Agenda **Regular Meeting of the Public Works and Utilities Committee**
September 15, 2025 at 5:00 PM
Council Chambers, City Hall
200 Lincoln Avenue

Procedures for Public Works and Utilities Committee Meeting

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Approval of Consent Agenda
5. Public Comment
6. Presentations
7. Action Items: Consent Agenda

   a. Request for Approval of the September 2, 2025, Public Works and Utilities Committee Meeting Minutes. (Elsa Ornelas-Segura, Administrative Manager; egornelassegura@santafenm.gov)

   Committee Review:
   Public Works and Utilities Committee: 09/15/2025

   b. Request for Approval of Construction Contract with Keers Facility Services in the Total Amount of $938,322 Including NMGRT for Remediation and Demolition Services at Midtown Required to Implement the Approved Master Plan for a Six-Month Term. (Tim Farrell, Facilities Division Property Development Manager; tgfarrell@santafenm.gov)

   Committee Review:
   Public Works and Utilities Committee: 09/15/2025
   Finance Committee: 09/22/2025
   Governing Body: 09/24/2025

   c. Request for Approval of a Professional Services Agreement with Yearout Energy Services Company, LLC DBA Energy Systems Group Southwest in the Total Amount of $500,827 Including NMGRT for an Investment Grade Audit and Microgrid Design for Community Resiliency for a Term of 18 Months.

(Regina Wheeler, Public Works Director; rawheeler@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 09/15/2025
Finance Committee: 09/22/2025
Governing Body: 09/24/2025

d. Request for Approval of a Budget Amendment Resolution (BAR) to Appropriate the Unspent Balance of an FY25 One Time Appropriation of $290,671 from General Fund Balance to FY26 Complete Streets Supplies for Intersection Markings (Regina Wheeler, Public Works Director; rawheeler@santafenm.gov).

Committee Review:
Public Works & Utilities Committee: 09/15/2025
Finance Committee: 09/22/2025
Governing Body: 09/24/2025

e. Request for Approval of a General Services Contract with Peter's Trucking Inc., in the Amount of $2,000,000 for Sewage Slude Disposal Services for a Four-Year Term. (Fred Heerbrandt, Engineer Supervisor; pfheerbrandt@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $500,000 from the Wastewater Enterprise Fund to Service Contracts.

Committee Review:
Public Works and Utilities Committee: 09/15/2025
Finance Committee: 09/22/2025
Governing Body: 09/24/2025

f. Request for Approval of an On-Call Construction Contract with Anchorbuilt for Sewer Collection System Repair, Replacement, and Extension in the Total Amount of $4,327,500 Including NMGRT for a Four-Year Term. (P. Fred Heerbrant, P.E., Engineer Supervisor; pfheerbrandt@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $1,081,875 from the Enterprise Fund to WIP Construction.

Committee Review:
Public Works and Utilities Committee: 09/15/2025
Finance Committee: 09/22/2025
Governing Body: 09/24/2025

g. Request for Approval of an On-Call Construction Contract with SKE

Contractors, Inc. for Sewer Collection System Repair, Replacement, and Extension in the Total Amount of $4,327,500 Including NMGRT for a Four-Year Term. (P. Fred Heerbrant, P.E., Engineer Supervisor; pfheerbrandt@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $1,081,875 from the Enterprise Fund to WIP Construction.

Committee Review:
Public Works and Utilities Committee: 09/15/2025
Finance Committee: 09/22/2025
Governing Body: 09/24/2025

h. Request for Approval of Amendment No. 1 to On-Call General Services Contract Item #23-0104 Pursuant to ITB#23/27/B with Proscape Landscape Management, LLC. and Pursuant to Article 8 of the Contract to Substitute the Price List. (Scott Overlie, Project Manager III, Parks & Open Space; saoverlie@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 09/15/2025
Finance Committee: 09/22/2025
Governing Body: 09/24/2025

i. Request for Approval of Amendment No. 1 to Item #24-0674 with Spencer Fane, LLP to Increase Compensation by $450,000 for a New Total Amount of $616,668.75 and to Extend the Term to September 1, 2028 for Litigation Against Contractors Involved in City Reservoir Improvement Projects. (Jesse Roach, Interim Public Utilities Director; jdroach@santafenm.gov)

Committee Review
Public Works and Utilities Committee: 09/15/2025
Finance Committee: 09/22/2025
Governing Body: 09/24/2025

j. Request for Approval of Capital Outlay Grant Agreement for Capital Appropriation Project 25-J3160 with the New Mexico Department of Finance & Administration in the Total Amount of $250,000 for Shelby Street Pedestrian Bridge Replacement with a Reversion Date of June 30, 2029. (Scott Overlie, Project Manager III; saoverlie@santafenm.gov)

Committee Review
Public Works Utilities Committee: 09/15/2025
Finance Committee: 09/22/2025
Governing Body: 09/24/2025

k. Request for Approval of Citywide Timekeeping and Workforce Management with UKG Kronos Systems LLC in the Total Amount of $211,153.10 for the First Year of the Four-Year Term through July 13, 2029. (Eric Candeleria, ITT Department Director; edcandelaria@santafenm.gov)

Committee Review
Public Works and Utilities Committee: 09/15/2025
Finance Committee: 09/22/2025
Governing Body: 09/24/2025

l. Request for Approval of a Donation Agreement wth Homewise to Donate Las Estrellas Tract 6A for Development as Affordable Housing. (Terry Lease, Asset Development Manager, tjlease@santafenm.gov).

Committee Review:
Public Works and Utilities Committee: 09/15/2025
Quality of Life Committee: 09/17/2025
Finance Committee: 09/22/2025
Governing Body: 09/24/2025

m. CONSIDERATION OF BILL NO. 2025-17. ADOPTION OF ORDINANCE NO. 2025-____. (Councilor Carol Romero-Wirth and Councilor Jamie Cassutt)
A Bill Amending SFCC 1987, Section 25-1.8(A) to Require the City of Santa Fe ("City") to Continue to Monitor the Naturally Occurring Fluoride Levels in its Water System at Representative Sample Locations and to End the Requirement to Add Fluoride to the System. (Jesse Roach, Interim Public Utilities Director; jdroach@santafenm.gov)

Committee Review:
Governing Body (Introduced): 08/27/2025
Governing Body (Public Comment): 09/10/2025
Public Works and Utilities Committee: 09/15/2025
Finance Committee: 09/22/2025
Governing Body: 10/08/2025

8. Action Items: Discussion Agenda
9. Executive Session
10. Matters from Staff
11. Matters from the Committee
12. Matters from the Chair
13. Next Meeting: Monday, September 29, 2025
14. Adjourn

Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6521, five (5) working days prior to meeting date.

Regular Meeting of the Public Works and Utilities Committee
September 2, 2025 at 5:00 PM
Council Chambers, City Hall
200 Lincoln Avenue
MINUTES

---

1. Call to Order

The Regular Meeting of the Governing Body was called to order by Councilor Amanda Chavez at 5:01 PM, on Tuesday, September 2, 2025, in the Council Chambers, CIty Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

2. Roll Call

MEMBERS PRESENT
Councilor Amanda Chavez
Councilor Lee Garcia
Councilor Michael Garcia
Councilor Alma Castro via Zoom
Councilor Carol Romero-Wirth

OTHER PARTICIPANTS ATTENDING

3. Approval of Agenda

MOTION A motion was made by Councilor Romero-Wirth, seconded by Councilor Garcia, to Approve.

VOTE The motion Passed on a roll call.

4. Approval of Consent Agenda

MOTION A motion was made by Councilor Romero-Wirth, seconded by Councilor Garcia, to Approve.

VOTE The motion Passed on a roll call.

5. Public Comment

6. Presentations

   a. Public Utilities Department Employee of the Month August 2025: Peter Rivera, Wastewater Management Division. (Patricia Rosacker, Wastewater Lab Manager; parosacker@santafenm.gov, and Michael Dozier, Wastewater Management Division Director; mldozier@santafenm.gov)

   b. Advanced Utility Billing System Update. (Nancy Jimenez, Utility Billing Division Director; nljimenez@santafenm.gov and Carla Monroe, Contractor, Project Manager; cdmonroe@santafenm.gov)

7. Action Items: Consent Agenda

a. Request for Approval of the August 18, 2025, Public Works and Utilities Committee Meeting Minutes. (Elsa Ornelas-Segura, Administrative Manager; egornelassegura@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 09/02/2025

Approved on Consent.

b. Request for Approval of an On-Call Construction Contract with AAC Construction, Inc. for Sewer Collection System Repair, Replacement, and Extension in the Total Amount of $4,327,500 Including NMGRT for a Four-Year Term. (P. Fred Heerbrant, P.E., Engineer Supervisor; pfheerbrandt@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $1,081,875 from the Wastewater Enterprise Fund to WIP Construction.

Committee Review:
Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

c. Request for Approval of a Budget Amendment Resolution (BAR) in the Amount of $3,683,246 from the 1/2% Capital GRT Fund to CIP Special Projects Fund for Appropriation of ERP Funds for FY26. (Eric Candelaria, ITT Department Director; edcandelaria@santafenm.gov).

Committee Review:
Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

d. Request for Approval to Purchase and Install a Headworks Generator at the Paseo Real Wastewater Treatment Plant from Wagner Equipment Company in the Total Amount of $1,319,302.21 Including NMGRT. (Leroy Alvarado, Operations Superintendent; lmalvarado@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $1,319,303 from the Wastewater Enterprise Fund to Equipment and Machinery.

Committee Review:

Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

e. Request for Approval of Grant Agreement FTA MA-33 with the United States Federal Transit Administration (FTA) via the Section 5307 Operating Assistance for the RideFinders Mobility Management Program in the Total Amount of $287,052 with Term Ending September 30, 2028. (Gabrielle Chavez, Transit Director of Administration; gnchavez@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $287,052 from the FTA Grant to Transit Revenue.

Committee Review:
Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

f. Request of Approval of a Construction Contract with Bradbury Stamm Construction for Construction Services at the Canyon Road Water Treatment Plant in the Total Amount of $23,673,913.31 Including NMGRT through December 31, 2028. (Clinton Peterson, Engineer; cdpeterson@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $12,000,000 from the Water Enterprise Fund to WIP Construction

Committee Review:
Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

g. Request For Approval to Accept the New Mexico Department of Transportation Aviation Division Grant # SAF-26-01 in the Amount of $1,000,000 for Rural Air Service Enhancement. (Paulette Ortiz, Grants Administrator; pkortiz@santafenm.gov)

1. Request For Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $1,000,000 to Increase Grants and Services using New Mexico Department of Transportation Aviation Division Funding for the Rural Air Service Enhancement.

Committee Review:

Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

h. Request for Approval of a Construction Contract with GME General Building LLC in the Total Amount of $5,500,000 Including NMGRT for On-Call Small Roadway, Trail and Sidewalk Construction for a Ten-Year Term. (Regina Wheeler, Public Works Director; rawheeler@santafenm.gov)

Committee Review
Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

i. Request for Approval of a Construction Contract with GM Emulsion LLC in the Total Amount of $5,500,000 Including NMGRT for On-Call Small Roadway, Trail and Sidewalk Construction for a Ten-Year Term. (Regina Wheeler, Public Works Director; rawheeler@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

j. Request for Approval of a Construction Contract with EMCO of Santa Fe in the Total Amount of $5,500,000 Including NMGRT for On-Call Small Roadway, Trail and Sidewalk Construction for a Ten-Year Term. (Regina Wheeler, Public Works Director; rawheeler@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

k. Request for Approval of a Construction Contract with Jaypen Construction LLC in the Total Amount of $5,500,000 Including NMGRT for On-Call Small Roadway, Trail and Sidewalk Construction for a Ten-Year Term. (Regina Wheeler, Public Works Director; rawheeler@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

l. Request for Approval of a Construction Contract with JDR & Associates in the Total Amount of $5,500,000 Including NMGRT for On-Call Small Roadway, Trail and Sidewalk Construction for a Ten-Year Term. (Regina Wheeler, Public Works Director; rawheeler@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

m. Request For Approval of U.S. Department of Transportation Federal Aviation Administration Grant # 3- 35-0037-066-2025 in the Amount of $90,193 for Funding the Rehabilitation of Taxiway F- Design. (Paulette Ortiz, Grants Administrator; pkortiz@santafenm.gov)

1. Request For Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $90,193 to Increase WIP Design using U.S. Department of Transportation Federal Aviation Administration Funding for the Rehabilitation of Taxiway F- Design.

Committee Review:
Public Works and Utilities Committee 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

n. Request for Approval of a Grant Agreement with the New Mexico Department of Finance and Administration via the New Mexico Match Fund in the Total Amount of $4,018,120 to Match the Section 5307 Operating Assistance Federal Transit Administration Grant. (Gabrielle Chavez, Transit Director of Administration; gnchavez@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) to Allocate Proceeds from the New Mexico Match Fund Grant in the Amount of $2,012,231 to FY25 and FY26 Transit Revenue.

Committee Review:
Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

o. Request for Approval of Amendment No. 1 to Item #25-0090 with Pure Operations LLC to Increase the Compensation by $1,477,688 for a New Total

of $1,926,888, and to Extend the Term through June 30, 2030 for Managing Large Distribution Meters Ranging in Size from 2” to 10”. (Randy Lopez, Transmission & Distribution Supervisor; rjlopez@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

p. Request for Approval of a Professional Services Contract with Mountain River Consulting, Inc. in the Total Amount of $1,244,156.25 Including NMGRT for Application Support, Technical Support for Data Conversion & CIS Interfaces to Update the Billing System for a Two-Year Term. (Nancy Jimenez, Public Utilities Admin, Billing and Customer Service Division Director; nljimenez@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 09/02/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

Approved on Consent.

q. CONSIDERATION OF BILL NO.2025-18. ADOPTION OF ORDINANCE NO. 2025-____. (Mayor Alan Webber and Councilor Carol Romero-Wirth)
A Bill Amending Chapter 22, Exhibit A by Removing Location of Service as a Criterion for Determining Sewer Service Charges. (Jesse Roach, Water Division Director; jdroach@santafenm.gov, Mike Dozier, Waste Water Division Director; mldozier@santafenm.gov, and Marcos Martinez, Senior Assistant City Attorney; mdmartinez@santafenm.gov)

Committee Review:
Governing Body (Introduced): 08/13/2025
Governing Body (Public Comment): 08/27/2025
Public Works and Utilities Committee: 09/02/2025
Governing Body: 09/24/2025

Approved on Consent.

r. CONSIDERATION OF RESOLUTION NO. 2025-____. (Councilor Amanda Chavez and Councilor Pilar Faulkner)
A Resolution Adopting Strategies to Participate in Suicide Prevention Awareness Month, September, by Increasing City of Santa Fe Employees’ Awareness about Suicide Prevention Resources and Calling on all Santa Fe Employers to Participate in Suicide Prevention Month. (Andrea Phillips, Deputy City Manager; akphillips@santafenm.gov)

Committee Review:
Governing Body (Introduced): 08/27/2025

Public Works and Utilities Committee: 09/02/2025
Quality of Life Committee: 09/03/2025
Governing Body: 09/10/2025

Approved on Consent.

s. CONSIDERATION OF RESOLUTION NO. 2025-____. (Councilor Jamie Cassutt, Councilor Pilar Faulkner, and Councilor Alma Casto)
A Resolution Convening a Charter Review Commission No Later than April of 2026 to Consider Mayor and City Councilor Powers. (Marci Eannarino, Legislation and Policy Innovation Manager; maeannarino@santafenm.gov, Palmer Anderson, Policy Analyst; pcanderson@santafenm,gov, and Christine Spiers, Legislative Assistant; cmspiers@santafenm.gov)

Committee Review:
Governing Body (Introduced): 08/27/2025
Public Works and Utilities Committee: 09/02/2025
Quality of Life Committee: 09/03/2025
Finance Committee: 09/08/2025
Governing Body: 09/10/2025

MOTION A motion was made by Councilor Garcia, seconded by Councilor Castro, to Approve.

VOTE The motion Passed on a roll call.

t. CONSIDERATION OF RESOLUTION NO. 2025-____. (Mayor Alan Webber and Councilor Jamie Cassutt)
A Resolution Authorizing Foreclosure of Certain Municipal Liens and Inviting Santa Fe County to Address Tax-Delinquent Properties within City Limits as Additional Strategies to Address Nuisance Properties in the City. (Frank Ruybalid, Assistant City Attorney; feruybalid@santafenm.gov)

Committee Review:
Governing Body (Introduced): 08/27/2025
Public Works and Utilities Committee: 09/02/2025
Quality of Life Committee: 09/03/2025
Governing Body: 09/10/2025

Approved on Consent.

8. Action Items: Discussion Agenda

9. Executive Session

10. Matters from Staff

11. Matters from the Committee

12. Matters from the Chair

13. Next Meeting: Monday, September 15, 2025

14. Adjourn

Meeting Adjourned at 5:31 PM

ELSA ORNELAS-SEGURA
Liaison

Chair

CITY OF SANTA FE

Date: July 24, 2025

To: Governing Body

From: Tim Farrell, Facilities Division Property Development Manager Timothy Farrell

Via: Regina Wheeler, Public Works Department Director Regina Wheeler (Jul 28, 2025 10:39:34 MDT)
Sam Burnett, Facilities Division Director JOHN BURNETT (Jul 27, 2025 15:08:14 MDT)

Subject: Midtown Remediation and Demolition

Vendor Name: Keers Facility Services, LLC

Vendor Number: 7887

ACTION:
Request for Approval of Construction Contract with Keers Facility Services in the Total Amount of $938,322 Including NMGRT for Remediation and Demolition Services at Midtown Required to Implement the Approved Master Plan. (Tim Farrell, Facilities Division Property Development Manager; tgfarrell@santafenm.gov)

CONTRACT NUMBER:
The FY25 Munis Contract Number is 3250629.

BACKGROUND AND SUMMARY:
The Facilities Division issued an Invitation to Bid for Phase 1 Remediation and Demolition services for selected buildings at Midtown. The procurement scope was developed based on Section 3.7 of the Midtown Master Plan Phase 1 Urban Design Vision which identifies areas for Phase 1 redevelopment which requires demolition of Luke Hall, LaSalle Hall, Kennedy Hall, and Apartments A/B & C/D. Keers Remediation Inc. was the sole qualified respondent.

The Contractor will provide remediation and demolition services of LaSalle Hall, Apartments A/B, and Apartments C/D. All of these buildings are decommissioned, present an active nuisance and risk of incident, and are in the way of new infrastructure. Work is planned to be completed in the Fall of 2025. Funding is available from legislative appropriation grants.

After this Phase 1 demolition of La Salle Hall and the Apartments, a Phase 2 demolition contract will be developed to demolish additional buildings which could include Luke, Kennedy, King, Alexis, and or Alumni Halls.

ATTACHMENTS:
Construction Contract
Proposal
Certificate of Insurance
Horizons Service List
CPO Determination

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:
Fund Name/Number: Legislative Appropriation
Munis Org Name/Number: MetroRedev/2120128
Munis Object Name/Number: WIP Constr/572970

Budget Officer/Designee: Andy Hopkins Date: 08/21/2025
Budget Officer Comment/Exceptions: _____

PROCUREMENT METHOD:
The procurement method for this contract is the Invitation to Bid No. 25111, dated April 21, 2025.

Chief Procurement Officer (CPO)/Designee: _____ Date: 08/22/2025
CPO Comment/Exceptions: _____

ASSOCIATED APPROVALS:
IT Components included? ☐ Yes | ☒ No
Approval: _____ Date: _____
Comment/Exceptions: _____

Treasury/Point of Sale Components included? ☐ Yes | ☒ No
Approval: _____ Title: _____ Date: _____
Comment/Exceptions: _____

Vehicles included? ☐ Yes | ☒ No
Approval: _____ Date: _____
Comment/Exceptions: _____

Construction to City Facilities, Furniture, and/or Fixtures, included? ☒ Yes | ☐ No
Approval: _____ Date: _____
JOHN BURNETT (Jul 27, 2025 15:08:14 MDT)
Comment/Exceptions: _____

Capital Asset or Project? ☐ Yes | ☒ No
Project Ledger No.: _____
Approval: _____ Date: _____
Comment/Exceptions: _____

Is this a Grant Funded Purchase? ☐ Yes | ☒ No
Approval: _____ Title: _____ Date: _____
Comment/Exceptions: _____

Item #: _____
Munis Contract #: 3250629
ITB #: 25111

CITY OF SANTA FE

CONSTRUCTION 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 **Keers Facility Services, LLC**, 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 City, through its Governing Body, is authorized to enter into a construction Contract for the project; and

WHEREAS, the City has procured this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount; and

The City and the Contractor hereby agree as follows:

1. Scope of Work

The Contractor will provide remediation and demolition services for multiple buildings, structures and related facilities located at the City's Midtown Campus at 1600 St Michaels Drive, Santa Fe, NM 87501. The Contract will cover the initial projects listed below and any additional on-call services as required.

Initial Buildings will be:

- LaSalle Hall Dormitory
- Student Apartments A and adjacent laundry facility
- Student Apartments B and adjacent laundry facility

The City anticipates a ninety (90) day period in which each remediation and demolition project should be completed after a Notice to Proceed is issued. Liquidated damages of $100.00 per day will be assessed for failure to complete all work within 90 days.

The Contractor will perform or provide all services related to the project and obtain all required permits. Contractor represents that all tasks will be performed in accordance with professional standards and further represents that the advice and consultation provided shall be within its authority and capacity as a professional. Contractor will comply with the regulations, laws, ordinances and requirements of all governmental impact applicable to assigned project.

Environmental Reports and Remediation

The City of Santa Fe has obtained environmental reports prepared by a New Mexico licensed

Environmental Consultant Company and the reports will be provided by the City to the Contractor and Contractor will perform remediation as set forth in the reports and under the conditions below.

Remediation

The work is to include all preparation and work needed to properly remove and dispose of identified hazardous, contaminated or environmentally hazardous materials located in and around the buildings at the Midtown Campus. For Asbestos abatement, Contractor will provide employees, subcontractors, or agents to perform this work in accordance with all Environmental Protection Agency (EPA) regulations as set forth in the National Emission Standards for Hazardous Air Pollutants (NESHAP) guidelines. For lead paint and hazardous material abatement, Contactor will provide employees, subcontractors, or agents to perform this work in accordance with all EPA regulations as set forth in Title IV of the Toxic Substances Control Act (TSCA) as well as other authorities in the Hazard Reduction Act of 1992. The Contractor/subcontractor will assume responsibility for all EPA fines including those attributable to the Using Agency if the Contactor/subcontractor is found to be illegally, intentionally, or accidently releasing any regulated asbestos or hazardous material. Prior to the removal of any asbestos of hazardous material the Contractor/subcontractor shall provide a written statement to the City certifying that they will abide by these EPA regulations and guidelines.

SPECIFICATIONS

The structures will be remediated as specified in the environmental reports and then demolished., Contractor shall make the lot(s) ready for new construction upon completion prior to invoicing.

The contractor shall be responsible for the following:

A. Compliance with all applicable laws, ordinances and codes of the federal, state and local governments and shall commit no trespass on any public or private property in performing any of the work as outlined. Contractor shall obtain all licenses, certifications, and inspections required City, County, State, and/or Federal law, and provide copies of all permits, certificates, and other proofs of compliance prior to a Notice to Proceed being issued by the Director of the City's Public Works Department, Facilities Division, or a person the Director designates in writing ("Facilities Director").

B. Locating and protecting services, curbs, gutters, sidewalks, streets, and roadways and notifing utility providers to remove their respective service if required (e.g., PNM, FM Mechanical for Gas, City of Santa Fe Water Dept.). The Contractor shall terminate and cap off all existing utilities at the street right of way, subject to approval by City code enforcement inspectors.

C. Completely demolish and remove the entire structure including all related and unrelated, attached and detached, surface and subsurface structural systems, materials, fixtures and utility systems, all pavement, concrete slabs, piers, foundations, poles, posts and all other improvements including all related and unrelated as described, all stumps, specified trees, shrubs, and vegetation.

D. Removing the cement materials and ensuring proper recycling at a recycling facility such as Mountainair Concrete, located in Mountainair, NM.

D. Removing overgrown brush, dead trees and/or fallen limbs, any trees within fifteen feet of the structures as well as any saplings on the lot(s). Contractor shall thoroughly clean the premises and remove project waste materials, rubbish, tools, demolition equipment,

machinery, surplus materials, vegetation, downed trees, rubble, debris, etc. from the property to the satisfaction of the Facilities Director and properly dispose of or recycle removed materials at landfills, transfer stations, and recycling centers approved by the Facilities Director for each respective type of waste in compliance with local codes and laws. All dump fees and receipts for this demolition project will be submitted to the City along with invoices.

E. Providing dust control.

F. Uniformally grading the lot(s) including backfilling with material approved in writing by the Facilities Director in all excavated areas and grading to the elevation necessary to provide positive surface drainage to all areas of the site. Erosion control will be used on the lot(s) where needed to provide proper surface drainage away from the surrounding properties, leaving all surfaces clear, clean and uniformly smooth.

H. Disking, raking, seeding with native grass, and covering all seed with straw.

J. Immediately repairing damage to adjacent structures, sidewalks and streetscape , at the Contractor's expense.

K. N.

Additional Specifications

B. A. Reuse of Materials – No materials from the project are proposed for reuse by the City.

C. Salvage of Materials – The Contractor shall take ownership of all scrap/salvage materials.

D.

E. Responsibility for Temporary Facilities – The Contractor will be responsible for all temporary facilities necessary to successfully complete the project – to include, but not limited to, portable restrooms, site fencing, site security, water, etc. Contractor must also obtain water from a fire hydrant with the rental of a hydrant meter from the City of Santa Fe.

F. Properties Adjacent to the Premises – Caution and care must be exercised to prevent damage to adjacent structures, sidewalks and streetscape. Contractor shall apply to the Facilities Director for all street closures at least 48 hours in advance.

The City reserves the right to provide an escort and/or full-time supervision of the Contractor and its employees during any or all phases of the project, should the City feel it is in its best interest to provide this extraordinary oversight and assistance.

The City reserves the right to escort any or all employees of the Contractor off its property, for any inappropriate conduct or actions that jeopardize the safety, security or wellbeing of the facility or any individual. Inappropriate behavior by the Contractor, its employees or subcontractors may be grounds for immediate termination of the Contract. Any employee of the Contractor found in violation of any law, while on the City's property, may be prosecuted.

Materials Storage

A. Materials or equipment for any remediation will be delivered to the project in the manufacturer's original sealed, labeled containers and will be adequately protected against moisture, dust, tampering or damage from improper handling or storage. Materials shall not be delivered to the site before they are needed.

B. Storage of materials and construction equipment shall be coordinated with the City.

Task Order
Contractor will accept all Task Orders from the Facilities Director. Contractor will accept Task Orders from other City of Santa Fe staff only with written approval of the scope of work from the Facilities Division Director.

The Contractor will be required to provide On-Call Remediation and Demolition for any number of the activities listed under Scope of Work upon the request of the City's Facilities Director or Director of Public Works. When a service is identified, the City will provide, at a minimum, a detailed scope of work and/or drawings defining work required. Each project will be individually described in a "Task Order". The Task Order will describe the scope of work, the duration of the project with the date of Substantial Completion and if there are liquidated damages for not meeting the date of substantial completion. The date of Substantial Completion is the date when the space can be occupied or the work in the applicable Task Order is complete and the premises where remediation occurred is turned over to the City Final completion is the date when the project is totally complete, the punch list work complete and the Facilities Director has approved the Contractor's final pay application/invoice. The terms and conditions of the Contractor's Contract will apply to all Task Orders.

Upon receiving the City's Task Order, the Contractor will promptly visit the site and compare the scope of work and/or drawings to the existing conditions and provide a written quote for all services called for in addition to the requirements set forth in the Contract. The Contractor will be required to provide a written quote based upon the rates submitted in the Bid Form and a cost summary to include the work to be performed and the amount of time required for the completion of the project and submit to the City at no cost to the City. Project schedules, negotiated price, and completion dates will be determined on a project-by-project basis and be dependent upon the urgency of that task. Failure to respond to the City's requests may be grounds for termination of this Contract. The Contractor will not commence work until the City's Facilities Director or Director of Public Works provides a Notice to Proceed.

OTHER CONSTRUCTION RELATED TERMS AND CONDITIONS

Mediation
Any controversy or claim arising between the parties shall be settled by mediation if the parties cannot reach a mutually agreeable solution. The parties will endeavor to resolve their disagreement by mediation which, unless the parties mutually agree otherwise, will be in accordance with the procedures of the New Mexico Public Works Mediation Act (NMSA 1978, Section 13-4C-1 et seq.) except that before any party may select a mediator, it must confer in good faith with the other party concerning the selection of a mutually acceptable mediator. Mediation will proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of **sixty (60) days** from the date of notice of mediation session, unless stayed for a longer period by agreement of the parties or court order.

Inspection of Work
If a Task Order is issued for demolition services, the following terms will apply when applicable:

A. Services include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor will provide and maintain an inspection system acceptable to the City covering the services under the Task Order. Complete records of all inspection work performed by the Contractor will be maintained and made available to the City or other party to the Task Order during the term of performance of the Work and for as long thereafter as required.

C. During and after the completion of demolition, the City has the right to inspect and test for proper and completed Remediation (as set forth above in "Remediation"). The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

D. If the City performs Environmental inspections or tests on the premises, the Contractor will furnish, and will require subcontractors to furnish, at no increase in Task Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services does not conform with the requirements, the City may require the Contractor to re-perform the services in conformity with the requirements at no increase in Task Order price. When the defects in services cannot be corrected by re-performance, the City may:
   1. require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements; and
   2. reduce the Task Order price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements, the City may:
   1. Perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
   2. cancel the Task Order for default.

THE PROVISIONS OF THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THE TASK ORDER/CONTRACT.

Suspension, Delay or Interruption of Work

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period as the City may determine. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized.

If at any time there is a delay in the critical path of a Task Order due to postponement by the Contractor or a subcontractor, or an increase in the price due to the Contractor's failure to perform work according to the schedule approved in the Task Order and Notice to Proceed, such delay and any Contractor costs resulting from it shall not serve as the basis for the extension of the Time for Completion or Agreement Completion Date or for an increase in the Contract Price.

Permits and Fees

A. IF APPLICABLE — The Contractor will secure and pay for any building permit and other permits and governmental fees, licenses and inspections, and Certificate of Occupancy necessary for proper execution and completion of the Work (permits as set forth in "Additional Specifications" above). Changes or modifications to the Work shall include all requirements of this paragraph.

B. The Contractor will comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

C. Any Certificates of Inspection, use and occupancy required under law will be delivered to the City upon completion of the Work in sufficient time for occupation of the facility in accordance with the approved schedule in the Task Order. Contractor will deliver a photocopy of the Building Permit to the City employee authorizing the Task Order and any City-contracted engineer or project manager as soon as it is obtained.

Schedule, Progress Meetings and Reports

A. The Contractor, promptly upon receiving a Notice to Proceed issued by the Facilities Director or Director of Public Works and before the first payment application, shall prepare and submit for the City's information a Critical Path Demolition Schedule for the Task Order that indicates the intended start and completion of the various demolition activities, which shall be implemented and adhered to by the Contractor, Subcontractors, material suppliers and equipment suppliers. At a minimum, the schedule will be a GANTT type schedule and will not exceed time limits allowed by the Task Order or Notice to Proceed with no fewer work breakdown events than line items of the Schedule of Values. An updated schedule shall be presented with any change orders, and an updated schedule shall be presented if requested by the City's Project Manager.

B. The Contractor will perform the Work in general accordance with the most recent schedule submitted to the City.

C. Progress meetings will be scheduled on a regular basis. The purpose will be to review the upcoming activities, any open issues and current progress. The Contractor will keep any meeting minutes as needed. Progress schedules will be updated regularly. A three-week look-ahead schedule should be presented at every project meeting.

D. The Contractor will prepare a daily report each day the Contractor, subcontractors or any other entity performs work on the project. The daily reports will be maintained at the site and be well organized. The City may request copies at any time. The reports shall include as appropriate:

1. Report date and who prepared the report;
2. Weather conditions – low temp, visibility, humidity, wind, wind direction, cloud conditions, precipitation amount, other notes;
3. Companies present by name and their number of workers, work location, total man hours that day for each company;
4. Equipment – type, source, units of work done, location of work, hour meter reading;
5. Material brought to site – description, units, quantity, quality, location, time;
6. Visitors to site – name, company, time;
7. safety concerns – company, contact, noticed by, work activity, safety issue, requirement, outcome; and
8. Quality assurance and control – company, description of issue, specification section, issued by, etc.

Close-out Requirements
The Contractor will submit to the City a separate and detailed Closeout Schedule indicating the date of Final Completion and all work to be completed before Final Completion including Close-Out requirements. The punch list of incomplete or inadequate demolition work will also be submitted when the work is substantially complete. Failure to include any item on the punch list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents.

Before final completion can be achieved, all Work must be complete and accepted including the following as applicable:
A. Work associated with Punch List(s);
B. All Storm Water Pollution Prevention Permits (SWPPP) have been updated or closed.

Warranty
The Contractor will warrant its work for materials and for workmanship furnished and performed under the Contract for a period of one (1) year minimum from the date of Substantial Completion. The Contractor will warrant its work for repairs or restoration of existing systems, appliances and work for ninety (90) days from the date of Substantial Completion.

This Contract is without assurance of quantity or dollar amount of work to be performed.

Minimum Requirements of Qualifications
Contractor is required to have a valid Contractor's license issued by the Construction Industries Division (CID) and be classified to perform the type of work to be undertaken, as set forth in NMSA 1978, Section 60-13-12.

All personnel working on the project and providing services under a Task Order shall be experienced and certified in all areas related to this work and required by the Contract. Journeymen level personnel shall have the ability and necessary skills to diagnose problems and to make the appropriate decisions needed to provide these services.

Price Schedule
Hourly rates are required for the three (3) levels of personnel:
A. **Superintendent**: a person with supervisory experience who maintains control of the work and work site. This person may or may not actually perform work on the project.
B. **Journeyman or Experienced Worker**: a person licensed by the State for work required and being performed or a person with many years of experience with a high rate of pay.
C. **Laborer**: a person with minimal experience, performing minor forms of labor.

Materials and Parts
Contractor will submit billings, based on actual Contractor costs for materials, less any applicable percentage for discounts. If there is no discount to be offered, enter zero. Contractor will provide verification that the materials purchased were used for the project. Any unused, billed for materials shall be turned over to the City.

The City of Santa Fe requires that all materials will be new and of the highest quality and at the best attainable price available for the type of work being performed.

No used materials will be used on the project. Recycled materials specifically prepared for reuse to meet "LEED" certification may be permitted with written approval of the Facilities Director.

The Contractor shall furnish all tools, equipment, materials, supplies, and manufactured articles and furnish all labor, transportation, and services, including fuel, power, water, and essential communications, and perform all work or other operations required for the fulfillment of the Contract in strict accordance with the contract documents for each Task Order.

The Contractor hereby acknowledges and assures the City that it has sufficient experience in constructing this type of work and therefore is familiar with all combinations of materials, labor, and equipment that are required for the successful completion of this project.

For each Task Order, the Contractor shall complete all work, and all work, materials, and services not expressly indicated or called for in the contract documents which may be necessary for the complete, safe and proper construction of the work in good faith shall be provided by the awarded Contractor at no increase in cost to the City:

1. Contractor will be responsible for adherence to the Contract documents, specifications and approved directives and change orders.
2. Contractor will be responsible for City and State CID requirements and permit.
3. Contractor will be responsible for verifications of all existing conditions, measurements and dimensions.
4. Contractor will be responsible for all permits, fees, and State and/or City inspections associated with the construction.

The City of Santa Fe is an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition or citizenship status (though citizenship status may impact hiring and retention under federal law). The Contractor will be required to conform to state, federal, and local Equal Employment Opportunity laws and regulations.

2. <u>Compensation</u>

A. The City shall pay to the Contractor in full payment for services satisfactorily performed at the rate of eight hundred sixty-seven thousand three hundred and eleven dollars ($867,311.00), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Contract shall be paid by the City to the Contractor, as follows:

The Unit Bid Contract Total is shown in Exhibit A "Pricing" and determined as follows:

Base Bid	$ 867,311.00
Gross Receipts Tax (8.1875%)	$ 71,011.09
Base Bid plus NMGRT	$ 938,322.09

The total amount payable to the Contractor under this Contract, including gross receipts tax and expenses, shall not exceed nine hundred thirty-eight thousand three hundred twenty-two dollars and nine cents ($938,322.09). 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 Facilities Director. 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. 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 twenty-one days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.

D. 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.

E. **Notice of Extended Payment Provision for Grant Funded Contracts**. This contract allows the City to make payment within 45 days after submission of an undisputed request for payment for contracts funded by grant money consistent with NMSA 1978, sec. 57-28-5(B).

3. Term

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This contract shall terminate **6 (six) months from the date of final approval signature**.

4. Termination

A. Grounds. The City may terminate this Contract 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 Contract based upon the City's uncured, material breach of this Contract.

B. Notice; City Opportunity to Cure.

1. Except as otherwise provided in Paragraphs 7.A and 17, 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 Contract 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 Contract 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 Contract, the Contractor is suspended or debarred by the City; or (iii) the Contract is terminated pursuant to Paragraph 5, "Appropriations," of this Contract.

C. Liability. Except as otherwise expressly allowed or provided under this Contract, 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 Contract. 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 CONTRACT.*

5. 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.

6. Status of Contractor

The Contractor and its agents and employees are independent contractors performing construction 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.

7. Construction Contract Performance and Payment Bond

A. When a task order is approved 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 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 Facilities Director. 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 12 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 12 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 12 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 Contract 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. Change Orders

A. 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) Contract compensation, as outlined in Article 2; or
5) Contract termination, as outlined in Article 4.

B. 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:

1) The Project Manager shall draft a written Change Request for review and approval by the City Manager to include:
(a) the name of the person requesting the change;

(b) a summary of the required change;
(c) the start date for the change;
(d) the reason and necessity for change;
(e) the elements to be altered; and
(f) the impact of the change.

2. 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 Contract, and become binding as a part of the original Contract.

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 **ITB #25111** and the Contractor's response to such document(s) are incorporated herein by reference and are 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. 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.

22. 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

23. Indemnification

The Contractor shall indemnify, hold harmless, or insure the City, including its officers, employees or agents, against liability, claims, damages, losses or expenses, including attorney fees for counsel of the City's choosing, only to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the indemnitor or its officers, employees, agents, or contractors. 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 Contract is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) business days after it receives notice thereof, notify the City.

24. 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.

25. 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.

26. 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.

27. 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:

Tim Farrell
Property Development Manager
City of Santa Fe - Facilities Division
2561 Siringo Road, Building E
Santa Fe, NM 87505
tgfarrell@santafenm.gov

To the Contractor:

Chris Lara
Service Coordinator
Keers Facility Services LLC
5904 Florence Avenue NE
Albuquerque, NM 87113
clara@keers.com

28. 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 into a binding contract.

29. Progress Payments

Based upon Application for Payment submitted to the City by the Contractor and Certificates for Payment issued by the City, the City shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the City; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract sum, less such amounts as the City shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

30. Final Payment

Final payment, constituting the entire unpaid balance of the Contract sum, unless it is a disputed payment, shall be paid by the City to the Contractor within twenty-one (21) calendar days, after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the City. In addition, the Contractor shall provide to the City a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

31. Schedule

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit a progress schedule covering project operations for the 30-day Contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the Contractor to implement the CPM shall be borne by the Contractor and are part of their Contract.

32. General and Special Provisions

A. Terms used in this Contract which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

B. An enumeration of the Contractor's General Comprehensive Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts, which the City could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to comply with the law.

C. This Contract shall not become effective until:

1. approved by the Governing Body; and
2. signed by all parties required to sign this Contract.

D. The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration and the State Auditor. 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 illegal payments.

E. The Contractor warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Contract.

F. The Contractor hereby warrants that the Contractor complies with the Americans with Disabilities Act, 29 CFR 1630.

G. Gender, Singular/Plural. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

H. Captions and Section Headings. The captions and section headings contained in this Contract are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Contract.

I. Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Contract shall be attached to this Contract at the time of execution and are hereby incorporated by reference as though set forth in full in this Contract to the extent they are consistent with its conditions and terms.

J. Separability. If any clause or provision of this Contract is illegal, invalid or unenforceable under present or future laws effective during the term of this Contract, then and in that event, it is the intention of the parties hereto that the remainder of this Contract shall not be affected thereby.

K. Words and Phrases. Words, phrases, and abbreviations, which have well-known technical or trade meanings used in the Contract documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.

L. Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.

M. Pursuant to NMSA 1978, section 13-1-191, reference is hereby made to the Criminal Laws of New Mexico (including NMSA 1978, sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (NMSA 1978, sections 13-1-28 through 13-1-199) imposes civil and criminal penalties for its violation.

N. Pursuant to NMSA 1978, section 13-4-11. Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

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, CITY MAYOR
DATE: _____

CONTRACTOR:
Keers Facilities Services LLC

Cameron Kilcup (Jun 27, 2025 13:26 MDT)

CAMERON KILCUP, MANAGING MEMBER
DATE: 06/27/2025

NMBTIN #: 03-383880-00-1

ATTEST:

_____
ANDREA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault
Kevin L. Nault (Jun 27, 2025 13:55 MDT)

ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

EMILY OSTER, FINANCE DIRECTOR

Keers Facility Services Construction Contract

Final Audit Report 2025-06-27

Created:	2025-06-27
By:	MATTHEW HARDING (mrharding@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAhXPY2RpPIX6SvlrPVJtAc4ZVI4dq8b8J

"Keers Facility Services Construction Contract" History

Document created by MATTHEW HARDING (mrharding@santafenm.gov)
2025-06-27 - 4:37:59 PM GMT- IP address: 63.232.20.2

Document emailed to camkilcup@keers.com for signature
2025-06-27 - 4:39:54 PM GMT

Email viewed by camkilcup@keers.com
2025-06-27 - 4:53:51 PM GMT- IP address: 96.72.10.145

Signer camkilcup@keers.com entered name at signing as Cameron Kilcup
2025-06-27 - 7:26:43 PM GMT- IP address: 73.98.3.113

Document e-signed by Cameron Kilcup (camkilcup@keers.com)
Signature Date: 2025-06-27 - 7:26:45 PM GMT - Time Source: server- IP address: 73.98.3.113

Document emailed to klnault@santafenm.gov for signature
2025-06-27 - 7:26:47 PM GMT

Email viewed by klnault@santafenm.gov
2025-06-27 - 7:54:35 PM GMT- IP address: 172.59.1.12

Signer klnault@santafenm.gov entered name at signing as Kevin L. Nault
2025-06-27 - 7:55:15 PM GMT- IP address: 172.59.1.12

Document e-signed by Kevin L. Nault (klnault@santafenm.gov)
Signature Date: 2025-06-27 - 7:55:17 PM GMT - Time Source: server- IP address: 172.59.1.12

Agreement completed.
2025-06-27 - 7:55:17 PM GMT

Powered by Adobe Acrobat Sign



Proposal/Service Agreement

Project Title: ITB 25111 Midtown Demolition
Proposal Number: 25-103-Revised Proposal 04/19/25
Date: April 19, 2025

EXHIBIT A

Submitted to:	Mr. Timothy Farrell	Project Name:	ITB 25111 MIDTOWN DEMOLITION
Client:	COSF Facilities Division	Project Location:	SANTA FE, NM 87501
Mailing Address:	2651 Siringo Rd. Bldg. E	Telephone/Fax:	1-505-955-5935
City/State/Zip:	Santa Fe, NM 87505	Email Address:	TGFARRELL@SANTAFENM.GOV

SCOPE OF WORK

The proposed work consists of the following:

Type of Services	☑ Building Demolition LaSalle Hall, Student Apartments A, B & Laundry Facilities ☑ Other: Building Demo & Waste Disposal Haul Off
Scope of Work	• ***Student Apartments A, B and Laundry Facilities, Sandia, Jemez, Sangre de Cristo and Ortiz apartment buildings.*** • ***Demolition and hauling per walk-thru of existing 2 story buildings (Sandia, Jemez, Sangre de Cristo and Ortiz) in their entirety (approximately 34,640 sf), including roofing system, interior/exterior frame wall partitions, furniture,*** • ***concrete slab, concrete footings, asphalt (approximately 24,440 sf), trash encloser, concrete sidewalk and concrete curb and gutter (approx. 702lf.*** • ***LaSalle Building:*** • ***Demolition and hauling per walk-thru of existing 2 story building in its entirety (approximately 31,515 sf) including roofing system, interior/exterior wall partitions, 2nd level concrete slab, 1st level concrete slab, concrete footings, furniture, countertops, windows and doors.*** • ***Seeding of all three work sites Is included in this proposal.*** • ***The student apartments A & B still need the asbestos survey performed.***
Project Locations	Midtown Site located at 1600 Saint Michaels Drive., Santa fe, NM.
Specific Project Exclusions	***Asbestos containing materials less than 1% by point counting/lead based paint, utility disconnections, capping of utilities, owner salvage items in LaSalle Hall. excavation for utilities, off site work, traffic control, underground utility work, shoring/bracing, unearth debris removal, dewatering, water pumping, geo textile fabric, base coarse, compaction testing, rock excavation, backfill, surveying, removal of pier soils, work not specified in this proposal, bond, unforeseen conditions. Asbestos abatement in the student apartments A & B.***
Proposed Time Frame	Approximately up to 90 working days Monday through Friday for the building demolition and debris hauling.
Treatment/ Storage/Disposal Facility	A landfill that accepts construction debris in Santa Fe, NM.
Other Details	The City of Santa Fe, to move items out of LaSalle Hall before the building is demolished. All items in student apartments will be salvaged or demolished by the demolition contractor.

TECHNICAL PROCEDURES

In completing the scope of work, all technical procedures employed will be in accordance with the Keers' proprietary QualPRO® Quality system. Our 193-page QualPRO manual consists of work practice procedures, checklists, and forms that our employees and supervisors use to provide you with a quality, end result in compliance with applicable EPA, OSHA, USHUD, NMED, TDH, and DOT governmental regulations.

WASTE MANAGEMENT

Unless otherwise indicated all asbestos-containing waste will be permanently disposed of at the Special Waste Disposal's landfill (EPA permit No. SWM-013035(SP). Hydrocarbon contaminated soils/water will be treated at the Special Waste Disposal's Hydrocarbon Landfarm Facility (NMED permit No. DP-1012). Both facilities are located in Torrance County, New Mexico.

LIABILITY PROTECTION

This proposal includes $1,000,000 of hazardous substances specific general liability, auto and workmen compensation insurances, written with A-Rated insurance carriers.

This proposal includes use of the Keers proprietary project documentation system **ProDOC™**. This system consists of: regulatory notifications, daily logs, visual and final inspection reports, air monitoring reports, manometer logs, final inspection report, and waste manifests. **ProDOC™** documents important regulatory/liability information for the protection of the facility owner.

REGULATORY COMPLIANCE

This project is subject to one or more of the following Federal governmental regulation or equivalent delegated State regulation: OSHA (29 CFR 1910 and 1926), EPA (40 CFR 260-299, 40 CFR 763, Subparts E and G), National Emission Standards for Hazardous Air Pollutants (NESHAPS 40 CFR 61, Subpart M), and DOT (49 CFR 100-177) and 24 CFR Part 35. This Proposal/Agreement is in compliance with the applicable regulatory sections.

PROJECT QUALITY/SAFETY ASSURANCE

This project proposal includes our 107-point QA/QC (health, safety, quality and regulatory Control) job site inspection program.

IMPORTANT NOTICE REGARDING REMOVAL OF ASBESTOS FLOORING

Our services are intended to remove asbestos-containing materials only. If flooring products are re-installed, it is the installer's responsibility to prepare the floor for reinstallation according to manufacture's recommendations and requirements. Keers will not be responsible for floor preparation.

IMPORTANT REMINDER: REGULATORY NOTIFICATIONS

Asbestos

On most asbestos abatement projects, a notice of intent to remove asbestos must be filed with the local NESHAPS regulatory authorities, 10 working days before work can begin. In many locations, local regulatory agencies bill the owner a fee based on the number of asbestos removal units stated on the notification. If you need help estimating what this fee is in your area, please ask your local Keers' Service Coordinator.

Toxic Mold

On some mold remediation projects, a notice of intent to remediate mold must be filed with the local regulatory authorities, (Texas: 5 working days.)

Lead

On some lead abatement projects, a notice of intent to remove lead must be filed with the local or national regulatory authorities, (Texas: 7 working days, USHUD: 5 business days.)

Proposal/Service Agreement

Project Title: ITB 25111 Midtown Demolition
Proposal Number: 25-103-Revised Proposal 04/19/25
Date: April 19, 2025

Submitted to:	MR. TIMOTHY FARRELL	Project Name:	ITB 25111 MIDTOWN DEMOLITION
Client:	COSF FACILITIES DIVISION	Project Location:	SANTA FE, NM 87501
Mailing Address:	2651 SIRINGO RD. # E	Telephone/Fax:	1-505-955-5935
City/State/Zip:	SANTA FE, NM 87505	Email Address:	TGFARRELL@SANTAFENM.GOV

PRICING: ITB 25111 Midtown Demolition

BUILDING DEMOLITION LASALLE HALL STUDENT APARTMENTS A & B INCLUDING THE ATTACHED LAUNDRY FACILITIES	$ 867,311.00
PLUS, NM GRT @ 8.1875%	71,011.09
TOTAL WITH NM GRT FOR BUILDING DEMOLITION SERVICES	$ 938,322.09

Note: We reserve the right to withdraw this proposal if not accepted within 30 days.

Keers Facility Services, LLC Signature: Christopher Lara Date: **04/19/25**
Name/Title: Christopher Lara, Service Coordinator, E-mail: **clara@keers.com**

Limitation of Authority: Proposals over $50,000 require Keers corporate review and signature by an officer and approval to be valid.
Reviewed and approved by: _____ Date: _____
Name/Title

CUSTOMER ACCEPTANCE

The above proposals (pages 1-6) are hereby accepted. You are authorized to complete the work as described.
Client Signature: _____

Name/Title: _____ **Date:**

Please Return to:
Keers Facility Services, LLC
5904 Florence Ave. NE, Albuquerque, NM 87113
Telephone: (505) 823-9006 or Toll Free 800-327-8642
Fax: (505) 823-2766 or Above Email Address

Service Center Located in El Paso, Texas

Proposal/Service Agreement

Project Title: ITB 25111 Midtown Demolition
Proposal Number: 25-103-Revised Proposal 04/19/25
Date: April 19, 2025

General Conditions

Scope of Work

Keers Facility Services, LLC (Contractor) agrees to furnish necessary labor, materials, supplies, equipment and tools to perform and complete in a professional workmanlike manner, the services described in the proposal.

Payment

100% upon completion of scope of work unless credit arrangements have been made, or work duration is longer than one (1) month. Then the contractor will submit invoices monthly, or as otherwise agreed, for completed portions of services or additional work authorized pursuant to Paragraph 5 herein. Client agrees to pay the invoiced amount within 20 days from date of invoice. Any payment not received by Contractor within 30 days shall be considered delinquent and the amounts due contractor shall accrue a late charge of 1 percent per month for each month from date of invoice. In the event any payment due Contractor under the terms of this Agreement is delinquent, Contractor may suspend all services until all delinquent payments have been received.

Standard of Care

a. While performing services under this agreement, Contractor shall exercise the degree of skill ordinarily exercised where performing the kind of services stated in the "Scope of Work".

b. Contractor assumes no responsibility for errors in public data utilized, statements from sources outside of Contractor, or developments resulting from situations outside the control of the contractor.

c. The standard of care set forth herein is the sole and exclusive standard of care that will be applied to measure Contractor's performance of the services or the creation of its work product.

There are no other representations or warranties made by Contractor. In particular, but not by way of limitation, Contractor makes no representation or warranty that the implementation or use of the recommendations, findings, conclusions, or final results produced as a result of performing the services will result in compliance with applicable law or provide a perfect result. Furthermore, with regard to microbial remediation, the contractor makes no warranties, claims, or guarantees that mold has been forever eliminated. It is possible that mold may return, unless the environment which supports mold growth is altered, which may or may not be possible, even given the best efforts of the contractor. Moreover, to the extent allowed by law, any and all implied representations or warranties arising out of the services are hereby expressly disclaimed and negated. IN PARTICULAR, BUT NOT BY WAY OF LIMITATION, NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

Time For Performance

The work will be completed within the calendar days as described in the scope of work, or as expeditiously as possible.
If the Contractor is delayed at any time in the progress of the work by any act or omission of the Client, or by its officers, directors, employees, agents and assigns ("Representatives"), or by any separate contractor employed by the Client, or by changes ordered in the work, or by labor dispute, fire, unusual delay in transportation, adverse weather conditions, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the owner pending arbitration, then the contract time shall be extended by agreement for such reasonable time as required.

Additional Work

The Client, without invalidating the agreement, may order changes in the work within the general scope of the agreement consisting of additions, deletions or revisions of the scope, cost of services and time being adjusted accordingly. All such changes in the work shall be authorized in writing. The cost or credit to the Client resulting from a change in the work shall be determined by one or more of the following: (1) by mutual agreement of either a fixed fee and/or unit price to be multiplied by the units worked in determining the total sum; (2) hourly rate per man hour multiplied by the man hours expended; or (3) by other mutually agreeable cost methods. If the outcome of the completed work indicates that additional or different work is required: the Contractor will notify the Client and will use his best professional judgment in assisting the Client in deciding how to proceed. The cost of services will be equitably adjusted by written change order or supplemental agreement between both parties.

Access, Approvals, Permits

Client shall arrange for access and make all provisions for Contractor to enter public and private property as required for Contractor to perform the specified services. Client shall furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approval and consent from others as may be necessary. Unless expressly stated in the proposal as the responsibility of contractor.

Client Provided Information

Work will not commence until the Contractor has received a duly executed copy of this contract. The Client shall direct its officers, directors, employees, subcontractors and agents to render reasonable assistance and to provide (promptly upon request) all necessary or appropriate data to the Contractor in connection with its performance under this agreement.

Any data furnished shall be furnished at the Client's expense, and the Contractor shall be entitled to rely upon its accuracy and completeness. The Client shall locate for the Contractor, and shall assume responsibility for the accuracy of his representations, as to the locations of all underground utilities, tanks, structures, or other installations, unless the express responsibility of the Contractor as stated in the "Scope of Work".

Safety

In an emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation and/or extension of time claimed by the Contractor on account of emergency work shall be determined as set forth, under the Additional Work section.

Hazardous Substances

Nothing herein shall be construed or interpreted as requiring Contractor to assume the status of a generator of any hazardous substances or hazardous materials, as those terms are defined under any applicable federal, state and local laws, statutes regulations, ordinances, rules or orders. If any hazardous, toxic or dangerous substances as defined by federal, state or local laws, statutes, regulations, ordinances, rules or orders, ("Hazardous Substances") are encountered at the site, and if these Hazardous Substances require handling, transportation or disposal at an off-site facility, Contractor will assist in advising the Client of his options. However, Contractor will not "arrange" for disposal of, accept title to, sign manifests for, or take control of any Hazardous Substances, unless expressly stated in the "Scope of Work". Client shall indemnify and hold Contractor harmless from any claims, damages, fines and fees, litigation or expenses, arising out of or in any way related to handling, transportation and disposal of any Hazardous Substances in the course of Contractor's performance of this Agreement

Restoration

The Client understands that in the normal course of work, some minor damage to property may occur including damage to landscaping, pavement, sprinkler systems, and interior building finishes. While the Contractor will act to minimize damage, the Client understands that the cost of restoration is not included in this agreement unless expressly stated in the scope of work.

Independent Contractor

Contractor shall perform all work under this agreement as an independent contractor, retaining complete control over its personnel and operations. Neither Contractor nor its subcontractors shall be, or shall be construed to be Client's

employees or agents, or have authority to bind Client in any way.

Indemnity

a. Contractor shall indemnify and hold harmless Client, and its respective officers, directors, employees, subcontractors, agents and assigns ("Representatives"), from and against any and all liabilities, claims, causes of action, suits, losses, damages, costs and demands, including reasonable attorneys' fees, resulting from or arising out of, personal injury, including death or property damage, to the extent such injury, death or property damage is caused by the negligence or willful misconduct of Contractor or its Representatives; and, provided that such injury, death, or property damage is not caused by the sole or contributory negligence of Client, or its Representatives; and provided further, that Contractor's liability hereunder shall be limited to and not exceed the insurance coverage and limits of liability identified in this proposal or the total cost of services under of this agreement, whichever amount is less.

b. Client shall indemnify and hold harmless Contractor, and its Representatives, from and against any and all liabilities, claims, causes of action, suits, losses, damages, costs and demands, including reasonable attorneys' fees, resulting from or arising out of, personal injury, including death or property damage, to the extent such injury, death or property damage is caused by the negligence or willful misconduct of Client or its Representatives; and provided further that such injury, death, or property damage is not caused by the sole or contributory negligence of Contractor or its Representatives.

c. The provisions this paragraph shall survive the completion of the work or the termination of the agreement between Contractor and Client.

Dispute Resolution

All claims, disputes and other matters in question between the Contractor and Client arising out of, or relating to, this agreement or breach thereof, shall be decided by arbitration in accordance with the construction industry rules of the American Arbitration Association, unless the parties mutually agree otherwise. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Notice of demand for arbitration shall be filed in writing with the other party to the contract agreement within a reasonable time after the claim, dispute or other matter in question has arisen.

Subcontractors

The Contractor reserves the right to remove any person, firm or corporation (Subcontracted to the Contractor) from participation in the services being provided to the Client.

Termination

If the work is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, through no act or fault of the Contractor or its Representatives, or if the Client has failed to make payment as provided in this agreement for work performed, or has otherwise stopped the contractor's work, then the Contractor may at his option provide three (3) days notice to the Client, terminate this agreement and recover from the Client, payment for all work completed, with all costs arising out of such termination.

Sample Handling and Retention

Generally, test samples or specimens are consumed and/or substantially altered during analysis. Contractor, at its sole discretion, will cause disposal of test samples, unless Client requests otherwise, in writing.

Reporting

By virtue of entering into this Agreement and providing services hereunder, Contractor does not assume responsibility for any conditions at the site that may present a danger, either potential or real, to the health, safety or the environment, except as set forth in the "Scope of Work".

Client hereby agrees to promptly notify Contractor of any Hazardous Substances and any special risk to human health, the environment or equipment on site of which Client is or becomes aware. By virtue of entering into this agreement or of providing services hereunder, Contractor does not assume control of or responsibility for reporting to any federal, state or local public agencies or governmental authorities any conditions at the site that may present a potential danger to health, safety, or the environment.

Waste Characterization

Prior to Contractor's performance of any services under this agreement, Client shall provide Contractor with an accurate waste characterization, which fully informs Contractor of the chemical, physical and hazardous characteristics of any waste to be managed pursuant to this agreement, unless the express responsibility of Contractor as stated in "Scope of Work". Client shall promptly notify Contractor if the waste characterization, or process generating the waste, changes in any respect during the term of this agreement.

Non-conforming Waste

Within a reasonable time after receipt of waste, Contractor may reject any waste that does not materially conform to the characterization or sample provided to Contractor by Client. Contractor shall immediately orally notify Client of such rejection and the manner in which the waste is non-conforming and shall confirm such oral notification in writing within a reasonable period of time. In the event of such rejection, Contractor shall have the right to: (a) return the waste to Client; or (b) arrange for treatment or disposal of the waste at another permitted facility. In any event, Client shall pay all additional fees and costs incurred in the handling of non-conforming waste, including, without limitation, transportation, storage, treatment, and disposal charges.

Title To Waste

Title, responsibility and risk of loss for waste conforming to the waste characterization shall pass from Client to Contractor as follows: (a) if Contractor provides transportation, upon departure of the Contractor vehicle carrying the waste from Client's site; (b) if Client provides transportation, upon acceptance of the waste at the Contractor facility or facility designated by Contractor.

Entire Agreement

The agreement and any referenced attachments constitute the entire agreement between Contractor and Client and supersedes all prior or oral or written representations or agreements. This agreement shall not be modified except in writing and signed by both parties.

Severability

If any of these General Conditions shall be finally determined to be invalid and unenforceable in sole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties.

Applicable Law and Venue

This Agreement shall be governed by the laws of the state of New Mexico. All actions, disputes, claims or other matters arising from this agreement shall be decided per the "Disputes Clause" in Albuquerque, New Mexico.

Limitations of Liability

In no event will the contactor be liable to the Client or anyone else (including third-party beneficiaries), for any consequential, incidental, special or indirect damages, including lost revenue and profits that result in any way connected with the services provided herein.

The Client agrees that the liability of the contractor arising out of any kind of legal claim (whether in contract, tort or otherwise) in any way connected with the services provided will not exceed the amount the Client originally paid the contractor for the service, or the available insurance identified elsewhere in the agreement, whichever amount is less.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/31/2025

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	CONTACT NAME: Chad Rush	
Brown & Brown Insurance Services, Inc. PO Box 94450 Albuquerque NM 87199	PHONE (A/C, No, Ext): (505) 821-5888	FAX (A/C, No):
	E-MAIL ADDRESS: Chad.Rush@bbrown.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Nautilus Insurance Company	
INSURED Keers Facility Services, LLC 5904 Florence Ave NE Albuquerque NM 87113	INSURER B : Key Risk Insurance Company	
	INSURER C : Great Divide Insurance Company	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 25-26 Master w/UMB **REVISION NUMBER:**

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	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:			ECP2040046-12	04/01/2025	04/01/2026	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
B	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY			BAP2040037-12	04/01/2025	04/01/2026	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) Uninsured motorist	$ 1,000,000 $ $ $ $ 1,000,000
A	[X] UMBRELLA LIAB [ ] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 0			FFX2040047-12	04/01/2025	04/01/2026	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N: Y If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WCA2040038-12	04/01/2025	04/01/2026	[X] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
A				ECP2040046-12	04/01/2025	04/01/2026		

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Job Number: 240057

Project Title: COSF-MTC King Hall

CERTIFICATE HOLDER

City of Santa Fe
Attn: Tim Farrell
PO Box 909
Santa Fe NM 87504

CANCELLATION

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



© 1988-2015 ACORD CORPORATION. All rights reserved.

Additional Named Insureds

Other Named Insureds

Keers Environmental, LLC

Keers Facility Services, LLC

Keers Industries dba Keers Environmental

Keers Industries, Inc dba Special Waste Disposal

Keers Industtries, Inc

Keers Remediation Inc dba Keers Clean

Keers Remedition Inc dba Keers Proclean

Special Waste Disposal Inc

COPYRIGHT 2007, AMS SERVICES INC

ADDITIONAL COVERAGES

Ref #	Description	Coverage Code	Form No.	Edition Date
	Professional			

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
1,000,000	2,000,000		5,000	Per Claim	

Ref #	Description	Coverage Code	Form No.	Edition Date
	Pollution	POL		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
1,000,000	2,000,000		5,000	Other	

Ref #	Description	Coverage Code	Form No.	Edition Date
	THIRD PARTY CLAIMS EXPENSE	TPCLE		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
1,000,000					

Ref #	Description	Coverage Code	Form No.	Edition Date
	EMERGENCY Remediation Costs			

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
1,000,000					

Ref #	Description	Coverage Code	Form No.	Edition Date
	COV A & B			

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
			5,000		

Ref #	Description	Coverage Code	Form No.	Edition Date
	Limited cyber Liability			

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
50,000	25,000		1,000		

Ref #	Description	Coverage Code	Form No.	Edition Date
	THIRD PARTY CLAIMS EXPENSE	TPCLE		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
1,000,000					

Ref #	Description	Coverage Code	Form No.	Edition Date
	Mold			

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
1,000,000	2,000,000		5,000	Per Claim	

Ref #	Description	Coverage Code	Form No.	Edition Date
	Underinsured motorist combined single limit	UNCSL		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
1,000,000					

Ref #	Description	Coverage Code	Form No.	Edition Date
	Medical payments	MEDPM		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
5,000					

Ref #	Description	Coverage Code	Form No.	Edition Date
	Experience Mod Factor 1	EXP01		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

OFADTLCV

Copyright 2001, AMS Services, Inc.

ADDITIONAL COVERAGES

Ref #	Description	Coverage Code	Form No.	Edition Date
	Increased employer's liability	INEL		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

Ref #	Description	Coverage Code	Form No.	Edition Date
	Terrorism Premium	TTER		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

Ref #	Description	Coverage Code	Form No.	Edition Date

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

Ref #	Description	Coverage Code	Form No.	Edition Date

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

Ref #	Description	Coverage Code	Form No.	Edition Date

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

Ref #	Description	Coverage Code	Form No.	Edition Date

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

Ref #	Description	Coverage Code	Form No.	Edition Date

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

Ref #	Description	Coverage Code	Form No.	Edition Date

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

Ref #	Description	Coverage Code	Form No.	Edition Date

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

Ref #	Description	Coverage Code	Form No.	Edition Date

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

Ref #	Description	Coverage Code	Form No.	Edition Date

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

OFADTLCV

Copyright 2001, AMS Services, Inc.

Services Offered to the City of Santa Fe (2025)

Approved:
These services have been approved by the New Mexico Council for Purchasing from Persons with Disabilities and are available through Horizons of New Mexico.

- ADA Accessibility Consulting Services
- Auctioneering Services
- Bulk Mailing and Sorting
- Call Center Services
- Computer Refurbishing
- Courier Services
- Decontamination, Sanitation and Sterilization Services
- Debris Removal
- Document Imaging
- Document Shredding
- Envelope Stuffing
- General Labor
- Hard Drive Destruction
- Janitorial and Housekeeping Services – Including Carpet Cleaning & Floor Care
- Landscape Irrigation
- Landscaping
- Mailing Services
- Management of an Assistive Technology Reuse and Recycling Program
- Medical Waste Disposal
- Meeting Minute Preparation Services
- Pest Control and Extermination Services
- Printing Services
- Rest Area Maintenance
- Screen Printing
- Snow Removal
- Temporary Staffing Services
- Yard, Grounds, and Lawn Maintenance

Permissive:
The services have been approved by the New Mexico Council for Purchasing from Persons with Disabilities as permissible for sale under the State Use Act through Horizons of New Mexico. While the Council recognizes that certain Horizons of New Mexico members are capable of performing the services listed below, said services are considered permissive and excluded from the mandatory aspect of the State Use Program. Any procurement of the below services through Horizons of New Mexico is at the discretion of the purchasing agent and will be considered by the Council on a case-by-case basis.

- Graphic Design
- Graphic Design - Logo Design
- IT – Enterprise Application
- IT – IV & V
- IT Network and Database Management
- IT Support
- IT Security Services
- IT – Web Design
- IT – Web Programmer
- Marketing
- Social Media Marketing
- Training Services

For the complete State Use service list, please go to: http://horizonsofnewmexico.org/services.html

From: DUTTON-LEYDA, TRAVIS K.
To: KAHAHANE, ELIZABETH L.; Purchasing DET
Subject: Re: Determination Request – Demolition Services
Date: Friday, November 8, 2024 5:07:26 PM
Attachments: image001.png

Hello, demolition is construction.

Thank you.

Regards,

Travis Dutton-Leyda
Chief Procurement Officer
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87501
505-629-8351
tkduttonleyda@santafenm.gov

https://santafenm.gov/finance-2/purchasing-1

Internal Link: https://intranet.santafenm.gov/finance_1



From: KAHAHANE, ELIZABETH L. <elkahahane@santafenm.gov>
Sent: Friday, November 8, 2024 5:06:39 PM
To: Purchasing DET <purchasing_det@santafenm.gov>
Subject: RE: Determination Request – Demolition Services

Aloha,

A friendly reminder… Thank you!

Best,
Elizabeth "Lisa" Kahahane
Contract Administrator | Facilities Division | Public Works Dept.
Email: elkahahane@santafenm.gov
M: (505) 795-2439

O: (505) 955-5934

From: KAHAHANE, ELIZABETH L.
Sent: Wednesday, November 6, 2024 3:05 PM
To: Purchasing DET <purchasing_det@santafenm.gov>
Subject: Determination Request – Demolition Services

Good afternoon,

Facilities Division is requesting a SOW determination for the following:

- The City of Santa Fe is seeking bids from qualified companies to provide demolition services for multiple buildings at 1600 St Michaels Drive (Midtown Site).

Please let me know if additional information is required.
Thank you!

Best,
Elizabeth "Lisa" Kahahane
Contract Administrator | Facilities Division | Public Works Dept.
Email: elkahahane@santafenm.gov
M: (505) 795-2439
O: (505) 955-5934

CITY OF SANTA FE
FACILITIES

GB Packet_Midtown Remediation Demo_07 17 2025 ELK2 SB RW2 TF2

Final Audit Report 2025-07-28

Created:	2025-07-24
By:	Elizabeth Kahahane (elkahahane@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAoj_Nzrq4ySj6K3qTyD05AUeqRkCXPrz-

"GB Packet_Midtown Remediation Demo_07 17 2025 ELK2 SB RW2 TF2" History

Document created by Elizabeth Kahahane (elkahahane@santafenm.gov)
2025-07-24 - 7:49:52 PM GMT- IP address: 63.232.20.2

Document emailed to Timothy Farrell (tgfarrell@santafenm.gov) for signature
2025-07-24 - 7:54:49 PM GMT

Email viewed by Timothy Farrell (tgfarrell@santafenm.gov)
2025-07-24 - 8:00:09 PM GMT- IP address: 104.47.64.254

Document e-signed by Timothy Farrell (tgfarrell@santafenm.gov)
Signature Date: 2025-07-24 - 8:01:57 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to JOHN BURNETT (jsburnett@santafenm.gov) for signature
2025-07-24 - 8:01:59 PM GMT

Email viewed by JOHN BURNETT (jsburnett@santafenm.gov)
2025-07-24 - 9:45:10 PM GMT- IP address: 104.156.39.164

Email viewed by JOHN BURNETT (jsburnett@santafenm.gov)
2025-07-27 - 9:08:00 PM GMT- IP address: 73.228.3.65

Document e-signed by JOHN BURNETT (jsburnett@santafenm.gov)
Signature Date: 2025-07-27 - 9:08:14 PM GMT - Time Source: server- IP address: 73.228.3.65

Document emailed to rawheeler@santafenm.gov for signature
2025-07-27 - 9:08:17 PM GMT

Email viewed by rawheeler@santafenm.gov
2025-07-27 - 9:08:20 PM GMT- IP address: 20.159.64.152

Signer rawheeler@santafenm.gov entered name at signing as Regina Wheeler

2025-07-28 - 4:39:32 PM GMT- IP address: 63.232.20.2

Document e-signed by Regina Wheeler (rawheeler@santafenm.gov)

Signature Date: 2025-07-28 - 4:39:34 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.

2025-07-28 - 4:39:34 PM GMT

GB Packet_Midtown Remediation Demo_07 17 2025 ELK2 SB RW2 TF2

Final Audit Report 2025-08-28

Created:	2025-08-21
By:	Kristy Miera (kamiera@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA1AVcuNOpPvE-Fpj3xUTm70S3SCdw-YCh

"GB Packet_Midtown Remediation Demo_07 17 2025 ELK2 SB RW2 TF2" History

Document created by Kristy Miera (kamiera@santafenm.gov)
2025-08-21 - 10:01:00 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
2025-08-21 - 10:09:35 PM GMT

Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2025-08-21 - 10:39:30 PM GMT- IP address: 104.47.65.254

Document e-signed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
Signature Date: 2025-08-21 - 10:42:08 PM GMT - Time Source: server- IP address: 63.232.20.2

Document sent to JoAnn Lovato (jdlovato@santafenm.gov) and Travis Dutton-Leyda (tkduttonleyda@santafenm.gov) for signature. One of them to sign
2025-08-21 - 10:42:11 PM GMT

Email viewed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
2025-08-21 - 10:51:20 PM GMT- IP address: 129.222.143.121

Document e-signed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
Signature Date: 2025-08-22 - 5:50:58 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature
2025-08-22 - 5:51:02 PM GMT

Email viewed by EMILY OSTER (ekoster@santafenm.gov)
2025-08-27 - 7:49:55 PM GMT- IP address: 104.47.65.254

Powered by Adobe Acrobat Sign

Document e-signed by EMILY OSTER (ekoster@santafenm.gov)

Signature Date: 2025-08-28 - 1:00:11 AM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.

2025-08-28 - 1:00:11 AM GMT

CITY OF SANTA FE

Date: August 4, 2025

To: Governing Body

From: Regina Wheeler, Public Works Department Director Regina Wheeler (Aug 4, 2025 10:48:11 MDT)

Via: Kyle Morgan, Interim Emergency Management Director Kyle Morgan
Jesse Roach, Interim Director of Utilities

Subject: Investment Grade Audit and Microgrid Design for Community Resiliency

Vendor Name: Yearout Energy Services Company LLC DBA Energy Systems Group Southwest

Vendor Number: 3069

ACTION:
Request for Approval of a Professional Services Agreement with Yearout Energy Services Company, LLC DBA Energy Systems Group Southwest in the Total Amount of $500,827 Including NMGRT for an Investment Grade Audit and Microgrid Design for Community Resiliency for a Term of 18 Months. (Regina Wheeler, Public Works Director, rawheeler@santafenm.gov)

CONTRACT NUMBER:
The FY26 Munis Contract Number is 3260085.

BACKGROUND AND SUMMARY:
Power outages that occur during disasters impact City of Santa Fe operations, visitors, and residents. During extreme weather, PNM has adopted a Public Safety Power Shutoff policy to reduce risk of fire, further increasing the likelihood of power outages. The City has backup generators on some critical facilities, but this microgrid project will assess and design provision of power by renewable microgrids. Renewable microgrids will build on the City's significant behind the meter solar capacity and utilize battery storage, control logic, and renewable energy generation to power facilities without the need for access to diesel fuel.

With this project, the City of Santa Fe would not only create resiliency and reduce human suffering and property loss during a disaster but also power more City daily operations with renewable power, further reducing climate impacts. There may be energy cost savings and broader grid benefits during normal operations resulting from energy storage and controls at facilities that could significantly reduce peak demand and energy use during peak times.

In alignment with the City of Santa Fe Disaster Mitigation Plan and following the approach outlined in the Department of Defense Climate Adaption Plan, the goal of the project is to utilize renewable microgrids to ensure essential services such as water, wastewater, transportation and emergency services during a disaster. Specific facilities that will be assessed for feasibility to be powered with renewable microgrids include drinking water pumps, wastewater plant, collection pumps, emergency

operations center, emergency shelter facilities, Santa Fe Regional Airport, Santa Fe Trails Transit Operations Facility, Complete Streets, City leadership, police and fire stations.

The scope of work this contract includes is as follows:

- Identify facilities that combined would create a backbone of essential services of water, wastewater, transportation and emergency services and leverage existing behind the meter solar capacity.
- Determine feasibility of installing and operating a renewable microgrid behind the meter at each facility to provide five days of power.
- Design microgrid systems for each facility.
- Develop energy savings estimates, construction cost estimates, equipment specifications and construction project plans.

The State of New Mexico Energy, Minerals and Natural Resources Department oversees projects performed under this Statewide Price Agreement and certifies designs and energy savings calculations. Yearout Energy Services completed the City's last renewable energy audit and installation of over three megawatts of solar at seventeen facilities. Yearout was authorized by the State to provide a discount to the City for this work that will build on the previous energy audit.

This contract is funded by the Building Resilient Infrastructure in Communities (BRIC) Grant which provided a 75% federal share with a 25% City match. Once this feasibility and design phase of the project is completed, estimated to take one year, additional FEMA funding will be sought for construction.

Public Works Department is managing the project, and the Office of Emergency Management is managing the grant and interfacing with FEMA and the New Mexico Department of Homeland Security and Emergency Management.

ATTACHMENTS:
Professional Services Agreement
Proposal – Exhibits A through D
Statewide Price Agreement 40-00000-23-00029
Certificate of Insurance
CPO Determination / Blanket List
Horizons Services List

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:
Fund Name/Number: CIPRESRCE/Fund 315
Munis Org Name/Number: Resource Conservation CIP/3159981
Munis Object Name/Number: WIP Construction/572970
Project Ledger No.: PWD2531532

Budget Officer/Designee: Andy Hopkins Date: 08/19/2025
Budget Officer Comment/Exceptions: _____

PROCUREMENT METHOD:
The procurement method used was NMSA 1978, Section 13-1-129, utilizing the existing Statewide Price Agreement 40-00000-23-00029, which expires on January 11, 2028.

Chief Procurement Officer (CPO)/Designee: _____ Date: 08/20/2025
CPO Comment/Exceptions: _____

ASSOCIATED APPROVALS:
IT Components included? ☐ Yes | ☒ No
Approval: _____ Title: _____ Date: _____
Comment/Exceptions: _____

Treasury/Point of Sale 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: Building Resilient Infrastructure in Communities (BRIC) Grant EMT-2022-BR-001 (which provided a 75% federal share with a 25% City match)
Approval: _____ Title: _____ Date: _____
Comment/Exceptions: _____

Capital Asset or Project? ☐ Yes | ☒ No
Project Ledger Number: _____
Approval: ERIKA LUJAN ERIKA LUJAN (Aug 25, 2025 08:27:16 MDT) Title: Grants Manager Date: 08/25/2025
Comment/Exceptions: _____

Item #: _____
Munis Contract #: _____
SWPA/GSA/Coop/RFP/ITB#: _____

CITY OF SANTA FE

PROFESSIONAL SERVICES CONTRACT

FOR

INVESTMENT-GRADE ENERGY AUDIT AND PROJECT PROPOSAL

THIS AGREEMENT is made and entered into by and between the **CITY OF SANTA FE**, a governmental entity hereinafter referred to as the "Agency," and **YEAROUT ENERGY SERVICES COMPANY, LLC. DBA ENERGY SYTEMS GROUP SOUTHWEST (ESG)**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed.

RECITALS

WHEREAS, this Agreement was created for use by New Mexico government entities to obtain an Investment-Grade Energy Audit of a facility from a private energy service company (ESG);

WHEREAS, authority exists in the law for Agency to enter into this contract, and funds have been budgeted, appropriated and otherwise made available; a sufficient unencumbered balance thereof remains available for payment; and the required approval, clearance and coordination have been accomplished from and with appropriate agencies;

WHEREAS, Contractor is a company with experience and technical and management capabilities to provide for the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water conserving measures at facilities similar in size, function and system type to Agency's facilities;

WHEREAS, Contractor has been selected in accordance with Statewide Price Agreement 40-00000-23-00029AH, pertaining to the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water conserving measures at Agency's facilities;

WHEREAS, Agency has selected Contractor to provide the services described herein;

WHEREAS, Agency desires to enter into a contract to have Contractor perform an Investment-Grade Energy Audit and Project Proposal to determine the feasibility of entering into an Guaranteed Utility Savings Contract to provide for installation and implementation of energy and water conserving measures at Agency's facilities; and

WHEREAS, if energy and water conserving measures are determined to be feasible, and if the amount of savings can be reasonably sufficient to cover all costs, as defined by Agency, associated with an Energy Savings Performance Contracting project, the parties intend to negotiate a

Guaranteed Utility Savings Contract under which the Contractor will design, procure, install, implement, maintain and monitor such energy and water conserving measures. However, this intent does not commit Agency to entering into such a Guaranteed Utility Savings Contract.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Agency and Contractor hereto covenant and agree that the following Exhibits are attached hereto (or will be, as provided in this Agreement) and are made a part of this Agreement by reference.

IT IS AGREED BETWEEN THE PARTIES:

1. <u>Scope of Work</u>.

With respect to the structure(s) identified in Exhibit B, Contractor shall:

A. Perform an Investment-Grade Energy Audit (Audit) in accordance with this Agreement. Contractor shall work diligently to assess validity of information provided and to confirm or correct the information as needed to provide a complete and accurate Audit including schematic architectural and engineering design, as required. Agency will assist Contractor in performing the Audit as described in this Agreement. Agency will work diligently to provide full and accurate information needed by Contractor for the Audit. The parties contemplate that development of the Audit will be an iterative process and that Agency's Director of Public Works or Facilities Director shall have a reasonable amount of time, not less than 30 calendar days but not exceeding 90 calendar days from Agency receipt of Audit report, to review and determine acceptance of Audit report. The Director of Public Works or Facilities Director shall communicate any deficiencies to Contractor or approve the Notice of Acceptance (Exhibit A) if no deficiencies are found.

B. Submit a Project Proposal (Proposal) to Agency within 30 calendar days of Audit report submittal that provides a package of energy and water conserving measures, including details as specified in this Agreement.

C. In order to successfully implement this project, Contractor shall:

I. **Conduct assessment.**

(a) Meet with Agency to establish interests, plans, problems, and any other issues related to facilities and operation of facilities.

(b) Collect data and background information on buildings, equipment and facilities operation and energy use for the most recent three years (as available or data from previous Investment Grade Audit if applicable) from the effective date of this Contract as follows:

(1) Building square footage;

(2) Construction data of buildings and major additions including building envelope;

(3) Utility company invoices;

(4) Occupancy and usage information;

(5) Description of all energy-consuming or energy-saving equipment used on the premises, as available;
(6) Description of energy management procedures utilized on the premises;
(7) Description of any energy-related improvements made or currently being implemented;
(8) Description of any changes in the structure of the facility or energy-using or water-using equipment;
(9) Description of future plans regarding building modifications or equipment modifications and replacements;
(10) Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels);
(11) Original construction submittals and factory data (specifications, pump curves, and any similar documentation), as available;
(12) Operating engineer logs, maintenance work orders, and any similar documentation, as available;
(13) Records of maintenance expenditures on energy-using equipment, including service contracts;
(14) Prior energy audits or studies, if any

(c) Perform a preliminary walk-through of facilities and interview staff and occupants to identify potential measures.
(d) Meet with Agency to present preliminary findings and establish agreement on measures to analyze.

II. **Identify potential measures.**

(a) Interview the facility manager, maintenance staff, subcontractors and occupants of each building regarding:
(1) Facility operation, including energy management procedures;
(2) Equipment maintenance problems;
(3) Comfort problems and requirements;
(4) Equipment reliability;
(5) Projected equipment needs;
(6) Occupancy and use schedules for the facility and specific equipment;
(7) Past, planned, and desired facility improvements.
(8) Critical loads in the event of an emergency.
(9) How facility use may change in the event of an emergency.

(b) Survey major energy-using equipment, including indoor and outdoor lighting, heating and heat distribution systems, cooling systems and related equipment, automatic temperature control systems and equipment, air distribution systems and equipment, outdoor ventilation systems and equipment, exhaust systems and equipment, hot water

systems, electric motors, transmission and drive systems, special systems (including kitchen/dining equipment), renewable energy systems, other energy using systems, and water consuming systems (restroom fixtures, water fountains, irrigation systems, and other water systems).

(1) Verify settings of control systems that include computer controls systems and building thermostats
(2) Measure lighting levels at various locations in a building to determine if recommended lighting levels exist
(3) Inspect filters for heating and cooling systems to determine the status of maintenance activities
(4) Consider maintenance staff and occupant concerns related to heating, cooling, and lighting
(5) Determine energy requirements in an emergency

(c) Perform "late-night" surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules, if deemed necessary.

(d) Develop a preliminary list of potential energy and water conserving measures as well as resiliency measures. Consider the following for each system:

(1) Comfort and maintenance problems;
(2) Energy use, loads, proper sizing, efficiencies and hours of operation;
(3) Current operating condition;
(4) Remaining useful life;
(5) Feasibility of system replacement;
(6) Hazardous materials and other environmental concerns;
(7) Agency's future plans for equipment replacement or building renovations;
(8) Facility operation and maintenance procedures that could be affected;
(9) Capability to monitor energy performance and verify savings.

III. **Analyze measures.**

(a) Establish base year consumption by examining utility bills for the past three years for electricity, gas, steam, water, and any other energy or fuel types. Present base year consumption in terms of energy units as used in utility bills, in terms of dollars, and in terms of dollars per square foot. Describe the process used to determine the base year (such as averaging, selecting most representative contiguous 12 months, or other methods). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. Contractor shall account for periods of time when equipment was broken or malfunctioning in calculating the base year.

(b) Estimate loading, usage and/or hours of operation for all major end uses of total facility consumption including, but not limited to: lighting, heating, cooling, motors (fans and pumps), plug loads, and other major energy and water using equipment. Where loading or usage are highly uncertain (including variable loads such as cooling), Contractor will use its best judgment, spot measurements or short-term monitoring. Contractor should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

(c) Reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable "real-world" limits on potential savings.

(d) Propose adjustments to the baseline for energy and water conserving measures that will be implemented in the future. Adjustments made to the energy baseline shall only be made for any of the following changes in conditions affecting the facility:

(1) utility rates;

(2) number of days in the utility billing cycle;

(3) floor area of the facility;

(4) operational schedule of the facility;

(5) facility temperature;

(6) weather, if change is significant;

(7) amount of equipment or lighting used in the facility, if change is significant;

(8) space type(s) in the facility, if change is significant; and

(9) material change(s) in or to the facility.

(e) Develop a preliminary analysis of potential energy and water conserving measures as well as resiliency measures. This resulting list of measures shall be compiled and submitted to Agency within 180 calendar days of the execution of this Contract. Furthermore:

(1) List all potential measures, whether cost-effective or not. Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, and water conserving devices.

(2) Identify measures which appear likely to be cost effective and therefore warrant detailed analysis.

(3) For each measure, prepare a preliminary estimate of energy or water cost savings, including description of analysis methodology, supporting calculations and assumptions used to estimate savings.

(f) Meet with Agency to present preliminary findings prior to thorough analysis. Describe how the projected project economics meet the

Agency's terms for completing the Investment-Grade Energy Audit and Proposal Contract. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an energy performance contract. Develop a list of recommended measures for further analysis. The Agency shall have the option to reject calculations of savings, potential savings allowed, or project recommendations.

(g) Perform final analysis of savings and costs for each energy and water conserving measure, including the following:
    (1) Follow the methodology of American Society of Heating, Refrigerating, and Air-Conditioning Engineers or other nationally-recognized authority following the engineering principle(s) identified for each retrofit option.
    (2) Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include accurate marginal costs for each unit of savings at the time the audit is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, calculations which account for the interactive effects of the recommended measures.
    (3) Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use.
    (4) Use markups and fees stated above in all cost estimates.
    (5) Develop a preliminary measurement and verification plan for each measure.
    (6) Follow additional guidelines for analysis and report preparation given below.

(h) Develop microgrid solution for appropriate sites as determined during the IGA process.

II. **Provide Investment-Grade Energy Audit Report**

The report provides an engineering and economic basis for negotiating a potential Guaranteed Utility Savings Contract between the Agency and the Contractor.

(a) Contractor shall prepare and submit to Agency a draft Investment-Grade Energy Audit Report within 365 days calendar days of the date of execution of this Contract. The report shall provide the following information:
    (1) Overview, which shall include:
        i) Contact information;
        ii) Summary table of recommended energy and water conserving measures as well as resiliency measures, with itemization for each measure of total design and construction cost, annual maintenance costs, the first

year cost avoidance (in dollars and energy units), simple payback and equipment service life;

iii) Summary of annual energy and water use by fuel type and costs of existing or base year condition;

iv) Calculation of cost savings expected if all recommended measures are implemented and total percentage savings of total facility energy cost;

v) Description of the existing facility, mechanical and electrical systems;

vi) Summary description of measures, including estimated costs and savings for each as detailed above;

vii) Discussion of measures considered but not investigated in detail;

Conclusions and recommendations.

(2) Base year energy use, which shall include:

i) Description and itemization of current billing rates, including schedules and riders;

ii) Summary of all utility bills for all fuel types and water;

iii) Identification and definition of base year consumption and description of how established;

Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc) with base year (include discussion of any unusual findings).

(3) Full written description of each energy and water conserving measure and resiliency measures, which shall include:

i) Existing conditions;

ii) Description of equipment to be installed and how it will function;

iii) Discussion of facility operations and maintenance procedures that will be affected by installation/implementation;

iv) Plan for installing or implementing the recommended measure.

(4) Allowable cost and savings factors approved for consideration. Agency will provide Contractor with sufficient guidance to develop savings estimates, which shall include:

i) Payment sources that can be incorporated:

- Energy and water cost savings;
- Material/commodity savings, including scheduled replacement of parts (only for years that these cost savings are applicable);
- Outside labor cost savings, including maintenance contracts;

- In-house labor costs;
- Deferred maintenance cost;
- Offset of future capital cost;
- Outside incentive funds (utility incentives, grants, etc.);
- Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented;

ii) Payment sources that may also be considered and negotiated;

iii) Additional factors related to establishing savings that cover all costs:

- Escalation rates that apply to each payment source. These are rates to be used in cash flow projections for project development purposes; *NOTE: Contractor shall use federal government guidelines on utility escalation rates to ensure reasonableness.* Interest rates (municipal tax-exempt rates for public agencies);
- Agency cash outlay (Agency's sole discretion);

iv) The markup costs are presented in Exhibit B: Cost and Pricing. These rates will be used in the Investment-Grade Energy Audit and subsequent Guaranteed Utility Savings Contract.

(b) Savings calculations

(1) Base year energy use and cost.

(2) Post-retrofit energy use and cost.

(3) Savings estimates including analysis methodology, supporting calculations and assumptions used.

(4) Annual savings estimates. The cost savings for all energy conserving measures must be estimated for <u>each year</u> during the contract period. Savings must be able to be achieved <u>each year</u> (cannot report average annual savings over the term of the contract).

(5) Savings estimates must be limited to savings allowed by the Agency as described above.

(6) Percent cost-avoidance projected.

(7) Description and calculations for any proposed rate changes.

(8) Explanation of how savings interactions between retrofit options are accounted for in calculations.

(9) Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment.

(10) If computer simulation is used, include a short description and state key input data. If requested by Agency, access will be provided to the program and all assumptions and inputs used, and/or printouts shall be provided of all input files and important output files and included in the Investment-Grade Energy Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts.
(11) If manual calculations are employed, formulas, assumptions and key data shall be stated.
(12) Conclusions, observations, and caveats.

(c) Cost estimate -- detailed scope of the construction work needed, suitable for cost estimating. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts.

(1) Engineering/design costs.
(2) Contractor/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities.
(3) Permit costs.
(4) Construction management fees.
(5) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.).
(6) Note that all markups and fees stated in this Contract shall be used in the cost estimates, unless otherwise documented and justified due to change in scope or size of project or other unforeseen circumstances.
(7) Conclusions, observations, and caveats.
(8) Other cost categories as defined above under “markups” in Section 3b above.

(d) Other
(1) Estimate of average useful service life of equipment.
(2) Preliminary commissioning plan.
(3) Preliminary measurement and verification plan, following the International Performance Measurement and Verification Protocol (IPMVP), explaining how savings from each measure is to be measured and verified (stipulated by Contract, utility bill analysis, end-use measurement and calculation, etc.). The Preliminary M&V plan shall follow the format provided in Exhibit C: Guidelines for Draft Measurement and Verification Plan.

(4) Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify who is responsible for maintenance.

(5) Compatibility with existing systems. NOTE: Include the name of the existing controls system, if new controls systems will have to be compatible with an existing brand of controls. Also note if a sole-source vendor is established for controls systems.

(6) Complete appendices that document the data used to prepare the analyses. Describe how data were collected.

(e) Contractor shall meet with Agency to: review the recommendations, savings calculations and impact of the measures on the operations of the facility; describe how the projected project economics meet the Agency's terms for completing the Investment-Grade Energy Audit and Project Proposal; and discuss the willingness and capability of Agency to make capital contributions to the project to improve the economics of the overall project.

(f) Contractor shall revise Audit Report as directed by Agency and shall submit **final Investment-Grade Energy Audit Report** within 30 days of the above meeting.

V. **Provide Project Proposal (term sheet).**

(a) In anticipation of Contractor and Agency entering into an Guaranteed Utility Savings Contract to design, install, and monitor the energy and water conserving measures proposed in the Investment-Grade Energy Audit Report, Contractor shall prepare a proposal for terms to be incorporated in the Guaranteed Utility Savings Contract, which shall include:

(1) Project Cost is the <u>total</u> amount Agency will pay for the project and Contractor's services. Costs must be consistent with maximum markups and fees established above. Costs may include but are not limited to: engineering, designing, packaging, procuring, installing (from Investment-Grade Energy Audit Report results); performance/payment bond costs; construction management fees; commissioning costs; maintenance fees; monitoring fees; training fees; legal services; overhead and profit; other markups.

(2) Include a List of Services that will be provided as related to each cost.

(3) Expected term of the Energy Performance Contract.

(4) Description of how the project will be financed including available interest rates and financing terms, based on interest

rates likely available to Agency at this time, and based on a 60-day and 90-day lock option.

(5) Explanation of how the savings will be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors. Monitoring and verification methods shall be consistent with the International Performance Monitoring and Verification Protocol 2000.

(6) Analysis of annual cash flow for Agency during the contract term.

(7) Contractor agrees to meet with Agency to present results and negotiate final terms.

(b) Services will be performed at locations attached in Exhibit B

2. Compensation.

A. Except as provided for in subparagraphs 2D and 2E below, the Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of four hundred sixty-two thousand nine hundred twenty-five dollars ($462,925). New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling thirty-seven thousand nine hundred two dollars ($37,902) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed five hundred thousand eight hundred twenty-seven dollars ($500,827).**

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. All invoices MUST BE received by the Agency 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.

B. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed five hundred thousand eight hundred twenty-seven dollars ($500,827). This amount is a maximum and not a guarantee that the work assigned to the Contractor under this Agreement to be performed shall equal the amount stated herein. This amount is based on a maximum of 689,729 gross square feet at eleven and a quarter US dollar cents ($0.1125) per square foot of audited facility floor area which was part of the previous Investment Grade Audit and twenty-two and a half US dollar cents ($0.225) per square foot of audited facility floor area which was not part of the previous Investment Grade Audit as per Exhibit B, Cost and Pricing and allowance for microgrid design as described per Exhibit B. Agency shall only pay for facility floor area actually audited. Areas not audited Contractor will not be charged to Agency.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency 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 Agency 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 agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. Agency shall have no payment obligations under this contract, provided that Contractor and Agency execute a Guaranteed Utility Savings Contract within 180 days after issuance of the Notice of Acceptance (Exhibit A) of the final Investment-Grade Energy Audit and Project Proposal, but the fee indicated above shall be incorporated into Contractor's project costs in the Guaranteed Utility Savings Contract and paid through the Guaranteed Utility Savings Contract funding mechanisms.

E. Agency shall have no payment obligations under this Contract in the event that Contractor's final Investment-Grade Energy Audit and Project Proposal does not contain a package of energy and water conservation measures which, if implemented and as meeting terms of Scope of Work, will provide the Agency with utility cost savings sufficient to fund Agency's payments of all costs and fees associated with the Guaranteed Utility Savings Contract, including: 1) the fee associated with the Investment-Grade Energy Audit; 2) all monthly payments on a lease purchase agreement to finance the measures; and 3) any annual fees for monitoring and maintenance incurred by the Contractor. Should the Contractor determine at any time during the Investment-Grade Energy Audit that savings cannot be attained to meet these terms, the Investment-Grade Energy Audit will be terminated by written notice by Contractor to Agency. In this event, this Agreement shall be terminated and Agency shall have no obligation to pay, in whole or in part, the amounts specified in subparagraphs 2A or 2B.

3. Term.

This Agreement shall terminate 18 months from contract execution unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150. An exception is that for contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act (6-23 NMSA 1978), the term shall not exceed twenty-five years, including all extensions and renewals.

4. Termination.

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency 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 Agency 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 Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency'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 AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

D. Termination Management. Immediately upon receipt by either the Agency 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 Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency 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 Agency upon termination and shall be submitted to the agency as soon as practicable.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Agency's Governing Body for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature,

this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency 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 agency and are not employees of the State of New Mexico or the Agency. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico or the Agency 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 State of New Mexico or the Agency unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. 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 Agency.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. 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 Procuring Agency.

9. Release.

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

10. 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 Agency.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the Agency and shall be delivered to the Agency 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.

12. <u>Conflict of Interest; Governmental Conduct Act</u>.

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. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1. in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;
2. this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
3. in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;
4. this Agreement complies with NMSA 1978, § 10-16-9(A)because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;
5. in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6. in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency 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 Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. 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 Agency 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.

14. 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.

15. Penalties for violation of law.

The Procurement Code, NMSA 1978 §§ 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.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, executive orders of the Governor of the State of New Mexico, and the Agency's Charter 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.

17. 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 NMSA 1978, § 38-3-2. 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.

18. 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 Agency.

19. 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 Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico 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 Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://insurenewmexico.state.nm.us/.

22. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement

applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

23. 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.

24. 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.

25. 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 Agency:	**To the Contractor:**
Regina Wheeler, Public Works	**Colby Geer, President**
City of Santa Fe	**7601 Jefferson Street NE, Suite 160**
737 Agua Fria St., Santa Fe, NM 87501	**Albuquerque, NM 87109**
rawheeler@santafenm.gov	**cageer@esg.email**

26. 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.

27. Entire Agreement.

This Agreement, the attached addendum of federally-required provisions, and any amendments adopted pursuant to Article 13 (Amendment) constitute the entirety of the agreement between the Parties.

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, MAYOR

CONTRACTOR:

Colby Geer
Colby Geer (Jul 22, 2025 08:03 MDT)
COLBY GREER, PRESIDENT

DATE: 07/22/2025

NMBTIN#: 03-260362-00-2

ATTEST:

_____
CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault
Kevin L. Nault (Jul 22, 2025 23:57:54 MDT)
ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Ostar
FINANCE DIRECTOR



Notice of Final Project Acceptance

Date of Notice _____

Client: _____

Contractor: _____

Contract Name / #: _____

Notice is hereby given that ***Client*** accepts the Project and establishes a Performance Commencement Date of _____.

Client Signatory

Signature _____

Name _____

Title _____

Date _____

When completely executed, this form is to be scanned and returned to the Contractor via electronic correspondence.

Exhibit B

Cost and Pricing

Facility	Street Address	City	State	Zip	Gross Area (ft^2)
Santa Fe Police Department HQ	2515 CAMINO ENTRADA	Santa Fe	NM	87507	26,000
Mary Esther Gonzales Senior Center	1121 Alto St	Santa Fe	NM	87501	17,000
Genoveva Chavez Community Center	3221 Rodeo Rd	Santa Fe	NM	87507	138,000
Santa Fe Fire Department Station 8	6796 Jaguar Drive	Santa Fe	NM	87507	33,500
Wastewater Treatment Facility	73 Paseo Real	Santa Fe	NM	87507	177,400
Canyon Road Water Treatment Plant	1780 Canyon Road	Santa Fe	NM	87501	11,000
Buckman Direct Diversion Plant	341 Caja Del Rio Road	Santa Fe	NM	87506	75,000
Emergency Operations Center	1600 St. Michaels Dr. Bldg 2	Santa Fe	NM	87505	9,950
Pasatiempo Senior Center	664 Alta Vista St	Santa Fe	NM	87505	19,000
Luisa Senior Center	1500 Luisa St	Santa Fe	NM	87505	6,500
Santa Fe Fire Department Station 6	West Alameda Street	Santa Fe	NM	87501	1,562
Santa Fe Fire Department Station 9	2501 Camino Entrada	Santa Fe	NM	87507	10,500
Santa Fe Fire Department Station 10 Airport	121 Aviation Drive	Santa Fe	NM	87505	12,868
Santa Fe Fire Department Station 1	200 Murales Road	Santa Fe	NM	87501	16,000
Santa Fe Fire Department Station 4	1130 Arroyo Chamiso Road	Santa Fe	NM	87505	8,242
Santa Fe Fire Department Station 7	2391 Richards Avenue	Santa Fe	NM	87507	12,000
Santa Fe Fire Department Station 3	1751 Cerrillos Road	Santa Fe	NM	87507	10,500
Depeartment of Information Technology Data Center	715 Alta Vista St	Santa Fe	NM	87505	70,530
Canyon Road Sewer Lift	1519 Canyon Road	Santa Fe	NM	87501	25,507
City Wellfield	Various - Along Alameda/Agua Fria	Santa Fe	NM		2,000
Interfaith Community Shelter	2801 Cerillos Rd	Santa Fe	NM	87507	6,670

Facility	Street Address	City	State	Zip	Gross Area (ft^2)
Square Footage (ft^2) Phase 1 Facilities	-----	-----	-----	-----	477,900
Square Footage (ft^2) NEW Facilities	-----	-----	-----	-----	211,829
IGA Fee Phase 1 ($0.1175/$ft^2$)					$53,764
IGA Fee NEW ($0.225/$ft^2$)					$47,662
NMGRT (8.1875%)					$8,304
Total IGA Fee + NMGRT					$109,729

IGA and Microgrid/Resiliency Study

Investment Grade Audit	Gross Area (SQFT)	Price/SQFT	Total
Facilities included in current EPC project	477,900	$0.1125	$53,764
Facilities NOT in current EPC project	211,829	$0.2250	$47,662
IGA Subtotal	689,729		$101,425
Microgrid Design			**Total**
Allowance for Microgrid Development & Design			$210,000
Allowance for Microgrid Interconnection Packages			$136,500
Allowance for Utility Supplemental Reviews			$15,000
Microgrid Design Subtotal			$361,500
Project Subtotal			$462,925
NMGRT (8.1875%)			$37,902
TOTAL			$500,827



GSD Purchasing Zone	Facility Area (sqft)		
	< 25K	25-100K	100K +
Zone 5	$0.250	$0.225	$0.200
Zones 2 and 8	$0.275	$0.250	$0.225
Zones 4 and 6	$0.300	$0.275	$0.250
Zones 1, 7, 9, and 12	$0.325	$0.300	$0.275
Zones 3, 10, and 11	$0.350	$0.325	$0.300

Exhibit C

Guidelines for Draft Measurement and Verification Plan

The Measurement and Verification Plan shall be developed following State requirements and industry best practices.

Exhibit D

Performance Measures

(Performance Measures should be based on the Scope of Work and must be tied to the Agency's Strategic Plan. The Plan should be referenced in the Performance Measures and the applicable part of the Strategic Plan copied below or in an attachment. To the extent possible based on the nature of the work to be performed, the Performance Measures should be "Output" oriented and specify an "Outcome.")

Performance Measures in the Scope of Work shall contain measurable goals and objectives that are linked to the performance measures of the Agency's Strategic Plan:

Example: Goal: Reduce or Increase or Other Service [insert blank].[1]

Objective: To reduce or increase or Other Service [insert blank] by [blank] percent or by a certain time.[2]

Activities: [Insert what services the Contractor is expected to perform to accomplish goals and objectives including an evaluation of the process and the outcome as well as provides efficiency measures that relate efforts to outputs of services].

OR: Through satisfactory completion of the Scope of Work set forth above and submission of acceptable Deliverables, the Contractor will assist the Agency to meet the portions of its Strategic Plan set forth below ***(insert additional language if necessary to describe how Contractor's work will assist the Agency to fulfill its duties).***

1 A goal is an "output" measure. It measures the quantity of a service provided. For example, the number of students graduated or promoted; the number of two-lane highways repaired; or the number of crimes investigated. It also can measure the quantity of a service provided that meets a certain quality requirement. For example, the number of students graduated or promoted who meet a minimum preset level of achievement; the number of miles of roads repaired to a minimum safety standard; or the number of criminal investigations performed that result in identification of a prime suspect.

2 An accomplishment is an "outcome" measure. These indicators measure accomplishments or results that occur (at least partially) because the services were provided. For example, the percentage of students achieving a specified skill level in reading, the percentage of miles of roads in excellent, good or fair condition; or the percent reduction in serious crimes or the percent of residents who perceive their neighborhoods as safe.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

State of New Mexico
General Services Department
Purchasing Division

Contract Amendment Cover Page

Awarded Vendor:
0000011132
Trane U.S. Inc.
5501 San Diego Avenue NE
Albuquerque, NM 87113

Contact: Zully De La Pava Torrado
Email: zully.delapava@trane.com
Telephone No. (915) 593-3484

Contract Number: 40-00000-23-00029AG

Amendment No.: One

Term: January 12, 2024 – January 11, 2028

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As Requested at time of order

For questions regarding this contract please contact:
Dennis Romero (505) 660-8605

ya

Procurement Specialist: Yvette Anaya

Telephone No.: (505) 500-9737

Email: Yvette.anaya@gsd.nm.gov

Title: Qualified Providers of Energy Performance Contracting Services, ESCO

This amendment is to be attached to the respective Contract and become a part thereof.

This amendment is issued to reflect the following effective immediately:

Update Appendix Sections:

N: Model Guaranteed Utility Savings Contract

O: Model Attachments for Guaranteed Utility Savings Contract

Except as modified by this amendment, the provisions of the Contract shall remain in full force and effect.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

State of New Mexico
General Services Department
General Services Contract Amendment
Agreement No.: 40-00000-23-00029AG
Amendment No.: One

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **General Services Department**, hereinafter referred to as the "Procuring Agency," and **Trane U.S. Inc.,** hereinafter referred to as the "Contractor".

The purpose of this Amendment is to Update Appendices N and O.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

1. **Appendices:**

    a. **N: Model Guaranteed Utility Savings Contract**
    b. **O: Model Attachments for Guaranteed Utility Savings Contract**

All other Articles and Deliverables of the original contract remain the same.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

By: _____ Date: 6/2/2025
Zully De La Pava Torrado, Area Sales Manager
Trane U.S. Inc.

The records of the Taxation and Revenue Department reflect that Contractor is registered with the Taxation and Revenue Department of the State to pay gross receipts and compensating taxes:

BTIN: 01-509460-00-0

NOTE: **Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.**

By: Ann Marie Lucero Date: 6/2/2025
Taxation & Revenue Department

This Agreement has been approved by the State Purchasing Agent:

By: Dorothy Mendonca Date: 6/2/2025
Dorothy Mendonca
State Purchasing Agent
State of New Mexico

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

APPENDIX N

MODEL GUARANTEED UTILITY SAVINGS CONTRACT

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

STATE OF NEW MEXICO
NAME OF AGENCY
PROFESSIONAL SERVICES CONTRACT #_____
For Energy Performance Contracting

TABLE OF CONTENTS

1. Definitions.
2. Scope of Work.
3. Compensation.
4. Term.
5. Termination.
6. Commencement Date.
7. Performance Measures.
8. Contractor is Qualified Provider.
9. Investment-Grade Energy Audit Report and Project Development Proposal.
10. Schedules, Exhibits and Appendices.
11. Purchase and Sale.
12. Energy Usage Records and Data.
13. Location and Access.
14. Permits and Approvals.
15. Coordination During Installation.
16. Construction Schedule; Equipment Installation.
17. Systems Startup and Equipment Commissioning.
18. Equipment Warranties.
19. Standards of Comfort.
20. Environmental Requirements, Excluded Material and Activities.
21. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps.
22. Training by Contractor.
23. Equipment Service, Actions by Contractor.
24. Malfunctions and Emergencies.
25. Actions by Agency.
26. Modification of Equipment.
27. Upgrade or Alteration of Equipment.
28. Material Change Defined.
29. Reported Material Changes; Notice by Agency.
30. Other Adjustments.
31. Corrective Action; Accuracy of the Services.
32. Annual Reporting Requirements; Annual ENERGY STAR Rating.
33. Other Documents.
34. Energy and Cost Savings Guarantee.
35. Annual Review and Reimbursement/Reconciliation.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

36. Contractor Compensation and Fees.
37. Billing Information Procedure.
38. Payment.
39. Effective Date of Payment Obligation.
40. Open Book Pricing.
41. Ownership of Certain Proprietary Property Rights.
42. Ownership of Existing Equipment.
43. Damages to Equipment or Property.
44. Liabilities.
45. Appropriations.
46. Status of Contractor.
47. Subcontracting.
48. Release.
49. Confidentiality.
50. Product of Service -- Copyright.
51. Conflict of Interest; Governmental Conduct Act.
52. Amendment.
53. Merger.
54. Penalties for violation of law.
55. Equal Opportunity Compliance.
56. Applicable Law.
57. Insurance
58. Workers Compensation.
59. Records and Financia4l Audit.
60. Indemnification.
61. Invalid Term or Condition.
62. Enforcement of Agreement.
63. Conditions Beyond Control Of The Parties.
64. Events of Default by Agency.
65. Events of Default by Contractor.
66. Remedies upon Default by Agency.
67. Remedies Upon Default by Contractor.
68. Assignment.
69. Assignment by Contractor.
70. Assignment by Agency.
71. Representations and Warranties.
72. Additional Representations of the Parties.
73. Waiver of Liens, Construction Performance and Payment Bonds, Labor and Material Payment Bonds.
74. Further Documents.
75. Methods of Operation by Agency.
76. Agency's Maintenance Responsibilities.
77. Inspection of Project Site(s).

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

78. Waiver Of Liens.
79. Conflicts of Interest.
80. Notices.
81. Non-Substitution.
82. Authority.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Schedules

Savings Guarantee

Schedule A	Energy and Cost Savings Guarantee
Schedule B	Baseline Energy Consumption; Methodology to Adjust Baseline
Schedule C	Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements
Schedules D-G	*[optional schedules]*

Payments and Schedule

Schedule H	Final Project Cost & Project Cash Flow Analysis
Schedule I	Financing Agreement and Payment Schedule
Schedule J	Compensation to Contractor for Annual Services
Schedule K	Rebates, Incentives and Grants
Schedules L-P	*[optional schedules]*

Design and Construction Phase

Schedule Q	Description of Project Site(s)
Schedule R	Equipment to be Installed by Contractor
Schedule S	Construction and Installation Schedule
Schedule T	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule U	Standards of Comfort
Schedule V	Contractor's Training Responsibilities
Schedules W-AA	*[optional schedules]*

Post-Construction

Schedule BB	Contractor's Maintenance Responsibilities
Schedule CC	Agency's Maintenance Responsibilities
Schedule DD	Facility Maintenance Checklist
Schedules EE-II	*[optional schedules]*

Administration

Schedule JJ	Alternative Dispute Resolution Procedures
Schedules KK-OO	*[optional schedules]*

Optional Schedules

- Pre-Existing Service Contracts
- Energy Savings Projections
- Facility Changes Checklist
- Current and Known Capital Projects at Facility

Exhibits

Exhibit I	Performance Bond
Exhibit II	Labor and Material Payment Bond
Exhibit III	EMNRD Certification of Contractor as Qualified Provider
Exhibit IV	EMNRD Certification of Guaranteed Energy Savings
Exhibit V	Agency Approval of Contracts and Agreements
Exhibit VI	Agency Certificate of Acceptance—Installed Equipment
Exhibit VII	Equipment Warranties

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Optional Exhibits

- Manifest of Ownership
- Minority and Woman-Owned Business Certification
- Certification that Financing Term is no Longer than the Aggregated Equipment Lifetime
- Notice to Proceed with Construction Phase
- Record of Reviews by Agency

Appendices

Appendix A RFP for Contractor Solicitation (Pre-qualification Phase; Final Selection Phase)
Appendix B Contractor Proposal (Pre-qualification Phase; Final Selection Phase)
Appendix C Investment-Grade Energy Audit and Project Development Contract
Appendix D Investment-Grade Energy Audit Report

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

STATE OF NEW MEXICO
NAME OF AGENCY
PROFESSIONAL SERVICES CONTRACT #_____
For Energy Performance Contracting

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **NAME OF AGENCY**, hereinafter referred to as the "Agency," and **NAME OF CONTRACTOR**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration ("DFA").

RECITALS

WHEREAS, Agency owns and operates the Project Site(s), and is in need of energy and water cost saving equipment and services designed to save energy and associated energy costs at said Project Sites; and

WHEREAS, Agency has been authorized to enter into a third party financing agreement for all professional services, equipment and construction for the purchase and installation of energy and water cost savings measures, collectively referred to as the "Work" (as hereinafter defined); and

WHEREAS, Contractor has developed or become knowledgeable about certain procedures for controlling energy and water consumption through services provided and equipment installed and maintained at project sites similar in scope and scale of Agency; and

WHEREAS**,** Contractor was selected after a determination that its proposal was the most advantageous to Agency pursuant to a Request for Proposal and contract for the Investment Grade Audit and Project Development Proposal (as hereinafter defined); and

WHEREAS, Contractor has made an assessment of the utility consumption characteristics of the Project Site(s) and existing Equipment described in Schedule Q (Description of Project Site(s)), which was delivered to Agency as an Investment-Grade Energy Audit Report which Agency has approved and is attached as Appendix D; and

WHEREAS, Agency desires to retain Contractor to purchase, install and service certain energy and water cost savings equipment and to provide other services and strategies described in the attached Schedules, for the purpose of achieving energy and water cost reductions within Project Site(s), as more fully described herein; and

WHEREAS, Agency is authorized under the New Mexico Constitution and state law, Chapter 6, Article 23, New Mexico Statutes Annotated (NMSA) 1978, to enter into this Contract for the purposes set forth herein.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Agency and Contractor hereto covenant and agree that the following Schedules, Exhibits and Appendices are attached hereto (or will be, as provided in this Contract) and are made a part of this Contract by reference.

IT IS AGREED BETWEEN THE PARTIES:

1. Definitions.

A. "Commencement Date" means the date described in Section 6 (Commencement Date);

B. "Contract" means this Energy Performance Contract and all Schedules, Exhibits, and Appendices attached hereto;

C. "Contract Sum" means the sum of all materials, labor, auditing, design, engineering, project construction management fees, overhead, profit, contingency, subcontracted services related to the project;

D. "Energy and Cost Savings Guarantee" means the guarantee of Schedule A (Savings Guarantee) that is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract as specified in Schedule J (Compensation to Contractor for Annual Services) and in accordance with the Savings Calculation Formula as set forth in Schedule C (Savings Measurement and Verification (M&V) Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements);

E. "Energy and Water Cost Savings" means the savings as provided in Schedule A ((Savings Guarantee);

F. "Equipment" means the material goods enumerated in Schedule R (Equipment to be Installed by Contractor) that is now, or hereafter from time to time, attached hereto and incorporated herein by reference, together and with any and all additions, modifications, attachments, replacements and parts thereof;

G. "Event of Default" means those events described in Sections 65 (Events of Default by Contractor) and 64 (Events of Default by Agency) hereof;

H. "Interim Period" means the period from contract execution until the Commencement Date;

I. "Investment Grade Audit" means a study by the Contractor selected for a particular energy performance contracting project, which includes detailed descriptions of the improvements

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

recommended for the project, the estimated costs of the improvements and the utility and operations and maintenance cost savings projected to result from the recommended improvements;

J. "Project Site(s)" means the facilities of the Agency in need of energy and water saving equipment and services designed to reduce consumption and associated costs at said Project Site(s);

K. "Qualified Provider" means the Contractor, who is a person experienced in the design, implementation and installation of energy or water conservation measures and who meets the experience qualifications developed by the Energy, Minerals and Natural Resources Department (EMNRD) for energy conservation measures or the Office of the State Engineer for water conservation measures;

L. "Substantial Completion" means the stage in the progress of the Work where the Work is sufficiently complete in accordance with the Contract Documents so that the Agency can utilize and take beneficial use of the Work for its intended use or purpose.

M. "Work" means the Equipment, materials, professional services and construction services for the project at Agency's Project Site, as described by this Agreement and attachments.

2. Scope of Work.

Contractor shall:

A. perform and complete the Work at the Agency's Project Site, as defined and described in this Agreement and the attached Schedules, Exhibits, and Appendices;

B. provide the Equipment, together with installation, maintenance and other services as provided herein, as in Schedule R (Equipment to be Installed by Contractor) based upon the terms and conditions set forth in Schedule S (Construction and Installation Schedule);

C. provide the Work and all related services identified in Schedule R (Equipment to be Installed by Contractor) and the services detailed in Schedule BB (Contractor's Maintenance Responsibilities) and Schedule J (Compensation to Contractor for Annual Services);

D. supervise and direct the Work and shall be responsible for the engineering, design, and quality control; construction means, methods, techniques, sequences, and procedures; and for coordinating all portions of the Work under this Contract; and

E. comply with all federal, state, and local government laws, codes, and regulations in effect at the time the Agreement is fully executed.

3. Compensation.

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of _____ dollars ($_____) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.).

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling _____ dollars ($_____) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed** _____ dollars ($_____) **in FYXX.**

(REPEAT LANGUAGE FOR EACH FISCAL YEAR COVERED BY THE AGREEMENT -- USE FISCAL YEAR NUMBER TO DESCRIBE EACH YEAR; DO NOT USE FY1, FY2, ETC.).

Payment in FYXX, FYXX, FYXX, and FYXX 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 DFA. All invoices MUST BE received by the Agency 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.

B. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed _____ dollars ($_____) as set forth in Schedule H (Final Project Cost & Project Cash Flow Analysis). This amount is a maximum and not a guarantee that the work assigned to the Contractor under this Agreement to be performed shall equal the amount stated herein. Payment terms are described in Schedule I (Financing Agreement and Payment Schedule).

D. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency 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 Agency 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 agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

4. <u>Term</u>.

The Energy Performance Contract shall have a term no greater than 25 years and no greater than the cost-weighted average lifetime of the equipment, in compliance with Section 6-23-3 NMSA 1978. Agency's goal is for a term no greater than its desired financing term.

A. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **DATE** unless terminated pursuant to paragraph 4, <u>infra</u>, or paragraph 5. 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. An exception is that for contracts entered into pursuant

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

to the Public Facility Energy Efficiency and Water Conservation Act (6-23 NMSA 1978), the term shall not exceed twenty-five years, including all extensions and renewals.

Prior to the Commencement Date the final contract and technical schedules are negotiated and executed by signature. At that point in time the Contractor typically begins the final design of the project and finalizes the construction schedule with the Agency. The "Interim Period" refers to the construction period, during which some amount of energy savings will start to accrue. The treatment of those energy savings can be negotiated to either be credited to the Contractor's guarantee or credited to the Agency. If such savings are credited to the Contractor's guarantee, it is recommended that such credit be extended for a specified period of time (e.g. 1-2 years). If the Contractor is credited with the interim period savings, the Agency and Contractor will need to agree to develop an approach to the measurement of those savings.

B. Subject to the following sentence, the term of this Contract shall be _____ years measured beginning with the Commencement Date. Nonetheless, the Contract shall be effective and binding upon the parties immediately upon its execution, and the period from contract execution until the Commencement Date shall be known as the "Interim Period". All energy savings achieved during the interim period will be fully credited to the Agency.

5. Termination.

The Agency has an option to terminate the contract but the Contractor does not. Contractor's termination is considered a default as described in the default clause.

A. Termination. This Agreement may be terminated by the Agency upon written notice delivered to the Contractor at least ten (10) days prior to the intended date of termination. By such termination, the Contractor may not nullify obligations already incurred for performance or failure to perform prior to the date 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 Agency 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 state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B. Termination Management. Immediately upon receipt by 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 Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

6. Commencement Date.

This section defines the Commencement Date which is the actual beginning date for the savings guarantee period. It is standard for this date to be the first month AFTER the Contractor has completed construction and delivered a notice that all equipment is installed and operating. In addition, the Agency will have accepted the installation by signing a Certificate of Acceptance which should be attached to the contract. It also clearly states that no payment for any of the Contractor's on-going services (e.g. measurement and verification, project monitoring, maintenance, training etc.) will be made prior to the Commencement Date. It is recommended that the repayment obligation of project financing be arranged to coincide with the Commencement Date. The timing of the Commencement Date may also need to be arranged to accommodate the Agency's fiscal year for the purpose of appropriations and budgeting. This date alignment should not prevent the Contractor from timely remuneration for training and other services performed prior to Commencement Date.

A. The Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by Agency and Contractor shall have delivered a Notice to Agency that it has installed and commenced operating all of the Equipment specified in **Schedule R (Equipment to be Installed by Contractor)** and in accordance with the provisions of **Schedule S (Construction and Installation Schedule)** and **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment);** and Agency has inspected and accepted said installation and operation as evidenced by the Certificate of Acceptance as set forth in **Exhibit VI (Agency Certificate of Acceptance—Installed Equipment).**

B. Notwithstanding anything to the contrary in **Sections herein (Purchase and Sale; Commencement Date and Terms; Interim Period),** the Commencement Date shall not occur and the Agency shall not be required to accept the work under this Contract unless and until all Equipment installation for the Project Site(s) is completed by Contractor in accordance with the terms and conditions of this Contract. Agency shall have _____ days after notification by the Contractor to inspect and accept the Equipment. Agency reserves the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. Contractor shall not be paid in full, including retainage, until after the punch list is completed and Contractor has satisfied any and all claims for labor and materials and the Certificate of Acceptance has been signed. The Certificate of Acceptance will not be unreasonably withheld by the Agency.

C. Compensation payments due to Contractor for on-going services and maintenance under this Contract as set forth in **Schedule J (Compensation to Contractor for Annual Services)** shall begin no earlier than _____ from the Commencement Date as defined herein.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

7. Performance Measures.

Contractor shall substantially perform the following Agency Performance Measures:

A. *[Insert Agency Performance Measure involving facility capital upgrades, if applicable.]*

B. *[Insert Agency Performance Measure involving operational cost reduction, if applicable.]*

C. *[Insert other Agency Performance Measure, if applicable]*

Agency Performance Measures documentation is provided as Attachment I.

8. Contractor is Qualified Provider.

This section records the certification by EMNRD of the Contractor as a Qualified Provider, pursuant to Sections 6-23-2E and 6-23-5 NMSA 1978, which must be completed prior to the execution of this contract. An EMNRD Certification of Contractor as Qualified Provider must be signed by EMNRD and attached to the contract (Exhibit III).

Contractor is certified as a Qualified Provider by EMNRD to perform the Work, pursuant to Sections 6-23-2E and 6-23-5 NMSA 1978 and as shown by Exhibit III (EMNRD Certification of Contractor as Qualified Provider).

9. Investment-Grade Energy Audit Report and Project Development Proposal.

This section records the certification by EMNRD of the Investment-Grade Energy Audit Report which must be completed prior to the execution of this contract. An EMNRD Certification of Guaranteed Energy Savings must be signed by EMNRD and attached to the contract - Exhibit IV(Agency Certificate of Acceptance – Installed Equipment). If the list of measures is not completely finalized prior to the signing of this contract, then language to that effect should be included.

Contractor has provided the complete Investment-Grade Energy Audit Report and Project Development Proposal of the Project Site(s), as set forth in Appendix D (Investment-Grade Energy Audit and Project Proposal Contract) and dated _____. The Investment-Grade Energy Audit Report includes all energy conservation measures agreed upon by Agency and Contractor for implementation in the Work. The guaranteed energy savings of energy conservation measures stated in the Investment-Grade Energy Audit Report appear to be accurately estimated and reasonable and are certified by EMNRD, as shown in Exhibit IV (EMNRD Certification of Guaranteed Energy Savings).

10. Schedules, Exhibits and Appendices.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Contractor has provided and Agency has approved the following Schedules, Exhibits and Appendices, copies of which are attached hereto (or will be as provided for in the Contract), set forth in their entirety as Attachment II and made a part of this Contract by reference.

A. Schedules

<u>Savings Guarantee</u>	
Schedule A	Energy and Cost Savings Guarantee
Schedule B	Baseline Energy Consumption; Methodology to Adjust Baseline
Schedule C	Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements
Schedules D-G	*[optional schedules]*
<u>Payments and Schedule</u>	
Schedule H	Final Project Cost & Project Cash Flow Analysis
Schedule I	Financing Agreement and Payment Schedule
Schedule J	Compensation to Contractor for Annual Services
Schedule K	Rebates, Incentives and Grants
Schedules L-P	*[optional schedules]*
<u>Design and Construction Phase</u>	
Schedule Q	Description of Project Site(s)
Schedule R	Equipment to be Installed by Contractor
Schedule S	Construction and Installation Schedule
Schedule T	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule U	Standards of Comfort
Schedule V	Contractor's Training Responsibilities
Schedules W-AA	*[optional schedules]*
<u>Post-Construction</u>	
Schedule BB	Contractor's Maintenance Responsibilities
Schedule CC	Agency's Maintenance Responsibilities
Schedule DD	Facility Maintenance Checklist
Schedules EE-II	*[optional schedules]*
<u>Administration</u>	
Schedule JJ	Alternative Dispute Resolution Procedures
Schedules KK-OO	*[optional schedules]*

<u>Optional Schedules</u>

Pre-Existing Service Contracts

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Energy Savings Projections
Facility Changes Checklist
Current and Known Capital Projects at Facility

B. Exhibits

Exhibit I Performance Bond
Exhibit II Labor and Material Payment Bond
Exhibit III EMNRD Certification of Contractor as Qualified Provider
Exhibit IV EMNRD Certification of Guaranteed Energy Savings
Exhibit V Agency Approval of Contracts and Agreements
Exhibit VI Agency Certificate of Acceptance—Installed Equipment
Exhibit VII Equipment Warranties

Optional Exhibits

Manifest of Ownership
Minority and Woman-Owned Business Certification
Certification that Financing Term is no Longer than the Aggregated Equipment Lifetime
Notice to Proceed with Construction Phase
Record of Reviews by Agency

C. Appendices

Appendix A RFP for Contractor Solicitation (Pre-qualification Phase; Final Selection Phase)
Appendix B Contractor Proposal (Pre-qualification Phase; Final Selection Phase)
Appendix C Investment-Grade Energy Audit and Project Development Contract
Appendix D Investment-Grade Energy Audit Report

11. Purchase and Sale.

When using a third-party lease-purchase structure the Contractor will receive 100% of the Contract Sum from the Agency once the Exhibit VI (Agency Certificate of Acceptance—Installed Equipment) is signed. The payments to the Contractor during the construction period (Interim Period) can be drawn down by the Contractor from the proceeds of the lease through an escrow account set up by the leasing Contractor. Payments will be made based upon the percentage of work completed and approved by the Agency. The Agency should require a percentage retainage be withheld from the Contractor until the Exhibit VI (Agency Certificate of Acceptance—Installed Equipment) is executed, at which time final payment can be made.

A. Agency agrees to lease Equipment through a third-party financier, **NAME OF LENDER**, as provided for in a separate lease document, Schedule I (Financing Agreement and Payment Schedule).

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

B. Contractor shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

12. Energy Usage Records and Data.

This section ensures that the Contractor has access to the historical energy consumption, facility operations and occupancy data in order to develop baseline utility consumption. At a minimum, there should be 24 months of data made available, however, 36 months is recommended. Existing facility conditions, operations and equipment needs to be carefully recorded to establish an accurate baseline. This will serve as a record of your buildings as they were configured prior to project installation and will be critical to the establishment and adjustment of baseline, and measurement of savings. As well, any prior technical studies and/or energy audits should also be made available for the Contractor's review and verification.

Agency has furnished and shall continue to furnish (or authorize its energy suppliers to furnish) during the Term of this Contract to Contractor or its designee, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Project Site(s).

13. Location and Access.

This states the Agency's responsibility for providing adequate space and protection for the installed equipment and authorizes the Contractor's access to the facility to perform routine and emergency operations.

Contractor acknowledges that there exists sufficient space on the Project Site(s) for the installation and operation of the Equipment. Agency shall take reasonable steps to protect such Equipment from harm, theft and misuse during the term of this Contract. Agency shall provide access to the Project Site(s) for Contractor to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by Contractor and acceptable to the Agency. Contractor shall be granted immediate access to make emergency repairs or corrections as it may, in its discretion, determine are needed. The Contractor's access to Project Site(s) to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by the Agency. Contractor shall immediately notify the Agency when emergency action is taken and follow up with written notice within three (3) business days specifying the action taken, the reasons therefore, and the impact upon the Project Site(s), if any.

14. Permits and Approvals.

This standard construction provision requires the Contractor comply with all code requirements, pay all associated permit fees and provide the Agency with copies of each permit and license required to do the work. The Agency agrees to assist the Contractor to the best of its ability to obtain all required permits and approvals.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Agency shall use its best efforts to assist Contractor in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Agency, however, be responsible for payment of any permit fees. The equipment and the operation of the equipment by Contractor shall at all times conform to all federal, state and local code requirements. Contractor shall furnish copies of each permit or license which is required to perform the work to the Agency before the Contractor commences the portion of the work requiring such permit or license.

15. Coordination During Installation.

This standard provision directs the Agency and Contractor to coordinate the equipment installation activities to not interfere with the Agency's business activities. If an installation will require interference, the Contractor must first obtain the Agency's written approval to proceed. If a facility generates revenue for the Agency (e.g. civic center, theater, arena etc.) and scheduled revenue-producing activities are interrupted due to the fault of the Contractor, either during project installation or operation, then a provision for the collection of damages may be negotiated.

The Agency and Contractor shall coordinate the activities of Contractor's equipment installers with those of the Agency, its employees, and agents. Contractor shall not commit or permit any act which will interfere with the performance of business activities conducted by the Agency or its employees without prior written approval of the Agency.

16. Construction Schedule; Equipment Installation.

Construction and equipment installation shall proceed in accordance with the construction schedule approved by Agency and attached as Schedule S (Construction and Equipment Installation Schedule).

17. Systems Startup and Equipment Commissioning.

This section requires the Contractor to conduct performance testing of the equipment as specified in its Commissioning Plan located in Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment), and verify the specified operating parameters to make certain the system is working properly. In most instances this activity occurs prior to the Agency's final acceptance of the project as fully installed, however, if any testing is negotiated to occur after project acceptance, language to that effect should be included here. It also requires the Contractor notify the Agency of when the testing will take place and gives the Agency (or its designee) the right to be present during all tests. Make sure the commissioning plan includes manufacturer's startup and performance sheets.

The Contractor shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in Schedule T

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

(Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment) and prior to acceptance of the project by the Agency as specified in Exhibit VI (Certificate of Acceptance—Installed Equipment). Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The Contractor shall provide notice to the Agency of the scheduled test(s) and the Agency and/or its designees shall have the right to be present at any or all such tests conducted by Contractor and/or manufacturers of the Equipment. The Contractor shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures as specified in Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment). The Contractor shall be responsible for correcting and/or adjusting all deficiencies in Equipment operation that may be observed during system testing procedures. Prior to Agency acceptance Contractor shall also provide Agency with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in Schedule R (Equipment to be Installed by Contractor).

18. Equipment Warranties.

This warranty provision requires all installed equipment be new and protected by appropriate written manufacturers' warranties for a minimum of one year, covering parts and performance. It also requires warranties provide for the installation of only new parts (not used or reconditioned) during the warranty period. While equipment warranties will be transferred to the Agency after completed project installation, this provision makes the Contractor responsible for pursuing any necessary remedies during the warranty period. If the Contractor fails to exercise the warranty and damages occur, the Contractor is responsible for all costs of repair and any lost savings.

A. Contractor warrants that all equipment sold and installed as part of this Contract is new, will be materially free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and will function properly for a period of at least one (1) year from the date of the Substantial Completion for the particular energy conservation measure, if operated and maintained in accordance with the procedures established per building. Substantial Completion does not occur until the Equipment or system has been commissioned, accepted, and Exhibit V (Notice of Substantial Completion) is fully executed.

B. After the warranty period, Contractor shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as provided in Schedule BB (Contractor's Maintenance Responsibilities).

C. Contractor further agrees to assign to Agency all available manufacturer's warranties relating to the Equipment and to deliver such written warranties and which shall be attached and set forth as Exhibit VII (Equipment Warranties); pursue rights and remedies against the manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance. Contractor shall, during the warranty period, notify

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

the Agency whenever defects in Equipment parts or performance occur, which give rise to such rights and remedies and those rights and remedies are exercised by Contractor. During this period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property and equipment of the Agency or the Project Site(s), due to Contractor's failure to exercise its warranty rights, shall be borne solely by Contractor.

D. All warranties, to the extent transferable, shall be transferable and extend to the Agency. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction. All extended warranties shall be addressed as the property of the owner and appropriately documented and titled.

E. Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve the Contractor from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

19. Standards of Comfort.

*This section references the **Schedule U (Standards of Comfort)** which the Contractor is contractually liable to maintain throughout the term of the contract. These standards are negotiated between the Contractor and Agency to reflect realistic ranges of heating, cooling and hot water temperatures, lighting levels, chilled water requirements, and other specified comfort and operating parameters to be maintained.*

Contractor shall maintain and operate the Equipment in a manner which will provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality and levels as described in Schedule U (Standards of Comfort). During the term of this Contract, Contractor and Agency will maintain, according to Schedule BB (Contractor's Maintenance Responsibilities) and Schedule CC (Agency's Maintenance Responsibilities), and operate the Equipment in a manner that will provide the standards of comfort and levels of operation as described in Schedule U (Standards of Comfort).

20. Environmental Requirements, Excluded Material and Activities.

This section addresses hazardous materials and establishes that the Contractor may encounter such materials but is not responsible for identification, handling or any work. The Agency will be responsible for such handling at its expense. In the event the Contractor discovers such materials, the Contractor will stop work and the Agency will handle it. Neither the Contractor's stoppage of work nor the Agency's discovery is grounds for default. If work can commence, any lost time will be added to the time schedule. The Contractor is responsible for any hazardous materials related to equipment it brings to the site.

Agency recognizes that in connection with the installation and/or service or maintenance of Equipment at Agency's Project Site(s), Contractor may encounter, but is not responsible for, any work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal,

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

containment or treatment thereof; (ii) fungus (any type of form of fungi, including mold or mildew, and myotoxins, spores, scents or by-products produced or released by fungi); (iii) incomplete or damaged work or systems or code violations that may be discovered during or prior to the work of this agreement; or (iv) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section below (collectively "Hazardous Materials"), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities." Agency agrees that if performance of work involves any Excluded Materials and Activities, Agency will perform or arrange for the performance of such work and shall bear the sole risk and responsibility therefore. In the event Contractor discovers Hazardous or Excluded Materials, Contractor shall immediately cease work, remove all Contractor personnel or subcontractors from the site, and notify the Agency. The Agency shall be responsible to handle such Materials at its expense. Contractor shall undertake no further work on the Project Site(s) except as authorized by the Agency in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Agency shall not constitute a default by the Agency. In the event of such stoppage of work by Contractor, the Time for Completion of Work will be automatically extended by the amount of time of the work stoppage and any additional costs incurred by Contractor as a result will be added by Change Order.

Contractor shall be responsible for any hazardous or other materials, including, without limitation, those listed in this section that it may bring to the Project Site(s).

21. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps.

The Contractor is required to have an agreement with an approved PCB ballast disposal company that will properly handle transport, recycling, and incineration, providing information for site handling and a Certificate of Destruction. Similarly the Contractor is required to have an agreement with an approved lamp disposal company. In both cases, the Agency will sign manifests of ownership.

A. Contractor shall enter into an agreement with an approved PCB ballast disposal company that will provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services for PCB ballasts. All capacitors and asphalt potting compound materials removed from Agency's PCB ballasts will be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction will be provided by the approved facility to Agency. Contractor's responsibility shall be for the proper and legal management of any of Agency's PCB ballasts removed as a result of the installation of the Equipment and shall be limited only until said PCB ballasts are loaded onto an approved PCB ballast disposal Contractor's vehicle for transportation.

B. Contractor shall enter into an agreement with an approved lamp disposal company, who will provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the manifest.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

C. Agency agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Project Site(s).

22. Training by Contractor.

In many performance contracts the training of facility personnel is often conducted prior to acceptance by the Agency of the completed installation. There are occasions, however, where it may be necessary to conduct training after project acceptance, which can be noted and included in the appropriate schedule. If there are charges for unscheduled training, such charges should be noted in this section.

The Contractor shall conduct the training program described in Schedule V (Contractor's Training Responsibilities) hereto. The must be completed prior to acceptance of the Equipment installation. The Contractor shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software. Such training shall be provided at no charge to the Agency and shall have no effect on prior acceptance of Equipment installation.

23. Equipment Service, Actions by Contractor.

This section refers to the maintenance and service responsibilities of each party as they are specified in Schedules CC (Agency's Maintenance Responsibilities) and BB (Contractor's Maintenance Responsibilities). It also states that if the Agency is at fault for causing additional maintenance or repair to the equipment, then the Agency will be charged by the Contractor for the cost of the required maintenance or repair.

Contractor shall provide all service, repairs, and adjustments to the Equipment installed under terms of this Contract pursuant to Schedule BB (Contractor's Maintenance Responsibilities). Agency shall incur no cost for Equipment service, repairs, and adjustments, except as set forth in Schedule J (Compensation to Contractor for Annual Services), provided, however, that when the need for maintenance or repairs principally arises due to the negligence or willful misconduct of the Agency or any employee or other agent of Agency, and Contractor can so demonstrate such causal connection, Contractor may charge Agency for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

24. Malfunctions and Emergencies.

This section requires the Agency to notify the Contractor within a specified number of hours of actually knowing about any situation that impacts the performance of the equipment. As described here, the impacts cover both pre-existing energy related equipment and the newly installed equipment. The impacts defined here include equipment malfunction or modification, interruption of power supply or any emergency situation which may affect the Energy and Cost Savings Guarantee. If such an impact is known by the Agency to have occurred and the Agency delays in

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

notifying the Contractor and doesn't correct the situation, it will treated as a Material Change and the baseline will be adjusted accordingly. If the Agency makes an effort to assess the situation and incorrectly determines it doesn't have an impact, then the Contractor will not fault the Agency, although an adjustment to the baseline may still be warranted.

A. Agency shall use its best efforts to notify the Contractor or its designated subcontractors within 24 hours after the Agency's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the guaranteed energy savings, (ii) any interruption or alteration to the energy supply to the Project Site(s), or (iii) any alteration or modification in any energy-related equipment or its operation.

B. Where Agency exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. Agency shall notify Contractor within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. Contractor shall respond or cause its designee(s) to respond within ____ hours and shall promptly proceed with corrective measures. Any telephonic notice of such conditions by Agency shall be followed within three business days by written notice to Contractor from Agency. If Agency unreasonably delays in so notifying Contractor of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, Contractor may charge Agency for its loss, due to the delay, associated with the guaranteed savings under this Contract for the particular time period, provided that Contractor is able to show the direct causal connection between the delay and the loss.

C. The Contractor shall provide a written record of all service work performed. This record will indicate the reason for the service, description of the problem and the corrective action performed.

25. Actions by Agency.

This section states the Agency may not make any changes to the operation and maintenance of the equipment without the prior written approval of the Contractor unless otherwise indicated in ***Schedule CC (Agency's Maintenance Responsibilities)*** *or if there is an emergency and the Contractor can't be reasonably notified. In the case of such emergency, the Agency should follow instructions provided by the Contractor for emergency action.*

Agency shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of Contractor except as set forth in Schedule CC (Agency's Maintenance Responsibilities). Notwithstanding the foregoing, Agency may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify Contractor before taking any such actions. In the event of such an emergency, Agency shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

action provided in advance by Contractor. Agency agrees to maintain the Project Site(s) in good repair and to protect and preserve all portions thereof which may in any way affect the operation or maintenance of the Equipment.

26. Modification of Equipment.

During the Term of this Contract, Agency will not, without the prior written consent of Contractor, affix or install any accessory Equipment or device on any of the Equipment if such addition will change or impair the originally intended functions, value or use of the Equipment without Contractor's prior written approval, which shall not be unreasonably withheld.

27. Upgrade or Alteration of Equipment.

This section describes the terms and conditions under which the Contractor may make changes to the equipment, operating procedures or take other energy savings actions. If such changes are implemented during any time during the contract they must be described in a supplemental schedule and be approved by the Agency. Any equipment replaced is required to be new and have the potential to produce at least as much or more savings. If computer software is updated, the licensing provisions of ***Section 41 (Ownership of Certain Proprietary Property Rights)*** *still apply.*

A. Contractor shall at all times have the right, subject to Agency's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Project Site(s), provided that: (i) the Contractor complies with the standards of comfort and services set forth in Schedule U (Standards of Comfort) herein; (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the Contractor to achieve the guaranteed energy and cost savings at the Project Site(s) and; (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the Contractor.

B. All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the Agency for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall, unless otherwise agreed, be new and have equal or better potential to reduce energy consumption at the Project Site(s) than the Equipment being replaced. The Contractor shall have the right to update any and all software to be used in connection with the Equipment in accordance with the provisions of Section 41 (Ownership of Certain Proprietary Rights) and Schedule BB (Contractor's Maintenance Responsibilities). All replacements of and alterations or additions to the Equipment shall become part the Equipment described in Schedule R (Equipment to be Installed by Contractor) and shall be covered by the provisions and terms of **Section 16 (Construction Schedule; Equipment Installation).**

28. Material Change Defined.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

This section defines the term "Material Change" which covers any condition other than weather that affects building energy use by more than the negotiated percentage (see above discussion). It is typical for the percent of deviation to be negotiated as a value ranging between 2% and 5% based on aggregate consumption costs. The lower value (2%) may be appropriate for large facilities (over $20,000/month utility bills) and the higher value (5%) may be appropriate for small facilities (less than $5,000/month utility bills).

A. A Material Change shall include any change in or to the Project Site(s), whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Agency, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline) and Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements) by at least __ % after adjustments for climatic variations.

B. Actions by the Agency which may result in a Material Change include, but are not limited to, the following:

i) manner of use of the Project Site(s) by the Agency; or
ii) hours of operation for the Project Site(s) or for any equipment or energy using systems operating at the Project Site(s); or
iii) Permanent changes in the comfort and service parameters set forth in Schedule U (Standards of Comfort); or
iv) occupancy of the Project Site(s); or
v) structure of the Project Site(s); or
vi) types and quantities of equipment used at the Project Site(s) or
vii) modification, renovation or construction at the Project Site(s); or
viii) the Agency's failure to provide maintenance of and repairs to the Equipment in accordance with Schedule CC (Agency's Maintenance Responsibilities); or
ix) any other conditions other than climate affecting energy use at the Project Site(s) including but not limited to the replacement, addition or removal of energy and water consuming devices whether plug in or fixed assets,
x) casualty or condemnation of the Project Site(s) or Equipment, or
xi) changes in utility provider or utility rate classification, or
xii) any other conditions other than climate affecting energy or water use at the Project Site(s).
xiii) Modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules.

29. Reported Material Changes; Notice by Agency.

This section requires the Agency to notify the Contractor in writing if there are any actual or planned changes to the facility which would effect energy consumption by more than the specified

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

percentage. In the event of an emergency or situation that would prevent advance notification, the Agency has a specified number of hours to inform the Contractor that a Material Change has occurred.

The Agency shall use its best efforts to deliver to the Contractor a written notice describing all actual or proposed Material Changes in the Project Site(s) or in the operations of the Project Site(s) at least __ days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the Contractor of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Agency within ____ hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Agency to have occurred.

30. Other Adjustments.

This section states that if all building conditions and operations stay the same, then energy consumption will not vary more than the negotiated percentage during any month when compared to the baseline use for that month and after adjustments for weather are made. See above discussion. In the event such a variation occurs, the Contractor will try to determine the cause of the deviation and report its findings the Agency. The Contractor and Agency will then determine what adjustments will be made to the baseline as described in ***Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)****.*

As agreed in **Section 29 (Reported Material Changes; Notice by Agency)** Agency will alert Contractor of materials changes as known. Both parties have a vested interest in meeting the guaranteed savings of the Contract. As such, the Contractor shall work with Agency to investigate, identify and correct any changes that prevent the guaranteed savings from being realized. As a result of such investigation, Contractor and Agency shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline) and Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements). Any disputes between the Agency and the Contractor concerning any such adjustment shall be resolved in accordance with the provisions of Schedule JJ (Alternative Dispute Resolution Procedures) hereto.

31. Corrective Action; Accuracy of the Services.

This section directs the Contractor to protect the Project Site(s) and its contents to repair and restore to the original condition any damage caused by the Contractor in connection with this contract. Any costs incurred to correct such damage are to be paid by the Contractor. The Contractor is solely responsible for the technical professional accuracy of all work performed under this Contract including work done by subcontractors or others.

A. Contractor shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

or their operating systems and so as to conform to the standards set forth in Schedule U (Standards of Comfort) and the construction schedule specified in Schedule S (Construction and Installation Schedule). Contractor shall repair and restore to its original condition any area of damage caused by Contractor's performance under this Contract. The Agency reserves the right to review the work performed by Contractor and to direct Contractor to take certain corrective action if, in the opinion of the Agency, the structural integrity of the Project Site(s) or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by Contractor's performance of the work shall be borne by Contractor.

B. Contractor shall remain responsible for the professional and technical accuracy of all services performed, whether by the Contractor or its subcontractors or others on its behalf, throughout the term of this Contract.

32. Annual Reporting Requirements; Annual ENERGY STAR Rating.

At the end of each year during the guarantee period as specified in Schedule A (Savings Guarantee) and no later than ninety (90) days thereafter, the Contractor shall complete and submit the data required in Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements). The Contractor shall provide an ENERGY STAR rating for each eligible facility for each year of the guarantee period if applicable.

33. Other Documents.

This section makes the original Request for Proposals (RFP) and the selected Contractor's proposal part of the contract. It also acknowledges the completion of the Contractor's Technical Energy Audit Report and its approval and acceptance by the Agency. It is recommended that the original Technical Energy Audit Report in its entirety be attached and/or referenced as an Exhibit to this contract. It is important to note the last sentence of this provision makes it clear that if there is any future discrepancy between the Technical Energy Audit Report and any technical schedule(s), the terms of this contract shall apply.

This Contract incorporates herein and makes a part hereof the entire Request for Proposal and Project Development Proposal, labeled Appendix A and B, respectively. Notwithstanding, the provisions of this Contract and the attached Schedules, Exhibits and Appendices shall govern in the event of any inconsistencies between the Investment-Grade Energy Audit Report and the provisions of this Contract.

34. Energy and Cost Savings Guarantee.

This section establishes the term of the Energy and Cost Savings Guarantee to be on an annual basis and structured to cover any and all annual payments (debt service/lease payment and on-going Contractor fees) to be made by the Agency. It ensures that the Contractor's savings

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

guarantee will at least cover annual project lease-purchase costs (principal and interest) and all annual Contractor service fees for maintenance.

Contractor has formulated and, subject to the adjustments provided for in Sections 28, 29 and 30 (Material Changes), has guaranteed the annual level of energy and water cost savings to be achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract in accordance with the methods of savings measurement and verification as set forth in Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements). The Energy and Cost Savings Guarantee is set forth in annual increments for the term of the Contract as specified in Schedule A (Savings Guarantee) and has been structured by the Contractor to be sufficient to cover any and all annual payments required to be made by the Agency as set forth in Schedule J (Compensation to Contractor for Annual Services) and Schedule I (Financing Agreement and Payment Schedule).

35. Annual Review and Reimbursement/Reconciliation.

At the end of each year of the contract and within a specified number of days, there will be a review and reconciliation of the actual achieved savings (subject to any adjustments made for weather, occupancy, operations etc.) with the Contractor's guaranteed savings. If there is a savings shortfall, the Contractor is contractually liable to reimburse the Agency for the difference between what was actually achieved and the amount guaranteed. If in any future year, the achieved savings exceed the guarantee, the excess savings will be used to reimburse the Contractor for any shortfall payments made in previous years. It is recommended that all excess savings be retained by the Agency except when the Contractor has had a previous year's shortfall and not be credited to satisfy savings guarantees in future years of the contract. Agency may negotiate to receive cash, equipment or services equivalent to any deficiency in savings.

A. Energy-related cost savings shall be measured and/or calculated as specified in Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements) and a report provided within ninety (90) days of the end of the year for the previous year for each anniversary of the Commencement Date.

B. In the event the Energy and Cost Savings achieved during such guarantee year are less than the Guaranteed Energy and Cost Savings as defined in Schedule A (Savings Guarantee), Contractor shall pay the Agency an amount equal to the deficiency.

C. The Contractor shall remit such payments to the Agency within ___ days of written notice by the Agency of such monies due. When the total energy savings in any one year during the guarantee period exceed the Energy and Cost Savings Guarantee as set forth in Schedule A (Savings Guarantee) and are in addition to those monies due the Contractor for compensation for services as set forth in Schedule J (Compensation to Contractor for Annual Services), such excess savings shall first be applied to reimburse Contractor for any payment Contractor made to Agency to meet Contractor's guarantee for previous years in which the energy savings fell short of Contractor's

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Energy and Cost Savings Guarantee under the terms as set forth in Schedule A (Savings Guarantee). In no event shall credit for excess savings be used to satisfy saving guarantees in future years of the Contract

36. Contractor Compensation and Fees.

This section ensures that the Contractor's savings guarantee will, at a minimum, cover annual project financing costs (principal and interest). In addition, it states that all annual Contractor service fees for maintenance will also be paid from savings.

Contractor has structured the Energy and Cost Savings Guarantee referred to in Section 34 above, to be sufficient to include any and all annual payments required to be made by the Agency in connection with financing/purchasing the Equipment to be installed by Contractor under this Contract as set forth in Schedule I (Financing Agreement and Payment Schedule). Actual energy and operations savings achieved by Contractor through the operation of Equipment and performance of services by Contractor shall be sufficient to cover any and all annual fees to be paid by Agency to Contractor for the provision of services as set forth and in accordance with the provisions of Schedules J (Compensation to Contractor) and BB (Contractor's Maintenance Responsibilities).

37. Billing Information Procedure.

A. Payments due to Contractor shall be calculated each _____in the following manner:

i) By the _____ day after receipt, Agency shall provide Contractor with copies of all energy bills for the Project Site(s) which it shall have received for the preceding month;

ii) Upon receipt of the required information, Contractor shall calculate the savings in accordance with the agreed-upon calculation formulae in Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements).

B. Based upon paragraphs (i) and (ii) above, Contractor shall prepare and send to Agency a _____invoice which shall set forth for each_____ the amounts of the energy and operations dollar savings calculated in accordance with Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements)and for the services as provided for in Schedule J (Compensation to Contractor for Annual Services). The invoice will set forth the total _____payment due from Agency.

38. Payment.

Agency shall pay Contractor within ___ days of receipt of Contractor's invoice.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

39. Effective Date of Payment Obligation.

This section states that no Contractor fees for ongoing maintenance, monitoring or other services shall be paid until all equipment in installed and operating in accordance with the agreed upon Construction Schedule and Agency has approved the completed installation and signed the Exhibit VI (Certificate of Acceptance—Installed Equipment).

Notwithstanding the above provisions, Agency shall not be required to begin any payments to Contractor under this Contract unless and until all equipment installation is completed by Contractor in accordance with the provisions of Section 16 (Construction Schedule; Equipment Installation) and Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment), and accepted by Agency as evidenced by the signed Certificate of Acceptance as set forth in Exhibit VI (Certificate of Acceptance—Installed Equipment), and unless and until said equipment is fully and properly functioning.

40. Open Book Pricing.

This section establishes that the Contractor will fully disclose all costs, providing access to records for all labor and material costs, making them available for three years beyond final payment.

Open book pricing will be required, such that the Contractor shall fully disclose all costs of materials and labor purchased and subcontracted by the Contractor and a list of hourly rates and position descriptions for labor or services provided by the Contractor. Estimates for number of hours required for the project and deviations of these budgeted hours shall require prior written approval by the owner or shall not be paid. Contractor shall maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. Contractor shall afford Agency access to these records and preserve them for a period of three (3) years after final payment. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices. The pricing methodology and individual cost markups disclosed during preliminary contract negotiations will be expected to be applied, providing the scope and size of the project remain the same as assumed when markups were disclosed.

41. Ownership of Certain Proprietary Property Rights.

This provision addresses the Contractor's proprietary rights over customized (or exclusive) software used in an energy management system which may control, manage and perform other functions in conjunction with the project (there may other technical designs, processes, formulas etc., which this provision would cover). Of particular importance is the stipulation that grants the Agency a continuing license (at no charge) to use and operate the project without violating any Contractor's proprietary rights.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Agency shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. The Contractor shall grant to the Agency a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Agency to continue to operate, maintain, and repair the Equipment in a manner that will yield guaranteed utility consumption reductions for the specified contract term. Contractor shall not be liable for providing new versions of software or other enhancements if or unless such new versions or enhancements are necessary to achieve the guaranteed utility consumption reductions.

42. Ownership of Existing Equipment.

This provision states that the Agency has ownership of all existing equipment and that the Contractor shall notify the Agency in writing of what equipment and materials are to be replaced. If the Agency chooses to keep the equipment to be replaced, the Contractor will be notified and the Agency responsible for identifying the location of where the property is to be stored or relocated. The Contractor is responsible for all equipment and materials to be disposed. The exception to this is the treatment of any hazardous or environmentally sensitive materials.

Ownership of the equipment and materials presently existing at the Project Site(s) at the time of execution of this Contract shall remain the property of the Agency even if it is replaced or its operation made unnecessary by work performed by Contractor pursuant to this Contract. If applicable, Contractor shall advise the Agency in writing of all equipment and materials to be replaced at the Project Site(s) and the Agency shall within ____days designate in writing to the Contractor which equipment and materials that should not be disposed of off-site by the Contractor. It is understood and agreed to by both Parties that the Agency shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. The Contractor shall be responsible for the disposal of all equipment and materials designated by the Agency as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

43. Damages to Equipment or Property.

This section needs to reflect the individual Agency's standard requirements with regard to insurance and indemnification.

Contractor shall be responsible for (i) any damage to the Equipment or other property on the Project Site(s) and (ii) any personal injury where such damage or injury occurs as a result of Contractor's performance under this Contract.

44. Liabilities.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Neither party shall be liable for any special, incidental, indirect, punitive or consequential damages, arising out of or in connection with this Contract. Further, the liability of either party under this Contract shall not exceed the Contract Sum in the aggregate.

45. Appropriations.

This section protects the Agency in the event no funds or insufficient funds are appropriated to cover the financial payments due to the Contractor under the terms of this Contract, in effect terminating the contract with no penalty to the Agency. This is a standard provision in public sector performance contracting and is generally accepted by the ESCO industry since it is unlikely that funding for utilities (source of funds) would be withheld.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate on the last day of the fiscal year for which appropriations were made, without penalty or expense to the Agency of any kind whatsoever, except as to the portions of payments herein agreed upon for which Agency and/or other funds shall have been appropriated and budgeted or are otherwise available, and upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency 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.

46. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico 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 State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

47. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

48. Release.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

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

49. 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 Agency.

50. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency 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.

51. Conflict of Interest; Governmental Conduct Act.

The Contractor warrants that it presently has no interest and 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. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

52. Amendment.

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

53. 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.

54. Penalties for violation of law.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

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.

55. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, 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.

56. 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.

57. Insurance.

At all times during the term of this Contract, Contractor shall maintain in full force and effect, at its expense: (1) Workmen's Compensation Insurance sufficient to cover all of the employees of (Contractor) working to fulfill this Contract, and (2) Casualty and Liability Insurance on the Equipment and Liability Insurance for its employees and the possession, operation, and service of the Equipment. The limits of such insurance shall be not less than $_____ for injury to or death of one person in a single occurrence and $_____ for injury to or death of more than one person in a single occurrence and $_____ _ for a single occurrence of property damage. Such policies shall name the Agency as an additional insured.

Prior to commencement of work under this Contract, Contractor will be required to provide Agency with current certificates of insurance specified above. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed until at least thirty (30) days' prior written notice has been given to Agency.

58. Workers Compensation.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

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 Agency.

59. 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 Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

60. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico 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 Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

61. 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.

62. 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.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

63. Conditions Beyond Control Of The Parties.

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of God, insurrections or riots, or similar events, this Contract shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days notice to the performing party, in which event neither party shall have any further liability to the other.

64. Events of Default by Agency.

A. Each of the following events or conditions shall constitute an "Event of Default" by Agency:

i) any failure by Agency to pay Contractor any sum due for a service and maintenance period of more than ___ days after written notification by Contractor that Agency is delinquent in making payment and provided that Contractor is not in default in its performance under the terms of this Contract; or

ii) any other material failure by Agency to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for _____ days after notice to Agency demanding that such failures to perform be cured or if such cure cannot be effected in _____ days, Agency shall be deemed to have cured default upon the commencement of a cure within _____ days and diligent subsequent completion thereof;

iii) any representation or warranty furnished by Agency in this Contract which was false or misleading in any material respect when made.

65. Events of Default by Contractor.

A. Each of the following events or conditions shall constitute an "Event of Default" by Contractor:

i) the standards of comfort and service set forth in Schedule U (Standards of Comfort) are not provided due to failure of Contractor to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within __ days after written notice by Agency to Contractor demanding that such failure be cured, shall be deemed cured for purposed of this Contract.

ii) any representation or warranty furnished by Contractor in this Contract is false or misleading in any material respect when made;

iii) failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in Schedule R (Equipment to be Installed by Contractor) and Schedule S (Construction and Installation Schedule);

iv) provided that the operation of the facility is not adversely affected and provided that the standards of comfort in Schedule U (Standards of Comfort) are maintained, any failure by Contractor to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within __ days

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

after written notice by the Agency to Contractor demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract;

v) any lien or encumbrance upon the equipment by any subcontractor, laborer or material vendor of Contractor;

vi) the filing of a bankruptcy petition whether by Contractor or its creditors against Contractor which proceeding shall not have been dismissed within_____ days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of Contractor.

vii) failure by the Contractor to pay any amount due the Agency or perform any obligation under the terms of this Contract or the Energy and Cost Savings Guarantee as set forth in Schedule A (Savings Guarantee).

66. Remedies upon Default by Agency.

If an Event of Default by Agency occurs, Contractor may, without a waiver of other remedies which exist in law or equity, exercise any remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by Agency, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy.

67. Remedies Upon Default by Contractor.

In the Event of Default by Contractor, Agency may exercise any remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred, including attorney's fees.

68. 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 Agency.

69. Assignment by Contractor.

This assignment provision first acknowledges that the Agency selected the Contractor for its unique expertise and qualifications to perform the services specified in the contract. The Contractor may not assign this contract to another Contractor without the written approval of the Agency and any Contractor assigned this contract must fully comply with all terms and conditions. In addition, the Contractor and any assignee remain contractually liable to the Agency for fulfilling all of the Contractor's obligations as specified in the contract.

The Contractor may, with prior written approval of the Agency, which consent shall not be unreasonably withheld, delegate its duties and performance under this Contract, and/or utilize Contractors, provided that any assignee(s), delegee(s), or Contractor(s) shall fully comply with the

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

terms of this Contract. Notwithstanding the provisions of this paragraph, the Contractor shall remain jointly and severally liable with its assignees(s), or transferee(s) to the Agency for all of its obligations under this Contract.

70. Assignment by Agency.

In turn, this provision allows the Agency to transfer or assign this contract to a new building owner or occupant. The Agency and its assignee, however, still remain responsible to the Contractor for the Agency's obligations as specified in the contract.

Agency may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Buildings or an interest therein. The Agency shall remain jointly and severally liable with its assignees or transferees to the Contractor for all of its obligations under this Contract.

71. Representations and Warranties.

This boilerplate provision states that each party has the requisite authority and ability to enter into this contract.

A. Each party warrants and represents to the other that:

i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

ii) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

72. Additional Representations of the Parties.

These additional representations address several areas specific to the performance contract. The Agency certifies it has or will provide the Contractor will all energy and energy-related records and all future records to be provided will be truthful and accurate. The Agency also declares it has not entered into any leases or service contracts relating to energy equipment or servicing of pre-existing equipment and will notify the Contractor within a specified period of time if it does so.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

A. Agency hereby warrants, represents and promises that:

i) it has provided or shall provide timely to Contractor, all records relating to energy usage and energy-related maintenance of Project Site(s) requested by Contractor and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and

ii) it has not entered into any leases, contracts or Contracts with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Project Site(s) or with regard to servicing any of the energy related equipment located in the Project Site(s). Agency shall provide Contractor with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Project Site(s) which may be executed from time to time hereafter within ____ days after execution thereof.

B. Contractor hereby warrants, represents and promises that before commencing performance of this Contract:

i) it shall have become licensed or otherwise permitted to do business in the State of New Mexico.

ii) it shall have provided proof and documentation of required insurance and bonds pursuant to this Contract;

iii) it shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;

iv) it shall use qualified subcontractors who are qualified, licensed and bonded in this state to perform the work so subcontracted pursuant to the terms hereof;

v) the Equipment will meet or exceed the provisions set forth in Section 17 (Systems Start Up and Equipment Commissioning) and in Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment).

vi) the Equipment is or will be compatible with all other Project Site(s) mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation;

vii) it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.

73. Construction Performance and Payment Bonds, Labor and Material Payment Bonds.

Such executed bonds are incorporated herein by reference as **Exhibit I (Performance Bond)** and **Exhibit II (Labor and Material Payment Bond, if applicable).**

74. Further Documents.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract**.**

75. Methods of Operation by Agency.

The parties acknowledge and agree that said Energy and Cost Savings would not likely be obtained unless certain procedures and methods of operation designed for energy and water conservation shall be implemented, and followed by Agency on a regular and continuous basis.

76. Agency's Maintenance Responsibilities.

This provision protects both the Contractor and the Agency by establishing a method for the Contractor to supervise the Agency's compliance with the scheduled routine and preventative maintenance activities to be performed by the Agency (either by in-house personnel or existing maintenance contract). This checklist should be developed for both the newly installed and pre-existing energy-related equipment.

Agency agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on Schedule CC (Agency Maintenance Responsibilities), to be attached hereto and made a part hereof after Agency's approval, such approval not to be unreasonably withheld, conditioned or delayed.

77. Inspection of Project Site(s).

Agency agrees that Contractor shall have the right once a month, with prior notice, to inspect Project Site(s) to determine if Agency is complying, and shall have complied with its obligations as set forth in **Section 76 (Agency's Maintenance Responsibilities).** For the purpose of determining Agency's said compliance, the checklist to be set forth at **Schedule DD (Facility Maintenance Checklist)** as completed and recorded by Contractor during its monthly inspections, shall be used to measure and record Agency's said compliance. Agency shall make the Project Site(s) available to Contractor for and during each monthly inspection, and shall have the right to witness each inspection and Contractor's recordation on the checklist. Agency may complete its own checklist at the same time. Contractor agrees to not interfere with the Agency operations during any monthly inspection.

78. Waiver Of Liens.

Contractor shall obtain and furnish to Agency a Waiver of Liens from each vendor, material manufacturer and laborer in the supply, installation and servicing of each piece of Equipment.

79. Conflicts of Interest.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither party hereto nor any director, employee or agent of any party hereto shall give to or receive from any director, employee or agent of any other party hereto any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, neither party hereto nor any director, employee or agent of either party hereto, shall without prior notification thereof to the other party enter into any business relationship with any director, employee or agent of the other party or of any affiliate of the other party, unless such person is acting for and on behalf of the other party or any such affiliate. A party shall promptly notify the other party of any violation of this section and any consideration received as a result of such violation shall be paid over or credited to the party against whom it was charged. Any representative of any party, authorized by that party, may audit the records of the other party related to this Contract, upon reasonable notice and during regular business hours including the expense records of the party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this section.

80. 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 Agency: [insert name, address and email].

To the Contractor: [insert name, address and email].

81. Non-Substitution.

In the rare event that funds were not appropriated or the Agency is in default, and to protect the Contractor, this provision prevents the Agency from securing funding for the same purposes for a period of one year following the termination of the contract.

In the event of a termination of this contract due to the non-appropriation of funds or in the event this Contract is terminated by Contractor due to a default by the Agency, the Agency agrees, to the extent permitted by state law, not to purchase, lease, rent, borrow, seek appropriations for, acquire or otherwise receive the benefits of any of the same and unique services performed by Contractor under the terms of this Contract for a period of three-hundred sixty five (365) calendar days following such default by Agency, or termination of this Contract due to non-appropriations.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

82. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represent and warrant 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. (I've encountered some situations where there was a question whether the person signing had authority; having the contractor assure the agency the person signing has authority creates an argument the agency has no obligation to check.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.

By: _____ Date:_____
Agency

By: _____ Date:_____
Agency's Legal Counsel –Certifying legal sufficiency

By: _____ Date: _____
Contractor

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **00-000000-00-0**

By: _____ Date:_____
Taxation and Revenue Department

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date:_____
DFA Contracts Review Bureau

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Performance Measures

(Performance Measures should be based on the Scope of Work and must be tied to the Agency's Strategic Plan. The Strategic Plan should be referenced in the Performance Measures and the applicable part of the Strategic Plan copied below or in an attachment. To the extent possible based on the nature of the work to be performed, the Performance Measures should be "Output" oriented and specify an "Outcome.")

Performance Measures in the Scope of Work shall contain measurable goals and objectives that are linked to the Performance Measures of the Agency's Strategic Plan:

Example: Goal: Reduce or Increase or Other Service [insert blank].[3]

Objective: To reduce or increase or Other Service [insert blank] by [blank] percent or by a certain time.[4]

Activities: [Insert what services the Contractor is expected to perform to accomplish goals and objectives including an evaluation of the process and the outcome as well as provides efficiency measures that relate efforts to outputs of services].

OR: Through satisfactory completion of the Scope of Work set forth above and submission of acceptable Deliverables, the Contractor will assist the Agency to meet the portions of its Strategic Plan set forth below ***(insert additional language if necessary to describe how Contractor's work will assist the Agency to fulfill its duties).***

---

3. A goal is an "output" measure. It measures the quantity of a service provided. For example, the number of students graduated or promoted; the number of two-lane highways repaired; or the number of crimes investigated. It also can measure the quantity of a service provided that meets a certain quality requirement. For example, the number of students graduated or promoted who meet a minimum preset level of achievement; the number of miles of roads repaired to a minimum safety standard; or the number of criminal investigations performed that result in identification of a prime suspect.
4. An accomplishment is an "outcome" measure. These indicators measure accomplishments or results that occur (at least partially) because the services were provided. For example, the percentage of students achieving a specified skill level in reading, the percentage of miles of roads in excellent, good or fair condition; or the percent reduction in serious crimes or the percent of residents who perceive their neighborhoods as safe.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

APPENDIX O

MODEL ATTACHMENTS FOR GUARANTEED UTILITY SAVINGS CONTRACT

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

CONTRACT ATTACHMENT I: Schedules, Exhibits, and Appendices

TABLE OF CONTENTS

Schedules

Savings Guarantee

Schedule A Savings Guarantee
Schedule B Baseline Energy Consumption; Methodology to Adjust Baseline
Schedule C Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements
Schedule D-G Left blank for optional schedules

Payments and Schedule

Schedule H Final Project Cost & Project Cash Flow Analysis
Schedule I Financing Agreement and Payment Schedule
Schedule J Compensation to ESCO for Annual Services
Schedule K Rebates, Incentives and Grants
Schedule L-P Left blank for optional schedules

Design and Construction Phase

Schedule Q Description of Project Site(s)
Schedule R Equipment to be Installed by ESCO
Schedule S Construction and Installation Schedule
Schedule T Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule U Standards of Comfort
Schedule V ESCO's Training Responsibilities
Schedule W-AA Left blank for optional schedules

Post-Construction

Schedule BB ESCO's Maintenance Responsibilities
Schedule CC Institution's Maintenance Responsibilities
Schedule DD Facility Maintenance Checklist
Schedules EE – II Left blank for optional schedules

Administration

Schedule JJ Alternative Dispute Resolution Procedures
Schedule KK – OO Left blank for optional schedules

Optional Schedules

Pre-Existing Service Contracts
Energy Savings Projections
Facility Changes Checklist
Current and Known Capital Projects at Facility

Exhibits

Exhibit I Performance Bond
Exhibit II Labor and Material Payment Bond ***if required***
Exhibit III (i) Certificate of Acceptance—Investment Grade Audit Report
Exhibit III (ii) Certificate of Acceptance—Installed Equipment
Exhibit IV Equipment Warranties
Optional Exhibits
Manifest of Ownership
Minority and Woman-Owned Business Certification

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Certification that Financing Term is no Longer than the Aggregated Equipment Lifetime
Notice of Substantial Completion
Notice to Proceed with Construction Phase
Record of Reviews by Institution

Appendices

Appendix A	RFP for ESCO Solicitation (Pre-qualification Phase; Final Selection Phase)
Appendix B	ESCO Proposal (Pre-qualification Phase; Final Selection Phase)
Appendix C	Investment Grade Audit and Project Development Contract
Appendix D	Investment Grade Audit Report

SAVINGS GUARANTEE SCHEDULES

SCHEDULE A. SAVINGS GUARANTEE

Fully describe all provisions and conditions of the ESCO's energy saving guarantee. The guarantee should be defined in units of energy to be saved for the duration of the contract term. Reference to the annual reconciliation of achieved vs. guaranteed savings should be included (there is also language in the body of the contract regarding annual reconciliation. See *Section 35 (Annual Review and Reimbursement/Reconciliation)*.

SCHEDULE B. BASELINE ENERGY CONSUMPTION; METHODOLOGY TO ADJUST BASELINE

The baseline energy consumption is the "yardstick" by which all savings achieved by the installed project will be measured.

B.1. BASELINE ENERGY CONSUMPTION

Present the methodology and all supporting documentation used to calculate the baseline including unit consumption and current utility rates for each fuel type. Also include baseline documentation regarding other cost savings such as material savings (e.g. bulbs, ballasts, filters, chemicals etc.), and cost savings associated with the elimination of outside maintenance contracts.

Energy and Water Baseline Development - Describe in general terms how the baseline for this ECM is defined.

- Describe variables affecting baseline energy or water use. Include variables such as weather, operating hours, set point changes, etc. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

- Define key system performance factors characterizing the baseline conditions. Include factors such as comfort conditions, lighting intensities, temperature set points, etc.
- Define requirements for Institution's witnessing of measurements if different than whole project data requirements.
- Provide details of baseline data collected, including: Parameters monitored, Details of equipment monitored, i.e., location, type, model, quantity, etc., Sampling plan, including details of usage groups and sample sizes, Duration, frequency, interval, and seasonal or other requirements of measurements, Personnel, dates, and times of measurements, Proof of Institution's witnessing of measurements (if required), Monitoring equipment used, Installation requirements for monitoring equipments (test plug for temperature sensors, straight pipe for flow measurement etc.), Certification of calibration/calibration procedures followed, Expected accuracy of measurements/monitoring equipment, Quality control procedures used, Form of data (.xls, .cvs, etc.), Results of measurements (attach appendix and electronic forma as necessary), Completed data collection forms, if used.
- Provide details of baseline data analysis performed, including: Analysis using results of measurements, Weather normalized regressions, Weather data used and source of data

B.2 METHODOLOGY TO ADJUST BASELINE.

Periodically (at least on an annual basis), the baseline will be adjusted to account for the prevailing conditions during the measurement period. Adjustments made to the energy baseline shall only be made for any of the following changes in conditions affecting the facility:

- utility rates;
- number of days in the utility billing cycle;
- floor area of the facility;
- operational schedule of the facility;
- facility temperature;
- weather, if change is significant;
- amount of equipment or lighting used in the facility, if change is significant;
- space type(s) in the facility, if change is significant; and
- material change(s) in or to the facility.

All methodologies used to account for any of these adjustments to the baseline shall be clearly defined.

SCHEDULE C. SAVINGS MEASUREMENT AND VERIFICATION PLAN; POST-RETROFIT M&V PLAN; ANNUAL M&V REPORTING REQUIREMENTS

The monitoring and verification (M&V) process is divided into three phases:

C.1 Savings Measurement and Verification Plan
C.2 Post-Installation M&V Plan
C.3 Annual M&V Reporting Requirements
Also see **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline**.

The latest version of the *International Performance Monitoring and Verification Protocol (IPMVP)* is used as the basis of the savings calculation and verification methodology.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

To help ensure plans and reports are complete and consistent, use the process and tables provided.

C.1 SAVINGS MEASUREMENT AND VERIFICATION PLAN.

A preliminary monitoring and verification plan would typically have been developed in the Investment Grade Audit process. In the Energy Savings Performance Contract process this plan is finalized.

Include a description of the energy savings measurement, monitoring and calculation procedures used to verify and compute the savings performance of the installed equipment. Include methods to compare the level of energy that would have been consumed without the project referred to as the "Baseline") with the amount of energy that was actually consumed during a specific time period (monthly, quarterly, etc.). Explicitly describe all methods of measuring savings including engineered calculations, metering, equipment run times, pre- and post-installation measurements, etc. for all equipment installed. Provide a clear methodology for converting energy savings into energy cost savings. Define the utility rates to be used for the baseline and actual energy costs. Clearly describe how the calculations are affected by rising or lowering utility rates. Clearly predictable annual variations are usually handled through established procedures for each identified factor (e.g., weather, billing days, occupancy, etc.) in the savings formulas. Explicitly define any routine adjustments that will be made during the performance period. Non-routine adjustments may be required for issues such as changes in production shifts, facility closures, adding new wings or loads (such as computer labs) require a conceptual approach versus a method to cover each eventuality. Specify how permanent changes, such as changes in square footage, will be handled. Options include use of agreement clauses that allow predictable or expected changes and/or through a “re-open” clause that allows either party to renegotiate the baseline. A Facility Changes Checklist or other method may be provided by the ESCO for the Institution to notify the ESCO of any changes in the facility that could have an impact on energy use (occupancy, new equipment, hours of use, etc.).

Prepare the M&V Plan as presented below.

List of Processes and Tables:

Risk, Responsibility and Perfomance Matrix.

M&V Plan and Savings Calculation Methods

- Proposed Annual Savings Overview
- Site Use and Savings Overview (Optional)
- M&V Plan Summary
- Schedule of Verification Reporting Activities
- Proposed Annual Savings For ECM
- Expected Year 1 Savings for ECM
- ENERGY STAR Ratings

Risk, Responsibility and Performance Matrix.

The ESCO shall complete and include the matrix below to summarize the allocation of responsibility for key items related to M&V.

RISK, RESPONSIBILITY AND PERFORMANCE MATRIX

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

RESPONSIBILITY/DESCRIPTION	CONTRACTOR PROPOSED APPROACH
1. Financial	
a. Interest rates: Neither the contractor nor the Institution has significant control over prevailing interest rates. Higher interest rates will increase project cost, financing/project term, or both. The timing of the TO signing may impact the available interest rate and project cost.	
b. Construction costs: The contractor is responsible for determining construction costs and defining a budget. In a fixed-price design/build contract, the Institution assumes little responsibility for cost overruns. However, if construction estimates are significantly greater than originally assumed, the contractor may find that the project or measure is no longer viable and drop it before TO award. In any design/build contract, the Institution loses some design control. **Clarify design standards and the design approval process (including changes) and how costs will be reviewed.**	
c. M&V confidence: The Institution assumes the responsibility to determine the confidence that it desires to have in the M&V program and energy savings determinations. The desired confidence will be reflected in the resources required for the M&V program, and the ESCO must consider the requirement prior to submittal of the final proposal. **Clarify how project savings are being verified (e.g., equipment performance, operational factors, energy use) and the impact on M&V costs.**	

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

d. Energy Related Cost Savings: The Institution and the contractor may agree that the project will include savings from *recurring* and/or *one-time* costs. This may include one-time savings from avoided expenditures for projects that were appropriated but will no longer be necessary. Including one-time cost savings before the money has been appropriated may involve some risk to the Institution. Recurring savings generally result from reduced O&M expenses or reduced water consumption. These O&M and water savings must be based on actual spending reductions. **Clarify sources of nonenergy cost savings and how they will be verified.**	
e. Delays: Both the contractor and the Institution can cause delays. Failure to implement a viable project in a timely manner costs the Institution in the form of lost savings, and can add cost to the project (e.g., construction interest, re-mobilization). **Clarify schedule and how delays will be handled.**	
f. Major changes in facility: The Institution controls major changes in facility use, including closure. **Clarify responsibilities in the event of a premature facility closure, loss of funding, or other major change.**	
2. Operational	
a. Operating hours: The Institution generally has control over operating hours. Increases and decreases in operating hours can show up as increases or decreases in "savings" depending on the M&V method (e.g., operating hours multiplied by improved efficiency of equipment vs. whole-building/utility bill analysis). **Clarify whether operating hours are to be measured or stipulated and what the impact will be if they change.** If the operating hours are stipulated, the baseline should be carefully documented and agreed to by both parties.	

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

b. Load: Equipment loads can change over time. The Institution generally has control over hours of operation, conditioned floor area, intensity of use (e.g., changes in occupancy or level of automation). Changes in load can show up as increases or decreases in "savings" depending on the M&V method. **Clarify whether equipment loads are to be measured or stipulated and what the impact will be if they change**. If the equipment loads are stipulated, the baseline should be carefully documented and agreed to by both parties.	
c. Weather: A number of energy efficiency measures are affected by weather. Neither the contractor nor the Institution has control over the weather. Should the Institution agree to accept risk for weather fluctuations, it shall be contingent upon aggregate payments not exceeding aggregate savings. **Clearly specify how weather corrections will be performed.**	
d. User participation: Many energy conservation measures require user participation to generate savings (e.g., control settings). The savings can be variable and the contractor may be unwilling to invest in these measures. **Clarify what degree of user participation is needed and utilize monitoring and training to mitigate risk.** If performance is stipulated, document and review assumptions carefully and consider M&V to confirm the capacity to save (e.g., confirm that the controls are functioning properly).	
3. Performance	
a. Equipment performance: The contractor has control over the selection of equipment and is responsible for its proper installation, commissioning, and performance. The contractor has responsibility to demonstrate that the new improvements meet expected performance levels including specified equipment capacity, standards of service, and efficiency. **Clarify who is responsible for initial and long-term performance, how it will be verified, and what will be done if performance does not meet expectations.**	

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

b. Operations: Performance of the day-to-day operations activities is negotiable and can impact performance. However, the contractor bears the ultimate risk regardless of which party performs the activity. **Clarify which party will perform equipment operations, the implications of equipment control, how changes in operating procedures will be handled, and how proper operations will be assured.**	
c. Preventive Maintenance: Performance of day-to-day maintenance activities is negotiable and can impact performance. However, the contractor bears the ultimate risk regardless of which party performs the activity. **Clarify how long-term preventive maintenance will be assured, especially if the party responsible for long-term performance is not responsible for maintenance (e.g., contractor provides maintenance checklist and reporting frequency). Clarify who is responsible for performing long-term preventive maintenance to maintain operational performance throughout the contract term. Clarify what will be done if inadequate preventive maintenance impacts performance.**	
d. Equipment Repair and Replacement: Performance of day-to-day repair and replacement of contractor-installed equipment is negotiable, however it is often tied to project performance. The contractor bears the ultimate risk regardless of which party performs the activity. **Clarify who is responsible for performing replacement of failed components or equipment replacement throughout the term of the contract.** Specifically address potential impacts on performance due to equipment failure. Specify expected equipment life and warranties for all installed equipment. Discuss replacement responsibility when equipment life is shorter than the term of the contract.	

M&V PLAN AND SAVINGS CALCULATION METHODS OUTLINE

Fill in the following tables or provide equivalent information.

PROPOSED ANNUAL SAVINGS OVERVIEW

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr) **	Total energy and water cost savings, Year 1 ($/yr)	Other energy-related O&M cost savings, Year 1 ($/yr)	Total cost savings, Year 1 ($/yr)
Total savings									
First Year Guaranteed Cost Savings: $									

Notes
*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
MBtu=10^6 Btu.
**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

SITE USE AND SAVINGS OVERVIEW

	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)**
Total proposed project savings						
Usage for entire site**						
% Total site usage saved						
Project square footage (KSF)						
Total site square footage (KSF)						
% Total site area affected						

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Notes MBtu=10^6 Btu *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings. **If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh). ***Define usage period. KSF = 10^3 square feet.

M&V PLAN SUMMARY

ECM No.	ECM Description	M&V Option Used*	Summary of M&V Plan

*M&V options include A, B, C, and D of the International Performance Measurement and Verification Protocol (IPMVP).

SCHEDULE OF VERIFICATION REPORTING ACTIVITIES

Item	[a]Recommended time of submission	[a]Institution's review and acceptance period
Post-Installation Report	30 to 60 days after acceptance	30 days
Annual Report	30 to 60 days after annual performance period	30 days

[a]Times are recommended based on industry practice; modify as needed.

PROPOSED ANNUAL SAVINGS FOR EACH ECM

[Include all applicable fuels/commodities for project, such as: electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

	Total energy use (MBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost, Year 1 ($/yr)	Electric demand* (kW/yr)	Electric demand cost, Year 1 ($/yr)	Natural gas use (MBtu/yr)**	Natural gas cost, Year 1 ($/yr)	Water use (gallons/yr)	Water cost, Year 1 ($/yr)	Other energy use (MBtu/yr)**	Other energy cost, Year 1 ($/yr)	Other energy-related O&M costs, Year 1 ($/yr)	Total costs, Year 1 ($/yr)
Baseline use													
Post-installation use													
Savings													

Notes

*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
MBtu = 10^6 Btu.
**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

ECM-SPECIFIC M&V PLAN AND SAVINGS CALCULATION METHODS

Develop section for each ECM.

- Summarize the scope of work, location, and how cost savings are generated. Describe source of all savings including energy, water, O&M, and other (if applicable).
- Specify the M&V guideline and option used from the International Performance Measurement and Verification Protocol (IPMVP).
- Provide an overview of M&V Activities for ECM. Explain intent of M&V plan, including what is being verified.
- Provide an overview of savings calculations methods for ECM. Provide a general description of analysis methods used for savings calculations.

Proposed Energy and Water Savings Calculations and Methodology

- Provide detail description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
- Detail all assumptions and sources of data, including all stipulated values used in calculations.
- Include equations and technical details of all calculations made. (Use appendix and electronic format as necessary.) Include description of data format (headings, units, etc.).
- Details of any savings or baseline adjustments that may be required.
- Detail energy and water rates used to calculate cost savings. Provide post-acceptance performance period energy and water rate adjustment factors.
- Detail proposed savings for this energy conservation measure for post-acceptance performance period. Include table - Proposed Annual Savings for Each ECM.

Operations and Maintenance Cost Savings

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

- Provide justification for O&M cost savings. Describe how savings are generated. Detail cost savings calculations.
- Provide post-acceptance performance period other cost savings adjustment factors.

Details of other savings (if applicable)

- Provide justification for cost savings. Describe how savings are generated. Detail cost savings calculations.
- Provide post-acceptance performance period other cost savings adjustment factors.

Post-Installation M&V Activities - Describe the intent of post-installation verification activities, including what will be verified.

- Describe variables affecting post-installation energy or water use. Include variables such as weather, operating hours, set point changes, etc. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.
- Define key system performance factors characterizing the post-installation conditions such as lighting intensities, temperature set points, etc.
- Define requirements for Institution witnessing of measurements if different than whole project data requirements.
- Provide details of post-installation data to be collected, including: Parameters to be monitored, Details of equipment to be monitored (location, type, model, quantity, etc.), Sampling plan, including details of usage groups and sample sizes, Duration, frequency, interval, and seasonal or other requirements of measurements, Monitoring equipment to be used, Installation requirements for monitoring equipment, Calibration requirements/procedures, Expected accuracy of measurements/monitoring equipment, Quality control procedures to be used, Form of data to be collected (.xls, .cvs, etc.), Sample data collection forms (optional)
- Detail data analysis to be performed.

Post-Acceptance Performance Period Verification Activities

- Describe variables affecting post-acceptance performance period energy or water use. Include variables such as weather, operating hours, set point changes, etc. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.
- Define key system performance factors characterizing the post-acceptance performance period conditions. Include factors such as comfort conditions, lighting intensities, temperature set points, etc.
- Describe the intent of post-acceptance performance period verification activities – what will be verified.
- Provide detailed schedule of post-acceptance performance period verification activities and inspections.
- Define requirements for Institution witnessing of measurements if different than whole project data requirements.
- Provide details of post-acceptance performance period data to be collected, including: Parameters to be monitored, Details of equipment to be monitored (location, type, model,

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

quantity, etc.), Sampling plan, including details of usage groups and sample sizes, Duration, frequency, interval, and seasonal or other requirements of measurements, Monitoring equipment to be used, Installation requirements for monitoring equipment, Calibration requirements/procedures, Expected accuracy of measurements/monitoring equipment, Quality control procedures to be used, Form of data to be collected (.xls, .cvs, etc.), Sample data collection forms (optional)

- Detail data analysis to be performed.
- Define O&M and repair reporting requirements. Detail verification activities and reporting responsibilities of Institution and contractor on operations and maintenance items. Define reporting schedule.

ENERGY STAR: For each building included in the project, ESCO will provide a Portfolio Manager rating. Also, for applicable buildings, ESCO includes the cost to provide services and complete the annual application for a building ENERGY STAR label. ESCO shall provide a Portfolio Manager rating and energy performance target score estimate. For each eligible building, ESCO shall provide a pre-retrofit Energy Performance Rating using EPA ENERGY STAR's Portfolio Manager, the weather normalized energy intensity in kBtu/SF, and an estimated post-retrofit Energy Performance Rating. If the building type is not eligible for rating in Portfolio Manager, then the normalized source EUI will suffice. ESCO shall provide a completed Cash Flow Opportunity Calculator (CFO Calculator) for the project, with variables inserted that represent the most likely options available to the customer. This will enable the ESCO and the customer to have an agreed-upon format for discussing project financing options and the potential costs of project delays. The CFO Calculator will be provided in both hard copy and electronic format, so that the agency can run its own analyses on financing options in the agreed format. ESCO will submit a completed Cash Flow Opportunity spreadsheet using the Cash Flow Opportunity Calculator (CFO Calculator) for the total project which shall include all facilities to be improved.

C.2 POST-INSTALLATION M&V PLAN.

The Post-Installation M&V Plan updates the M&V Plan and includes detailed measurements, monitoring, and inspections.

List of Processes and Tables:

- Proposed Annual Savings Overview
- Expected Savings Overview for First Performance Year
- Impact to Energy Cost Savings from Changes between Final Proposal and As-Built Conditions for ECM
- Expected Year 1 Savings for ECM
- ENERGY STAR Ratings

POST-INSTALLATION REPORT OUTLINE

Post-Acceptance Performance Period Dates Covered: _____ to_____

EXECUTIVE SUMMARY

Project Background - Provide an overview of project background, including:

- Dates of relevant contract modifications

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

- Post-acceptance performance period dates covered
- Project acceptance date (actual or expected)

Brief Project and ECM Descriptions

- Provide an overview what was done and how savings are generated.
- Note any changes in project scope between the final proposal (including any relevant contract modifications) and as-built conditions.

Proposed and expected energy and cost savings for Year 1 of the post-acceptance performance period

- Proposed Annual Savings Overview.
- Compare expected savings for first performance year to first year guaranteed cost savings. State whether guarantee is expected to be fulfilled for first year.

Note: Expected savings are prediction for first year based on post-installation M&V activities. Verified savings for first year of post-acceptance performance period will be documented in annual report. The proposed savings for each ECM are included in TO-4 of the contract.

Proposed Annual Savings Overview

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)**	Total energy and water cost savings, Year 1 ($/yr)	Other energy-related O&M cost savings, Year 1 ($/yr)	Total cost savings, Year 1 ($/yr)
Total savings									

Notes

MBtu=10^6 Btu.

*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.

**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

Expected Savings Overview for 1st Performance Year

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)**	Total energy and water cost savings,	Other energy-related O&M cost	Total cost savings, Year 1 ($/yr)

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

							Year 1 ($/yr)	savings, Year 1 ($/yr)	
Total savings									

Notes

MBtu=10^6 Btu.

*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.

**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

Guaranteed Cost Savings for First Performance Year

First Year Guaranteed Cost Savings:	$

Energy, Water, and O&M Rate Data

- Detail energy and water rates used to calculate cost savings for this period.
- Provide post-acceptance performance period rate adjustment factors for energy, water, and O&M cost savings, if used.
- Report actual energy and water rates at site for same period (optional).

Savings Adjustments

- Provide summary of any energy and/or cost savings adjustments required between final proposal (including any relevant contract modifications) and as-built conditions.
- Describe the impact in changes between the final proposal (including any relevant contract modifications) and as-built conditions based on post-installation M&V results.

Construction Period Savings

- Provide a summary of construction period savings, if applicable.
- Provide overview of how construction period savings are calculated.

Status of Rebates - Include if applicable.

- Provide a summary of the source of any third-party rebates or incentives provided on this project.
- Provide status of any third-party rebates or incentives.

ECM-SPECIFIC M&V ACTIVITIES AND EXPECTED FIRST YEAR SAVINGS

Develop section for each ECM.

Overview of ECM, M&V Plan, and Savings Calculation for ECM

- Summarize the scope of work, location, and how cost savings are generated.
- Describe source of all savings including energy, water, O&M, and other (if applicable).

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

- Provide an overview of M&V activities for ECM. Explain the intent of M&V plan, including what is being verified.
- Provide an overview of Savings Calculation Methods for ECM. Provide a general description of analysis methods used for savings calculations.

Installation Verification

- Detail any changes between final proposal (including any relevant contract modifications) and as-built conditions.
- Provide details of energy and cost savings impact from changes between final proposal (including any relevant contract modifications) and as-built conditions based on post-installation M&V results. Include Impact to Energy and Cost Savings from Changes between Final Proposal and As-built Conditions for each ECM.

Impact to Energy and Cost Savings from Changes between Final Proposal and As-built Conditions for Each ECM

	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric energy cost savings, Year 1 ($/yr)	Electric demand savings * (kW/yr)	Electric demand cost savings, Year 1 ($/yr)	Natural gas savings (MBtu/yr) **	Natural gas cost savings, Year 1 ($/yr)	Water savings (gallons/yr)	Water cost savings, Year 1 ($/yr)	Other energy savings (MBtu/yr) **	Other energy cost savings, Year 1 ($/yr)	Other energy-related O&M cost savings, Year 1 ($/yr)	Total cost savings, Year 1 ($/yr)
Proposed													
Expected													
Variance													

Notes
MBtu = 10^6 Btu.
*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

Note: Expected savings are prediction for first year based on post-installation M&V activities. Verified savings for first year of post-acceptance performance period will be documented in the annual M&V report. The proposed savings for each ECM are included in the contract.

- Describe construction period savings (if applicable). Include date ECM was in effect, and reference acceptance documentation.
- Detail savings calculations for construction period savings.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Post-Installation M&V Activities Conducted - Detail measurements, monitoring, and inspections conducted in accordance with M&V plan (include all that apply for each one):

- Measurement equipment used.
- Equipment calibration documentation.
- Dates/times of data collection or inspections, names of personnel, and documentation of Institution witnessing.
- Details to confirm adherence to sampling plan.
- Include all post-installation measured values. Include periods of monitoring and durations and frequency of measurements. (Use appendix and electronic format as necessary). Include description of data format (headings, units, etc.).
- Describe how performance criteria have been met.
- Detail any performance deficiencies that need to be addressed by ESCO or Institution.
- Note impact of performance deficiencies or enhancements on generation of savings.

Expected Savings Calculations and Methodology

- Provide detailed description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
- Detail all assumptions and sources of data, including all stipulated values used in calculations.
- Include equations and technical details of all calculations made. (Use appendix and electronic format as necessary.) Include description of data format (headings, units, etc.).
- Details of any baseline or savings adjustments made.
- Detail energy and water rates used to calculate cost savings. Provide post-acceptance performance period energy and water rate adjustment factors, if used. Report actual energy and water rates at site for same period (optional).
- Detail expected savings for this energy conservation measure for first year. Include Expected Year 1 Savings for ECM.

Details of O&M Savings (if applicable)

- Describe source of savings.
- Describe verification activities.
- Provide post-acceptance performance period O&M cost savings adjustment factors, if applicable.

Details of other savings (if applicable)

- Describe source of savings.
- Describe verification activities.
- Provide post-acceptance performance period adjustment factors, if applicable.

Note: Expected savings are prediction for first year based on post-installation M&V activities. Verified savings for first year of post-acceptance performance period will be documented in the annual report. The proposed savings for each ECM are included in Schedule TO-4 of the contract.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Expected Year 1 Savings for ECM

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

	Total energy use (MBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost ($/yr)	Electric demand * (kW/yr)	Electric demand cost ($/yr)	Natural gas use (MBtu/yr)**	Natural gas cost ($/yr)	Water use (gallons/yr)	Water cost ($/yr)	Other energy use (MBtu/yr)**	Other energy cost ($/yr)	Other energy-related O&M costs ($/yr)	Total costs ($/yr)
Baseline use													
Post-installation use													
Savings													

Notes
MBtu = 10^6 Btu.
*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

ENERGY STAR Ratings: For each building included in the project, ESCO will provide an updated Portfolio Manager rating. Also, for applicable buildings, ESCO includes the cost to provide services and complete the annual application for a building ENERGY STAR label.

C.3 ANNUAL M&V REPORTING REQUIREMENTS

Summarize the project including energy, water and operational cost savings (in dollars and MMBTUs) for the annual reporting period, annual emission reductions and ENERGY STAR rating (if applicable). This summary information is useful for tracking and reporting on annual project performance.

Prepare the Annual Report as presented below.

List of Processes and Tables:

- Annual Report Overview
- Proposed Annual Savings Overview
- Verified Savings Overview for Performance Year # _____
- Verified Savings for Performance Period to Date
- Verified Annual Savings for ECM for Performance Year #_____

Annual Report Overview

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Institution Name/Institution Contact (Include Email and Phone Number)	
Facility Name/Facility Contact (Include Email and Phone Number)	
ESCO Name/ESCO Contact (Include Email and Phone Number)	
Total Square Footage of Project Site/Contract Start Date/Contract End Date	
Current Repayment Year (ex. Yr. 3/ 2005)	
Reporting Timeframe (ex. Jan 1-Dec. 31)	
Installed Project Cost (no financing costs)	
Total Contract Value of Guaranteed Savings	
Annual Value of Guaranteed Savings	
Measured Energy Savings	
Operational Savings	
Avoided Capital Cost (if applicable)	
Annual Dollar Value of Achieved Savings	
Total Annual Achieved Energy Savings (MMBTU)	
Electric	
Natural Gas	
Oil	
Coal	
Steam	
Other	

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Annual Water Savings (kgal)	
Annual Avoided NOx Emissions (Tons)	
Annual Avoided SOx Emissions (Tons)	
Annual Avoided CO2 Emissions (Tons)	
ENERGY STAR Rating	

ENERGY STAR Ratings: For each building included in the project, ESCO will provide an updated Portfolio Manager rating to be included in the Measurement and Verification report at the conclusion of each year of project operation (alternately, at the conclusion of each of the first xx years of project operation). Also, for applicable buildings, ESCO includes the cost to provide services and complete the annual application for a building ENERGY STAR label.

ANNUAL MEASUREMENT AND VERIFICATION REPORT OUTLINE

Post-Acceptance Performance Period Dates Covered: _____ to_____

Contract year #: _____

EXECUTIVE SUMMARY

Project Background - Provide an overview of project background, including:

- Date of Contract Execution and primary parties to the contract
- Dates of relevant contract modifications
- Post-acceptance performance period dates covered
- Project acceptance date (actual or expected)

Brief Project and ECM Descriptions - Provide an overview including what was done and how savings are generated.

Summary of proposed and verified energy and cost savings. Compare verified savings for Performance Year # to Guaranteed Cost Savings for Year #. State whether guarantee is fulfilled for year. If not, provide detailed explanation.

- Define post-acceptance performance period.
- Include Proposed Annual Savings Overview.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Proposed Annual Savings Overview

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)	Total energy and water cost savings, Year # ($/yr)	Other energy-related O&M cost savings, Year # ($/yr)	Total cost savings, Year # ($/yr)
Total Savings									

Notes
MBtu = 10^6 Btu.
*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

Note: The proposed savings for each ECM are included in the contract as well as the guaranteed savings.

Verified Savings for Performance Year

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)	Total energy and water cost savings, Year # ($/yr)	Other energy-related O&M cost savings, Year # ($/yr)	Total cost savings, Year # ($/yr)
Total savings									

Notes
MBtu = 10^6 Btu.
*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

Savings Adjustments - Provide summary of any energy and/or cost savings adjustments required.
Performance and O&M Issues

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Note impact of operating deficiencies or enhancements on generation of savings.
Note impact of maintenance deficiencies on generation of savings.
Detail any deficiencies needed to be addressed by contractor or Institution.

Energy, Water, and O&M Rate Data

Detail energy and water rates used to calculate cost savings for this period.
Provide post-acceptance performance period rate adjustment factors for energy, water and O&M, if used.
Report actual energy and water rates at site for same period (optional).

Verified Savings To Date - Include Table 3**.**

Verified Savings for Post-Acceptance Performance Period to Date

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

Year #	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/ yr)	Other energy savings (MBtu/yr)	Total energy and water cost savings, Year # ($/yr)	Other energy-related O&M cost savings, Year # ($/yr)	Total cost savings, Year # ($/yr)	Guaranteed cost savings for year
Total savings										

Notes
MBtu = 10^6 Btu.
*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

DETAILS FOR EACH ECM

Develop section for each ECM.

Overview of ECM, M&V Plan, and Savings Calculation for ECM

- Summarize the scope of work, location, and how cost savings are generated. Describe source of all savings including energy, water, O&M, and other (if applicable).
- Provide an overview of M&V Activities for ECM. Explain the intent of M&V plan, including what is being verified.
- Provide an overview of savings calculation methods for ECM. Provide a general description of analysis methods used for savings calculations.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

M&V Activities Conducted This Period - Detail measurements, monitoring and inspections conducted this reporting period in accordance with M&V plan (include all that apply for each one):

- Measurement equipment used.
- Equipment calibration documentation.
- Dates/times of data collection or inspections, names of personnel, and documentation of Institution witnessing.
- Details to confirm adherence to sampling plan.
- Include all measured values for this period. Include periods of monitoring and durations and frequency of measurements. (Use appendix and electronic format as necessary). Include description of data format (headings, units, etc.).
- Describe how performance criteria have been met.
- Detail any performance deficiencies that need to be addressed by ESCO or Institution. Note impact of performance deficiencies or enhancements on generation of savings.

Verified Savings Calculations and Methodology

- Provide detailed description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
- Detail all assumptions and sources of data, including all stipulated values used in calculations.
- Include equations and technical details of all calculations made. (Use appendix and electronic format as necessary.) Include description of data format (headings, units, etc.).
- Details of any baseline or savings adjustments made.
- Detail energy and water rates used to calculate cost savings. Provide post-acceptance performance period energy and water rate adjustment factors, if used. Report actual energy and water rates at site for same period (optional).
- Detail verified savings for this energy conservation measure for performance year.

Details of O&M Savings (if applicable)

- Describe source of savings.
- Describe verification activities.
- Provide post-acceptance performance period O&M cost savings adjustment factors, if applicable.

Details of other savings (if applicable)

- Describe source of savings.
- Describe verification activities.
- Provide post-acceptance performance period adjustment factors, if applicable.

Verified Annual Savings For ECM for Performance Year #

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

	Total energy use (MBtu/ yr)	Electric energy use (kWh/yr)	Electric energy cost, Year # ($/yr)	Electric demand* (kW/yr)	Electric demand cost, Year # ($/yr)	Natural gas (MBtu/ yr)**	Natural gas cost, Year # ($/yr)	Water use (gallons/ yr)	Water cost, Year # ($/yr)	Other energy use (MBtu/yr)	Other energy cost, Year # ($/yr)	Other energy-related O&M costs, Year # ($/yr)	Total costs, Year # ($/yr)
Baseline use													
Perform-ance Year # use													
Savings													

Notes
MBtu = 10^6 Btu.
*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

O&M Activities

Operating requirements

1. State organization(s) responsible for equipment operations. If appropriate, detail how responsibilities are shared.
2. Detail any deficiencies needed to be addressed by contractor or Institution.
3. Note impact of operating deficiencies or enhancements on generation of savings.

Preventive Maintenance requirements - State organization(s) responsible for performing maintenance. If appropriate, detail how responsibilities are shared.

Verification of scheduled maintenance items completed by ESCO or Institution

1. Detail any deficiencies needed to be addressed by contractor or Institution.
2. Note impact of maintenance deficiencies on generation of savings.

Repair and replacement requirements

1. State organization(s) responsible for performing maintenance. If appropriate, detail how responsibilities are shared.
2. Summary of activities conducted this period by contractor or Institution.
3. Detail any deficiencies needed to be addressed by contractor or Institution.
4. Note impact of maintenance deficiencies on generation of savings.

SCHEDULE D. Left blank for optional schedule related to Savings Guarantee
SCHEDULE E. Left blank for optional schedule related to Savings Guarantee
SCHEDULE F. Left blank for optional schedule related to Savings Guarantee

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

SCHEDULE G. Left blank for optional schedule related to Savings Guarantee

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

PAYMENTS SCHEDULES

SCHEDULE H. FINAL PROJECT COST & PROJECT CASH FLOW ANALYSIS

This schedule contains a spreadsheet depiction of the expected financial performance of the project throughout the entire contract term. The documentation should clearly identify all financial components of the project, including interest rates, current fuel prices, any escalation rates, guaranteed savings figures, ESCO compensation figures, cash-flow projections, and projected Net Present Value of any cumulative positive cash flow benefits to the Institution. Savings projections should be delineated by utility/fuel type and should identify ongoing annual service fees provided over the contract term. Project cost breakdowns should identify both hard costs (labor costs, subcontractor costs, cost of materials and equipment, and miscellaneous costs like permits, bonds taxes, insurance, mark-ups, overhead and profit, etc.).

SCHEDULE I. FINANCING AGREEMENT AND PAYMENT SCHEDULE

This schedule contains a copy of the project financing agreement or terms and conditions of whatever financing vehicle is used (lease, COPs, bank financing etc.). An amortization and payment schedule should also be included as well as the progress payment disbursement schedule that will be used to pay the ESCO during the Interim Period (construction and installation) for the agreed-upon percentages of work completed.

SCHEDULE J. COMPENSATION TO ESCO FOR ANNUAL SERVICES

This should contain the amount and frequency of any payments that may be made to the ESCO for maintenance, monitoring or other services negotiated as part of the contract. It should contain information about how the compensation is calculated (e.g. a percentage of savings above and beyond the guarantee, flat fee etc.), and if an annual inflation index is to be used to escalate fees over the duration of the contract term. An hourly fee structure will also likely be included to cover ESCO costs for any services provided beyond the scope agreed to at the time of contract execution.

SCHEDULE K. REBATES, INCENTIVES AND GRANTS

List and describe any rebates, incentives and grants related to this project.

SCHEDULE L. Left blank for optional schedule related to Payments and Schedule
SCHEDULE M. Left blank for optional schedule related to Payments and Schedule
SCHEDULE N. Left blank for optional schedule related to Payments and Schedule
SCHEDULE O. Left blank for optional schedule related to Payments and Schedule
SCHEDULE P. Left blank for optional schedule related to Payments and Schedule

DESIGN, AUDIT AND CONSTRUCTION PHASE SCHEDULES

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

SCHEDULE Q. DESCRIPTION OF PROJECT SITE(S); PRE-EXISTING EQUIPMENT INVENTORY

This schedule contains basic information about the condition of the Project Site(s) at the time of contract execution. Such information would include facility square footage, building construction, use, occupancy, hours of operation etc., and any special conditions that may exist.

The inventory is important to include for the purpose of identifying what equipment was in place and how it was configured at the time of contract execution. This schedule is important to the accurate establishment of baseline, savings measurement and may need to be referred to in the later years of the contract.

SCHEDULE R. EQUIPMENT TO BE INSTALLED BY ESCO

Schedule H: This schedule should specify all of the newly installed equipment including manufacturer, quantity, location and warranties (you can also have a separate schedule for warranties). This schedule should also describe any modifications that may have been made to existing equipment, if applicable.

SCHEDULE S. CONSTRUCTION AND INSTALLATION SCHEDULE

Include the timetables and milestones for project construction and installation. If so desired, document required insurance, subcontractor lists and any MBE/WBE required subcontracts or break out into a separate schedule. NOTE: It is important that the construction/installation phase of the project be treated in compliance with individual institutional requirements and the appropriate governing statutes. Since construction is just one component of the overall project, a separate construction contract may be desirable and in some cases necessary. The construction contract would then be referred to in the body of the contract and attached as an exhibit, appendix or other type of attachment. Another approach would be to consolidate the appropriate construction language for inclusion in the body of the final contract. This will need to be decided as appropriate on a case-by-case basis.

SCHEDULE T. SYSTEMS START-UP AND COMMISSIONING OF EQUIPMENT; OPERATING PARAMETERS OF INSTALLED EQUIPMENT

Specify the performance testing procedures that will be used for start-up and commissioning of the installed equipment and total system. Define procedures for developing and implementing a commissioning plan and specify any requirements for the Institution and/or third party review and approvals, pre-functional inspections, use of manufacturers' start-up procedures, and for executing functional performance tests. Include operating parameters should for the operation of the installed equipment such as temperature setbacks, equipment run times, load controlling specifications and other conditions for the operation of the equipment.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Provide a general commissioning schedule, including any seasonal testing, and outline commissioning tracking and reporting requirements, including periodic and final commissioning reports, and any other required submittals such as a systems manual. Prescribe any requirements for warranty walk-through or other commissioning follow-up procedures.

Include specific provisions on how the Institution's project requirements or design intent for each measure or system will be defined. Define any requirements for certification that the tests followed the specified procedures and met or exceeded the expected results.

Define the qualifications and affiliation of the commissioning agent, and provide an overview of the roles and responsibilities of the commissioning agent, ESCO and the Institution in the commissioning process. Provide for the Institution to be notified of and present during all commissioning procedures. Include a provision for the documentation of the Institution's attendance at the various tests and the Institution's approval that the tests followed the specified procedures and met or exceed the expected results.

Because of the design-build nature of ESPCs, the details of the commissioning activities are developed along with the project scope, rather than being explicitly defined at the beginning of the project. Commissioning requirements must be: 1) specified in the contract, 2) defined explicitly after design, 3) implemented during construction, 4) completed prior to final project acceptance, and 5) followed-up on after acceptance.

Specify commissioning that will be completed during the following stages:

- Commissioning Process Defined at the Time of Contract Execution
- Defining Commissioning Activities During Project Design
- Implementing Commissioning Activities During Construction
- Completing Commissioning Activities Prior to Project Acceptance

PHASE 1 – CONTRACT DEVELOPMENT

Outline the project's specific commissioning requirements including:

- Qualifications and affiliation of the Commissioning Agent (CxA);
- Roles and responsibilities of CxA, ESCO and Institution, including witnessing of Cx activities;
- Process that will be followed to document the design intent or Institution's project requirements for each energy conservation measure (ECM) or system;
- Requirements for Institution or 3rd party design reviews or submittal approvals;
- Schedule for developing and approving a Cx plan, including expected content such as:
    - Pre-functional inspections,
    - Functional testing procedures,
    - Required use of manufactures' start-up procedures,
- Plan for seasonal testing and conditional acceptance, if needed;
- Contents and timing of periodic project reports, Final Cx Report, and
- Systems Manual;
- Requirements for CxA oversight of O&M training; and
- Plan for warranty walk-though or other follow-up procedures.

Designate both the affiliation and qualifications of the Commissioning Agent (CxA) that will lead the commissioning process for the project. The key responsibilities of the CxA are: 1) Directing the

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

commissioning team in the completion of the commissioning requirements; 2) Overseeing or performing the commissioning tests; and 3) Verifying the adequacy of the commissioning results.

Develop a written design intent for each system or ECM installed documenting the Institution's project requirements. Specific operational parameters, design details, performance requirements (conditions in addition to energy savings), or other provisions that are established by a design intent are:

- Operational parameters, such as temperature setback capabilities or operator interface features;
- Requirements for design details or ancillary items, such as sensors, valves, access, electrical, existing equipment demolition, etc.;
- Performance requirements, such as equipment efficiencies, or ton-hours of chilled water to be delivered.

PHASE 2 – PROJECT DESIGN

Commissioning related activities performed by the Cx team in the design phase include:

- ESCO completes project design;
- Institution and CxA review design and approve equipment submittals;
- ESCO and Institution document the design intent for each ECM or system;
- CxA develops a draft Cx Plan, including the specifics of all pre-functional inspections and functional performance tests;
- CxA develops Cx specifications for project (if needed);
- Institution and ESCO review and accept Cx documents;
- CxA issues Final Commissioning Plan and specifications.

PHASE 3 – CONSTRUCTION

Commissioning related activities that occur during the construction phase include:

- Construction observation by Institution's Cx representative and
- Commissioning Agent;
- Periodic Cx meetings are held with the project team;
- Cx progress reports are submitted by the CxA;
- Pre-functional inspections are completed and certified by the ESCO prior to equipment start-up and functional testing;
- Manufactures' start-up procedures are completed by the ESCO or manufacturer's representative.

PHASE 4 – PROJECT ACCEPTANCE

In this phase the functional performance tests are executed and the procedures are documented by the CxA, explicitly including how the Institution's project requirements or design intent prescribed for each system were met. Any items that did not pass shall be tracked and presented to the project team in a deficiency log. The ESCO will rectify the items and then perform a retest in the presence of the CxA to confirm that the items have been fixed. The deficiency log is then updated by the CxA, noting the date and corrective action taken. The Institution may choose to specify consequences for multiple failed re-tests to limit the possibility of excessive use of the CxA's time. The ESCO then assembles the Final Commissioning Report or a Systems Manual including, at minimum, the following:

- Commissioning summary report;
- ESCO certified pre-functional checklists;
- Completed manufacturers start-up sheets;
- Results of functional testing and verification of system performance;
- Detailed operating procedures / sequences of operations;

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

- Closed out deficiency log;
- Overview of training provided to O&M staff.
- Some Agencies may prefer to receive a more comprehensive Systems Manual, which is
- required for LEED certification. A systems manual typically brings together
- comprehensive project documentation:
- Institution's project requirements or design intent;
- Schematic system drawings;
- Approved submittals;
- Recommended record keeping procedures;
- Maintenance procedures & schedules;
- Test requirements for ongoing commissioning.

PHASE 5 – POST-ACCEPTANCE PHASE

Commissioning activities that typically extend beyond Project Acceptance include deferred functional testing and warranty verification. Some functional testing may be postponed until seasonal conditions are appropriate to evaluate the system. When some functional testing has been deferred, acceptance of the project is conditional upon the success of the scheduled tests. Most equipment installed will have a one-year warranty provided by the manufacturer. A warranty check-out with the ESCO after 8 to 10 months of operation is a recommended commissioning activity. Reviewing the equipment warranties and performing a site walkthough at this time can identify any problems that may still be covered by a manufacturer's or contractor's warranty.

SCHEDULE U. STANDARDS OF COMFORT

Explicitly describe the standards of comfort to be maintained for heating, cooling, lighting levels, hot water temperatures, humidity levels and/or any special conditions for occupied and unoccupied areas of each building.

SCHEDULE V. ESCO'S TRAINING RESPONSIBILITIES

Describe the ESCO's training program or sessions for facility personnel including the duration and frequency of the specified training. Describe any provisions for on-going training, commitments to train newly hired facility personnel, and training with respect to possible future equipment or software upgrades. Also specify any fees associated with the Institution's request for training beyond what the ESCO is contractually bound to provide.

SCHEDULE W. Left blank for optional schedule related to Design and Construction Phase
SCHEDULE X. Left blank for optional schedule related to Design and Construction Phase
SCHEDULE Y. Left blank for optional schedule related to Design and Construction Phase
SCHEDULE Z. Left blank for optional schedule related to Design and Construction Phase
SCHEDULE AA. Left blank for optional schedule related to Design and Construction Phase

POST-CONSTRUCTION SCHEDULES

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

Also see Schedule T: Start-Up Commissioning

SCHEDULE BB. ESCO'S MAINTENANCE RESPONSIBILITIES

Include a complete description of the ESCO's specific operations and maintenance responsibilities along with the time intervals for their performance of the stated O&M activities.

The description shall include but is not limited to:

1. Description of ESCO's operations and maintenance responsibilities.
2. Performance period for ESCO's performance of the stated operating and maintenance activities.
3. Period of time for Maintenance during or after warranty period.
4. Payment terms for Maintenance: annually and for how much.

SCHEDULE CC. INSTITUTION'S MAINTENANCE RESPONSIBILITIES

Describe the operations and maintenance responsibilities that may be assigned to facility staff as agreed to by both parties. In some instances this will contain no more than a description of routine O&M currently being performed on existing energy consuming equipment in the facility. In other cases, facility staff may be used to provide some maintenance on the new equipment installed under the performance contract, with the ESCO providing any specialized services as needed.

The description shall include but is not limited to:

1. Description of the Institution's operations and maintenance responsibilities.
    a. Existing maintenance and operations
    b. Additional maintenance and operations necessitated by the Work

Institution shall provide all maintenance tasks on all existing equipment at all times. Institution shall provide all maintenance duties on new equipment after Substantial Completion. Maintenance Duties will be outlined in Operation and Maintenance Manuals, which will be provided by ESCO.

SCHEDULE DD. FACILITY MAINTENANCE CHECKLIST

This checklist is a method by which the ESCO may record and track the Institution's compliance with any of the maintenance procedures being performed by facility personnel. The checklist typically specifies simple list of tasks and the corresponding schedule for the performance of the prescribed procedures. Facility staff will complete the checklist and forward it to the ESCO, usually on a monthly basis. (This checklist is a very useful tool for both the ESCO and Institution to verify that the required maintenance activities are being performed at the scheduled intervals).

SCHEDULE EE. Left blank for optional schedule related to Post-Construction Phase
SCHEDULE FF. Left blank for optional schedule related to Post-Construction Phase

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

SCHEDULE GG. Left blank for optional schedule related to Post-Construction Phase
SCHEDULE HH. Left blank for optional schedule related to Post-Construction Phase
SCHEDULE II. Left blank for optional schedule related to Post-Construction Phase

ADMINISTRATION SCHEDULES

SCHEDULE JJ. ALTERNATIVE DISPUTE RESOLUTION

This schedule describes methods for resolving disputes or claims relating to construction or the contract, wherein the parties agree to exercise good faith efforts (e.g., mediation, dispute resolution board) and to only use litigation as a last resort. This schedule is included as an alternative to costly binding arbitration and litigation.

SCHEDULE KK. Left blank for optional schedule related to Administration
SCHEDULE LL. Left blank for optional schedule related to Administration
SCHEDULE MM. Left blank for optional schedule related to Administration
SCHEDULE NN. Left blank for optional schedule related to Administration
SCHEDULE OO. Left blank for optional schedule related to Administration

OPTIONAL SCHEDULES

PRE-EXISTING SERVICE CONTRACTS

Information regarding the scope and cost of pre-existing equipment service contracts should be located in this schedule. This gives both the Institution and ESCO information about how and when the existing equipment is being serviced. As well, if the ESCO is credited with any maintenance savings or is taking over any existing service contracts, the scopes and costs of such Contracts will useful in tracking the performance of the ESCO in providing the required services and documenting any attributable cost savings.

ENERGY SAVINGS PROJECTIONS

This schedule should contain the projected energy savings in units for each year of the contract. Oftentimes these projections are broken down on a measure by measure basis although some measures may be aggregated into general categories such as lighting or HVAC. If there are several buildings involved in the project, this schedule should contain projections for each facility, even though they may all be covered under a single guarantee.

FACILITY CHANGES CHECKLIST

A "Facility Changes Checklist" or other method may be provided by the ESCO for the Institution to notify the ESCO of any changes in the facility that could have an impact on energy consumption (e.g. occupancy, new equipment acquisition, hours of use etc.). This checklist is generally submitted on a monthly basis or quarterly basis.

CURRENT AND KNOWN CAPITAL PROJECTS AT FACILITY

If there are any current or planned capital projects to be implemented in the facility, that information should be contained in this schedule. This information could prove to be very useful in the out-years of the contract to avoid potential disputes over long-term energy savings performance, overall facility energy consumption and costs.

Docusign Envelope ID: 5662B728-A81D-437D-A294-5A20E2BC9A93

EXHIBITS

EXHIBIT I	PERFORMANCE BOND/CONSTRUCTION BOND
EXHIBIT II	LABOR AND MATERIAL PAYMENT BOND ***if required***
EXHIBIT II (i)	CERTIFICATE OF ACCEPTANCE—TECHNICAL AUDIT
EXHIBIT II (ii)	CERTIFICATE OF ACCEPTANCE—INSTALLED EQUIPMENT
EXHIBIT III	EQUIPMENT WARRANTIES

APPENDICES

APPENDIX A	RFP FOR ESCO SOLICITATION
APPENDIX B	ESCO PROPOSAL
APPENDIX C	INVESTMENT GRADE AUDIT AND PROJECT PROPOSAL CONTRACT
APPENDIX D	INVESTMENT GRADE AUDIT REPORT

NOTE: THESE SCHEDULES CAN BE INCLUDED AS OPTIONAL AND INCLUDED OR COMBINED WITH OTHERS OR MAY BE CONTAINED IN THE AUDIT REPORT AS DESIRED.

Certificate Of Completion

Envelope Id: 5662B728-A81D-437D-A294-5A20E2BC9A93
Status: Completed
Subject: Please Electronically Sign: SWPA# 40-00000-23-00029AG
Source Envelope:
Document Pages: 80
Signatures: 3
Envelope Originator:
Certificate Pages: 5
Initials: 2
Yvette Anaya
AutoNav: Enabled
1100 S Saint Francis Dr
EnvelopeId Stamping: Enabled
Santa Fe, NM 87502
Time Zone: (UTC-07:00) Mountain Time (US & Canada)
yvette.anaya@gsd.nm.gov
IP Address: 164.64.62.10

Record Tracking

Status: Original
Holder: Yvette Anaya
Location: DocuSign
5/23/2025 10:28:20 AM
yvette.anaya@gsd.nm.gov
Security Appliance Status: Connected
Pool: StateLocal
Storage Appliance Status: Connected
Pool: General Services Department
Location: Docusign

Signer Events	Signature	Timestamp
Johnny DeSha johnny.desha@gsd.nm.gov Procurement Specialist Manager Security Level: Email, Account Authentication (None), Login with SSO	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 5/23/2025 10:34:55 AM Viewed: 5/23/2025 2:06:22 PM Signed: 5/23/2025 2:06:32 PM
Electronic Record and Signature Disclosure: Accepted: 3/25/2025 7:13:20 AM ID: d1ec4280-451a-42ce-b36b-a39ed00bc76f		
ZULLY DE LA PAVA TORRADO zully.delapava@trane.com Security Level: Email, Account Authentication (None)	 Signature Adoption: Uploaded Signature Image Using IP Address: 98.6.229.90	Sent: 5/23/2025 2:06:34 PM Resent: 5/29/2025 12:58:22 PM Viewed: 5/29/2025 12:58:57 PM Signed: 6/2/2025 11:35:53 AM
Electronic Record and Signature Disclosure: Accepted: 1/14/2024 9:29:33 PM ID: 26d6612e-1a70-4dc7-9b9c-afa41bbfa3bd		
Ann Marie Lucero annmarie.lucero@tax.nm.gov District Mgr. State of New Mexico Taxation and Revenue Signing Group: 33300 - CRS Verification Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.133.222	Sent: 6/2/2025 11:35:55 AM Viewed: 6/2/2025 11:57:03 AM Signed: 6/2/2025 11:58:14 AM
Electronic Record and Signature Disclosure: Accepted: 6/2/2020 2:28:54 PM ID: 4e14c1ed-cee7-47c4-9f77-dc41a9cef910		
Dorothy Mendonca dorothy.mendonca@gsd.nm.gov SPD Division Director / State Purchasing Agent General Services Department Signing Group: 35000 - State Purchasing Agent Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 6/2/2025 11:58:16 AM Viewed: 6/2/2025 12:30:31 PM Signed: 6/2/2025 12:30:47 PM
Electronic Record and Signature Disclosure:		

Signer Events	Signature	Timestamp
Accepted: 4/14/2023 7:24:59 AM ID: 51f6380f-50f7-4227-afb5-572b373dfb7c		
Yvette Anaya yvette.anaya@gsd.nm.gov Executive Procurement Officer New Mexico General Services Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 6/2/2025 12:30:49 PM Viewed: 6/2/2025 12:46:40 PM Signed: 6/2/2025 12:47:38 PM
Electronic Record and Signature Disclosure: Not Offered via Docusign		
In Person Signer Events	**Signature**	**Timestamp**
Editor Delivery Events	**Status**	**Timestamp**
Agent Delivery Events	**Status**	**Timestamp**
Intermediary Delivery Events	**Status**	**Timestamp**
Certified Delivery Events	**Status**	**Timestamp**
Carbon Copy Events	**Status**	**Timestamp**
Witness Events	**Signature**	**Timestamp**
Notary Events	**Signature**	**Timestamp**

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/23/2025 10:34:55 AM
Certified Delivered	Security Checked	6/2/2025 12:46:40 PM
Signing Complete	Security Checked	6/2/2025 12:47:38 PM
Completed	Security Checked	6/2/2025 12:47:38 PM

Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a $1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: *GSD.SPDinfo@state.nm.us*

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at *GSD.SPDinfo@state.nm.us* and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at *GSD.SPDinfo@state.nm.us* and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a $1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to *GSD.SPDinfo@state.nm.us* and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:
https://support.docusign.com/guides/signer-guide-signing-system-requirements

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to "I agree to use electronic records and signatures," before you click "CONTINUE" within the DocuSign system.

By selecting the check-box next to "I agree to use electronic records and signatures," you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

State of New Mexico
General Services Department
State Purchasing Division

Statewide Price Agreement Cover Page

Awarded Vendor:
0000011132
Trane U.S. Inc.
5501 San Diego Avenue NE
Albuquerque, NM 87113

Attn: Zully De La Pava Torrado
Email: zully.delapava@trane.com
Phone: (915) 593-3484

Agreement Number**: 40-00000-23-00029AG**

Payment Terms**: Net 30**

F.O.B.**: Destination**

Delivery**: Per Contract**

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As Requested at time of order

For questions regarding this agreement please contact:
Dennis Romero (505) 660-8605

Procurement Specialist**: Tami Concha**

Telephone No.**: (505) 660-3671**

Email: **Tami.Concha@gsd.nm.gov**

Title**: Qualified Providers of Energy Performance Contracting Services, ESCO**

Term**: January 12, 2024 – January 11, 2028**

The attached Agreement is made subject to the "terms and conditions" as indicated.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

STATEWIDE PRICE AGREEMENT
#40-00000-23-00029AG
STATE OF NEW MEXICO
FOR

Qualified Providers of Energy Performance Contracting Services, ESCO

THIS AGREEMENT is made and entered into by and between the **General Services Department** and the **State of New Mexico**, herein after referred to as the "Agency", and **Trane U.S. Inc.,** herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

"**Agencies**" or "**Agency**" means eligible governmental entities under the Public Facilities Energy Efficiency and Water Conservation Act [NMSA 1978, 6-23], which are state government, local governments, public schools, higher educational institutions, and other instrumentalities of state government.

"**Agreement Administrator**" shall mean the State Purchasing Division (SPD) of the General Service Department.

"**Close of Business**" means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the given date.

"**Contract**" means any agreement for the procurement of items of tangible personal property, services or construction derived from an Invitation to Bid (ITB) or Request For Proposals (RFP).

"**Deliverable**" means any measurable, tangible, verifiable outcome, result, or item that must be produced to complete a project or part of a project.

"**ECMD**" means the Energy Conservation and Management Division of the Energy, Minerals and Natural Resources Department.

"**EMNRD**" means the Energy, Minerals and Natural Resources Department.

"**Energy Conservation Measure,**" or **"ECM"**, means a training program or a modification to a facility, including buildings, systems or vehicles, designed to reduce energy consumption or conservation-related operating costs. More specifically, ECMs that may be proposed by Qualified Providers are stated in the EPC Statute and include:

(a) Insulation of the building structure or systems within the building;
(b) Storm windows or doors, caulking or weather-stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;
(c) Automated or computerized energy control systems;
(d) Heating, ventilating or air conditioning system modifications or replacements;

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

(e) Replacement of modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code or nationally accepted standards for the lighting system after the proposed modifications are made;
(f) Energy recovery systems;
(g) Solar heating and cooling systems or other renewable energy systems;
(h) Cogeneration or combined heat and power systems that produce steam, chilled water or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
(i) Energy conservation measures that provide long-term operating cost reductions;
(j) Maintenance and operation management systems that provide long-term operating cost reductions;
(k) Traffic control systems; or
(l) Alternative fuel options or accessories for vehicles.

ECMs may also include "conservation-related cost savings," which are cost savings, other than utility cost savings, in the operating budget of a Governmental Unit that are a direct result of energy or water conservation measures implemented pursuant to a Guaranteed Utility Savings Contract.

"**Energy Performance Contracting**" or **"EPC"** means a project that is backed up by a written guarantee stating that the utility cost savings and conservation-related cost savings will meet or exceed the costs of implemented ECMs or WCMs.

"**ESCO**" means Energy Service Company that can provide energy audit, project development, implementation, financing, and monitoring services to Agencies for ECMs or WCMs.

"**Guaranteed Utility Savings Contracts**," means contracts for the evaluation and recommendation of energy or water conservation measures and for the implementation of one or more of those measures, and which contract provides that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make the payments for the conservation measures.

"**Investment-Grade Energy Audit**" means a study approved by a Professional Engineer registered in New Mexico that evaluates in detail the technical and economic issues necessary to justify the investment related to the proposed ECMs or WCMs.

"**Local Public Body**" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof.

"**New Mexico State Purchasing Agent**" or "**NMSPA**" means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".

"**Pre-qualified**" means the status of an ESCO or vendor that has been selected through an RFP process, certified by EMNRD as a Qualified Provider, and has established a statewide price

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

agreement with the State Purchasing Agent. A pre-qualified ESCO or vendor is eligible for secondary selection processes for EPC services that Agencies may conduct.

"**Price Agreement**" means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property or service to the procuring agency which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

"**Procuring Agency**" means any state agency or local public body that chooses to procure products or services under this agreement. Other units of government, including cities, counties, school districts, institutions of higher education and other jurisdictions not subject to the procurement authority of the SPA, are authorized to buy from this agreement.

"**Products and Services Schedule**" refers to the complete list of products and services offered under this agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

"**Qualified Provider**" means a person experienced in the design, implementation and installation of energy or water conservation measures and who meets EMNRD's experience qualifications for energy conservation measures or the Office of the State Engineer for water conservation measures.

"**State (the State)**" means the State of New Mexico.

"**Statewide Price Agreement**" means the contract that selected Offerors would execute in order to be deemed a Qualified Provider.

"**State Purchasing Agent,**" or SPA, means the purchasing agent for the State of New Mexico or a designated representative.

"**Third-Party Fee**" means a one (1) percent fee on the pre-gross receipts tax total of the project cost.

"**Utility Cost Savings**" means the amounts saved by a Governmental Unit in the purchase of energy or water that are a direct result of energy or water conservation measures implemented pursuant to a Guaranteed Utility Savings Contract.

"**Water Conservation Measure,**" or **"WCM"**, means a training program, change in maintenance practices, or facility or landscape alteration designed to reduce water consumption or conservation-related operating costs.

"You" and **"your"** refers to **Selected ESCO Contractor.** "We," "us" or "our" refers to the State of New Mexico, agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

2. SCOPE OF WORK

Pre-qualified Energy Services Companies (ESCOs) will provide Energy Performance Contracting (EPC) services for New Mexico governmental entities ("Agencies" or "Agency"). ESCOs selected through the Request for Proposals (RFP) process and who also enter into statewide price agreements, will each be deemed Qualified Providers by the Energy Conservation and Management Division (ECMD) of the Energy, Minerals and Natural Resources Department (EMNRD). ESCOs selected through separate federal, state, or private procurement processes for EPC services are not pre-qualified.

Qualified Providers are approved to provide proposals to Agencies that may choose to utilize EPC services for upgrading facilities, fleets, and water infrastructure with energy and water conservation measures (ECMs and WCMs). Such EPC services are allowed by the Public Facility Energy Efficiency and Water Conservation Act ("EPC Statute"), as amended. The statute citation is New Mexico Statutes Annotated (NMSA) 1978, Chapter 6, Article 23 (6-23).

Eligible Agencies under the EPC Statute are state agencies, K-12 public school districts, higher education governmental entities, municipal and county governments, and other political subdivisions. EPC enables these Agencies to access financing and accomplish energy projects without using capital budgets; project financing costs are offset by energy cost savings. The Agencies and selected Qualified Providers will follow the EPC statute and program guidelines of EMNRD.

The selected ESCOs will commit to the EPC Statute and EMNRD's program guidelines via subsequent contracts with Agencies for specific projects. The term of the Statewide Price Agreement will be four (4) years, with continuation subject to an annual review by EMNRD of each Qualified Provider's performance. The Statewide Price Agreement will contain schedules of markups and fees as stated in the Offeror's RFP response. Compensation to Qualified Providers for specific work projects will be detailed in the resulting contracts with Agencies to implement EPC projects.

The Qualified Provider will be required to develop proposals for potential projects. Agreements established between the Qualified Provider and the Agency, as described in the following, will incorporate current state statutes and directives that directly relate to EPC, including:

- Public Facility Energy Efficiency and Water Conservation Act [NMSA 1978, 6-23]; and
- Energy Efficiency Standards for Public Buildings, [NMSA 1978, 15-3-36].

The selection of ESCOs and subsequent contracting with Qualified Providers serves as a major step to enable Agencies to initiate EPC projects that upgrade facilities and generate avoided energy costs. There are three (3) phases possible in a complete EPC project, after an Agency's selection of a Qualified Provider, as follows:

Phase 1: Investment-Grade Energy Audit and Project Proposal

The selected Qualified Provider and the Agency will execute the Investment-Grade Energy Audit and Project Proposal contract. This contract sets specific expectations and provides a detailed process for both the Qualified Provider and the Agency. The contract also defines the deliverables to Agency and establishes the basis for the Guaranteed Utility Savings Contract to follow. The Investment-Grade Energy Audit and Project Proposal will identify and evaluate cost-saving measures and define the proposed project scope, cost, savings, and cash-flow over the

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

proposed financing term. A project proposal will present bundled ECMs and WCMs that can be financed through guaranteed savings.

Phase 2: Guaranteed Utility Savings Contract and Implementation
Upon satisfactory completion of the Investment-Grade Energy Audit and Project Proposal, the Agency will have the option to execute a Guaranteed Utility Savings Contract with the Qualified Provider to implement the recommended project. The Guaranteed Utility Savings Contract will define the final agreed upon scope of work and all its associated costs and mutual responsibilities between the Qualified Provider and Agency, as well as improvement measures, the equipment and labor costs associated with them, and all guaranteed energy and maintenance cost savings. The Qualified Provider will solicit financing companies on behalf of Agency using the Financing Bid Package. A separate financing agreement will be developed including Qualified Provider payment schedules and lender financing terms and schedules. Upon execution of the Guaranteed Utility Savings Contract, the Qualified Provider proceeds to final design, construction, and commissioning of the ECMs and WCMs. Qualified provider shall inform EMNRD ECMD of contract execution and the total amount of the contract to initiate an invoice for the third-party fee.

Phase 3: Performance Period
The Performance Period of the Guaranteed Utility Savings Contract begins upon construction completion and project acceptance by Agency. The Guaranteed Utility Savings Contract may include a number of services the Qualified Provider will provide until the end of the contract, including, but not limited to, measurement and verification of savings, the savings guarantee, staff training, and contract maintenance services.

Each of the Agencies has the option to procure services of an ESCO to implement ECMs and WCMs in Agency facilities, which will avoid Agency energy costs. Selected ESCOs that establish Statewide Price Agreements will be deemed Qualified Providers for selection by any of the Agencies. The primary purposes of this Qualified Provider selection process are:

(1) To ensure the Qualified Provider meets minimum qualifications and can implement successful EPC projects;
(2) To provide each Agency with the opportunity to procure services of a Qualified Provider in a timely and cost-effective way;
(3) To increase the number of successful Guaranteed Utility Savings Contracts statewide, as a means to implement comprehensive energy, transportation, and water efficiency projects.

There will be multiple ESCOs selected to become Qualified Providers. Selection will be based on the quality of proposals as determined by the evaluation committee. The number of EPC projects is not pre-determined and inclusion on a statewide price agreement is not a guarantee of engaging in EPC projects. However, it is also possible that the Qualified Provider may be engaged in developing and implementing more than one project at any point in time. The number of EPC projects moving forward for Agency facilities will depend on the subsequent proposals for potential projects, as requested by the Agencies.

3. PAYMENT PROVISIONS

All payments under this agreement are subject to the following provisions.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the agency shall determine if the product or services provided meet specifications. No payment shall be made for any products or services until the products or services have been accepted in writing by the procuring agency. Unless otherwise agreed upon between the procuring agency and the contractor, within fifteen (15) days from the date the procuring agency receives written notice from the contractor that payment is requested for services or within thirty (30) days from the receipt of products, the procuring agency shall issue a written certification of complete or partial acceptance or rejection of the products or services. Unless the procuring agency gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

B. Issuance of Orders - Only written signed orders are valid under this Price Agreement. A Purchase Order is the approved form for state agencies issuing Contract Orders under this Price Agreement. Other authorized government entities may utilize Purchase Orders or forms adapted by them for their own use.

C. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the contractor within thirty (30) days after the date of invoice. After the thirtieth (30^{th}) day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one half percent (1.5 %) per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the contractor's designated mailing address. Payment on each invoice shall be due within thirty (30) days from the date of the acceptance of the invoice. The Procuring Agencies and the State agree to pay in full the balance shown on each account's statement, by the due date shown on said statement.

D. Late Charges - If the State fails to pay as required above, the Contractor may assess a late fee on the unpaid balance of more than sixty (60) days. Late fees will be assessed at a rate based upon the billing address of each State or Procuring Agency account; therefore, the periodic (monthly) late fee rate shall be one and one half percent (1.5%) and the corresponding Annual Percentage Rate for the State of New Mexico will be eighteen percent (18%). No late fee on new purchases will be assessed during the billing cycle when the purchase was made.

E. Fees:

The Contractor agrees to remit an administrative reporting fee payable by check to the State Purchasing Division for an amount equal to one percent (1.00 %) of the total sales and other revenues derived from the New Mexico state agencies and local public bodies. The Contractor shall indicate the contract number 40-00000-23-00029AG and include the remittance check with the quarterly sales report.

Reports may be submitted via U.S. mail to NM State Purchasing Division or via email to: GSD.QuarterlyUsageR@gsd.nm.gov

For payment of fees through U.S. Mail:

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

New Mexico State Purchasing Division
Attn: Compliance
P.O. Box 6850
Santa Fe, New Mexico 87502

4. TERM

THIS PRICE AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE AGENCY. This Price Agreement shall begin on date approved by the agency and end four (4) years from the date of approval.

5. DEFAULT

The State reserves the right to cancel all or any part of any orders placed under this Price Agreement without cost to the State, if the Vendor fails to meet the provisions of this Price Agreement and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the State due to the Vendor's default. The Vendor 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 Vendor; 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 State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

6. TERMINATION

A. For Cause - Either party may terminate this agreement for cause based upon material breach of this agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

7. AMENDMENT

This Price Agreement may be amended by mutual agreement of the State Purchasing Agent 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 State Purchasing Agent. Amendments affecting price adjustments and/or extension of contract expiration are not allowed unless specifically provided for in the proposal and contract documents.

8. STATUS OF CONTRACTOR

The contractor, and contractor’s agents and employees, are independent contractors for the agency and are not employees of the State of New Mexico. The contractor, and contractor’s

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this agreement. The contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

9. ASSIGNMENT

A. Neither this price agreement, any orders placed under this price agreement, any interest therein, nor claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in Subparagraph 10B below or as expressly authorized in writing by the State Purchasing Agent. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this Price Agreement.

B. Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.

10. SUBCONTRACTING

The contractor shall not subcontract any portion of any services to be performed under this agreement without written approval from the State Purchasing Agent. The following subcontractor(s) have been approved to supply resources for this agreement: case by case basis.

11. NON-COLLUSION

In signing this agreement, the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with the offer submitted to the State Purchasing Agent.

12. INSPECTION OF PLANT

The State Purchasing Agent may inspect, at any reasonable time, during Contractor's regular business hours and upon prior written notice the part of the contractor's, or any subcontractor's plant or place of business, which is related to the performance of this contract.

13. COMMERCIAL WARRANTY

The Vendor agrees that the tangible personal property or services furnished under this price agreement shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other clause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.

14. CONDITION OF PROPOSED ITEMS

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

15. RECORDS OF AUDIT

During the term of this agreement and for three years thereafter, the contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the agency, the State Auditor and other appropriate state and federal authorities. The agency shall have the right to audit billings both before and after payment.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

Payment under this agreement shall not foreclose the right of the agency to recover excessive or illegal payments.

16. APPROPRIATIONS

The terms of this agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the legislature of New Mexico for the performance of this agreement. If sufficient appropriations and authorization are not made by the legislature, this agreement, and any orders placed under it, shall terminate upon written notice being given by the agency to the contractor. The agency's decision as to whether sufficient appropriations are available shall be accepted by the contractor and shall be final.

17. RELEASE

The contractor, upon final payment of the amount due under this agreement, releases the agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this agreement. The contractor agrees not to purport to bind the State of New Mexico, unless the contractor has express written authority to do so, and then only within the strict limits of that authority.

18. 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 prior written approval by the procuring agency.

19. CONFLICT OF INTEREST

The contractor warrants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this agreement. The contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

20. APPROVAL OF CONTRACTOR REPRESENTATIVES

The agency reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the agency, serving the needs of the State of New Mexico adequately.

21. SCOPE OF AGREEMENT

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 understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

22. NOTICE

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

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

23. EQUAL OPPORTUNITY COMPLIANCE

The contractor agrees to abide by all federal and state laws, rules and regulations, and executive orders of the governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, and executive orders of the governor of the State of New Mexico, the contractor agrees to assure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, 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 to be not in compliance with these requirements during the life of this agreement, contractor agrees to take appropriate steps to correct these deficiencies.

24. INDEMNIFICATION

The contractor shall hold the state and its agencies and employees harmless and shall indemnify the state and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the contractor, its agents, officers, employees or subcontractors. The contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the agency, its officers or employees.

25. NEW MEXICO EMPLOYEES HEALTH COVERAGE.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $500,000 dollars or;

3) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additonal information: http://bewellnm.com.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

against it); Contractor agrees these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a statewide price agreement) of $250,000, $500,000 or $1,000,000, depending on the dollar value threshold in effect at that time.

26. APPLICABLE LAW
This agreement shall be governed by the laws of the State of New Mexico.

27. LIMITATION OF LIABILITY
The contractor's liability to the agency, or any procuring agency, for any cause whatsoever shall be limited to the purchase price paid to the contractor for the products and services that are the subject of the agency's, or the procuring agency's, claim. The foregoing limitation does not apply to paragraph 27 of this agreement or to damages resulting from personal injury caused by the contractor's negligence.

28. BINDING ARBITRATION
Any controversy or claim arising between the parties shall be settled by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

29. INCORPORATION BY REFERENCE AND PRECEDENCE
This agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the contractor's best and final offer; and (3) the contractor's response to the request for proposals.

In the event of a dispute under this agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the agreement in reverse chronological order; (2) the agreement, including the scope of work; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the contractor's best and final offer; and (5) the contractors response to the request for proposals.

30. 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 agency.

31. IMPRACTICALITY OF PERFORMANCE
A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

32. 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.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

33. 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.

34. PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION

The contractor shall defend, at its own expense, the state and its agencies against any claim that any product or service provided under this agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the agency based upon contractor's trade secret infringement relating to any product or services provided under this agreement, the contractor agrees to reimburse the state for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the agency shall:

A. give the contractor prompt written notice within 48 hours of any claim;
B. allow the contractor to control the defense of settlement of the claim; and
C. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

A. provide the agency the right to continue using the product or service and fully indemnify the agency against all claims that may arise out of the agency's use of the product or service;
B. replace or modify the product or service so that it becomes non-infringing; or,
C. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the agency to the extent such modification is the cause of the claim.

35. SURVIVAL

The agreement paragraph titled "patent, copyright, trademark, and trade secret indemnification; indemnification; and limit of liability" shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement

36. DISCLOSURE REGARDING RESPONSIBILITY

The Contractor and/or any of its Principals who seek to enter into a contract greater than twenty thousand dollars ($20,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agree to disclose whether they, or any principal of their company:

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

Are presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

Have within a three-year period preceding this offer, been convicted of or had civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes related to the submission of offers; or commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property.

Are presently indicted for, or otherwise criminally or civilly charged by any (federal, state or local) government entity with, commission of any of the offenses enumerated in Paragraph B of this disclosure.

Have preceding this offer, been notified of any delinquent federal or state taxes in an amount that exceeds $3,000.00 of which the liability remains unsatisfied.

A. Taxes are considered delinquent if both of the following criteria apply:
   1) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
   2) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
   3) The taxpayer has within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.

Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

The Offeror shall provide immediate written notice to the Procurement Manager or Buyer if, at any time prior to contract award, the Offeror learns that its disclosure was erroneous when submitting or became erroneous by reason of changed circumstances.

A disclosure that any of the items in this requirement exist will not necessarily result in withholding an award under this solicitation. However, the disclosure will be considered in the determination of the Offeror's responsibility. Failure of the Offeror to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of an Offeror is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts. If during the performance of the contract, the contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the contractor must provide immediate written notice to the Procurement Manager or Buyer. If it is later determined that the Offeror knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

37. NOTIFICATION

Either party may give written notice to the other party in accordance with the terms of paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To agency:	State Purchasing Agent State Purchasing Division P.O. Box 6850 Santa Fe, New Mexico 87502
To contractor:	Trane U.S., Inc. Zully De La Pava Torrado Area Sales Manager 5501 San Diego Avenue NE Albuquerque, NM 87113 Email: zully.delapava@trane.com Phone: (915) 593-3484

Either party may change its representative or address above by written notice to the other in accordance with the terms of Paragraph 37. The carrier for mail delivery and notices shall be the agent of the sender.

38. AMENDMENTS

This agreement shall only be amended by written instrument executed by the parties.

39. SUCCESSION

This agreement shall extend to and be binding upon the successors and assigns of the parties.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

By: _____ Date: 1/17/2024
Zully De La Pava Torrado, Area Sales Manager
Trane U.S. Inc.

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State to pay gross receipts and compensating taxes:

BTIN: 01-509460-00-0

NOTE: **Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.**

By: Ann Marie Lucero Date: 1/18/2024
Taxation & Revenue Department

This Agreement has been approved by the State Purchasing Agent:

By: _____ Date: 1/18/2024
State Purchasing Agent
State of New Mexico

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

1. Completed Cost Response Form

APPENDIX D

COST RESPONSE FORMS

Please include the information in Appendix D in File 2 of your proposal. Instructions calling for brief responses indicate a short response of 2-4 sentences is requested.

In the table below, provide your company's proposed Maximum Percentage of Total Project Price for this project, for each category listed. These percentages must be equal to or less than the maximums proposed in the ESCO pre-qualification process. This format is required and must be completed in its entirety. Use only the categories shown. Ranges are acceptable.

Clearly describe how incidental and ancillary work will be charged (billed hourly, billed as a markup of equipment and labor costs, etc.). Incidental and ancillary work includes but is not limited to work that is related to ensure jobsite safety and security, jobsite cleanliness and sanitation, limited demolition, and other incidental work that is necessary to enable subcontractors to perform their work in a timely manner.

Project Construction Cost Category	Maximum Percent of Total Project Price	Self-Performed or Subcontracted
Pre-Construction Costs		
Design and other Engineering *Professional architectural and engineering services; Energy modeling*	6 – 9%	Both
Pre-Construction Services *Construction management and project development services*	3 – 5%	Both
Other Pre-Construction Costs *Site visits, Owner meetings, Legal review, Accounting services, etc.*	1 – 1.5%	Both
Construction Costs		
Trade Subcontractors *Construction contractors subcontracted to ESCO; Lighting, construction, sheet metal, etc.*	N/A until Investment Grade Audit is completed	
Design/Build Subcontracts *Construction and design contractors*	N/A until Investment Grade Audit is completed	
Direct Purchase Equipment *Equipment directly purchased by ESCO*	N/A until Investment Grade Audit is completed	
Construction Management *Construction manager and site superintendent*	9.5 – 14%	Self-Performed
Project Engineering *Design engineer inspections; Engineering analysis*	1.4 – 2%	Both

© 2023 Trane. All rights reserved.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

General Conditions *Miscellaneous non-staffing costs; Equipment rentals, security fencing, etc.*	8 – 12%	Both
Construction Completion *Commissioning, Training, Construction M&V, O&M Manuals*	1 – 4%	Self-Performed
Other Construction Costs *Site visits, Owner meetings, Permits, Insurance, Bonds, Warranty Labor*	1 – 5%	Both

Profit Markup

In the table below provide the maximum percentage markup that will be applied to direct purchases of equipment, material, and subcontractors for this project. The percentage must be equal to or less than the maximums proposed in the ESCO pre-qualification process. Note that overhead is included in Construction Costs - General Conditions.

	Maximum % Markup
Profit Percent	7 – 15%

If a proposal is from a joint venture partnership, include proposed maximum allowable markups in the schedule format above for each participating company.

Contingency

Briefly describe your company's typical level of contingency budget for lighting, electrical, mechanical, controls projects, and other projects and how it proposes to apply contingency to cover changes in work scope and subcontractor change orders. Note that all unused contingency funds will revert to the Owner or be applied to additional work scope through a change order approved by the Owner.

Trane reduces contingency levels by providing comprehensive design, development, and preconstruction services. Project scopes are clearly defined in proposals as well as any general inclusions and or exclusions to avoid inflated contingency costs carried. Although highly dependent on the scope and site conditions this percentage of contingency to project price can range from 1 – 5 %. Minor or foreseen scope changes can be planned into the contingency during preconstruction and approved through change order approval process. Any additional owner-controlled contingency can be applied to unforeseen conditions, scope or subcontractor change orders, or additional scope that benefits the project or deferred future projects.

Investment Grade Audit Fee

Please refer to Figure D.1 and Table D.1 for mandatory pricing of Investment-Grade Energy Audit and Project Proposal Price Ranges

© 2023 Trane. All rights reserved.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

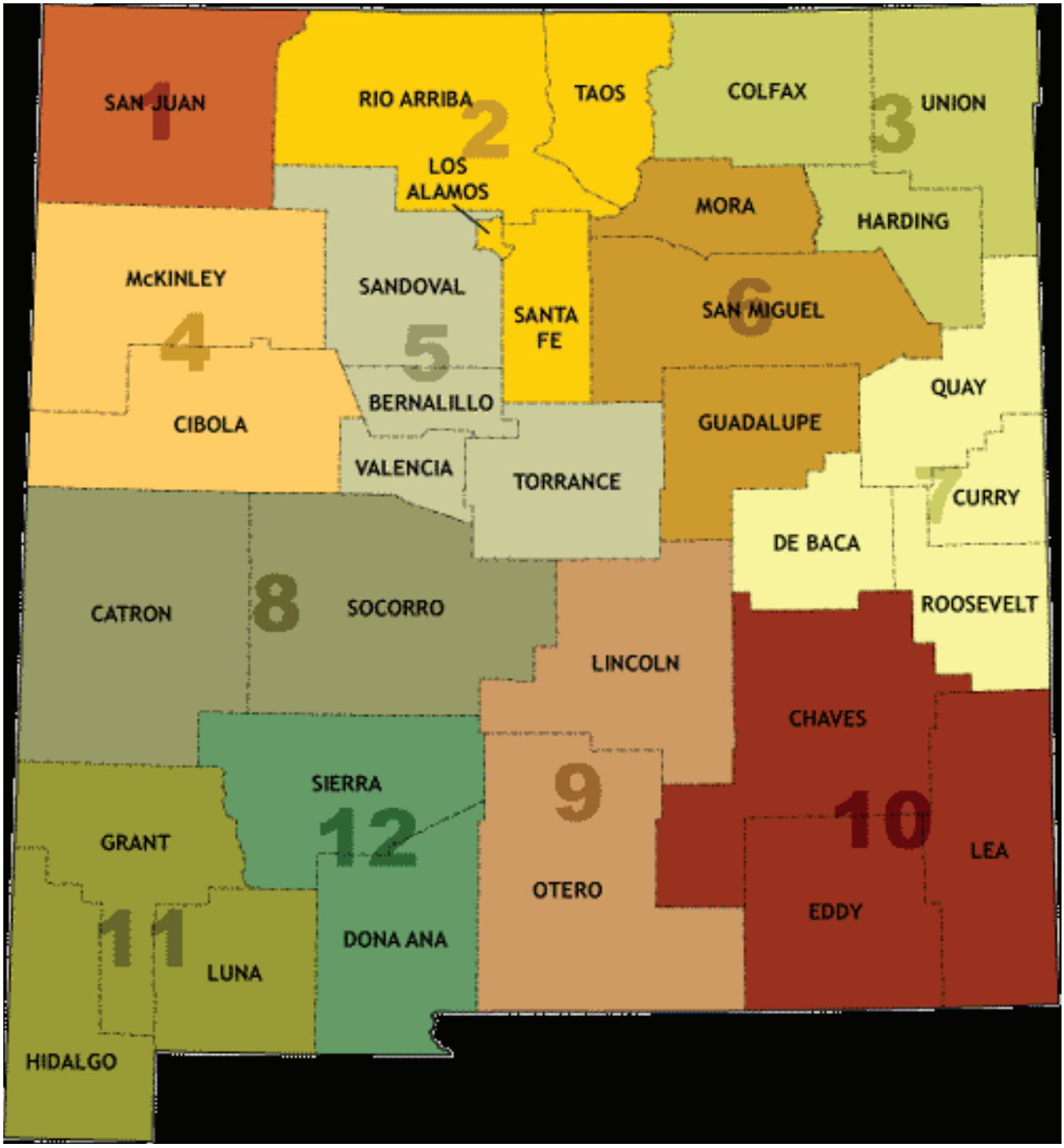


Figure D.1. GSD Purchasing Zones

Confidential and Proprietary Information of Trane U.S. Inc.
© 2023 Trane. All rights reserved.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

Table D.1. Mandatory Pricing of Investment-Grade Energy Audit and Project Proposal.

Pricing

Tiered Audit Pricing based on Difficulty and Price Range ($/sqft)	GSD Purchasing Zone	Facility Area (sqft)		
		< 25K	25-100K	100K +
One-way travel distance to Zone from Albuquerque (Central & Broadway)	Zone 5	$0.250	$0.225	$0.200
	Zones 2 and 8	$0.275	$0.250	$0.225
	Zones 4 and 6	$0.300	$0.275	$0.250
	Zones 1, 7, 9, and 12	$0.325	$0.300	$0.275
	Zones 3, 10, and 11	$0.350	$0.325	$0.300

Self-Performed Work Fees

In the table below, provide the position descriptions and hourly rates for labor and services as performed by your company.

The purpose of this is to enable confirmation through open book pricing.

Labor Category	GSA Regional Ceiling Labor Rate
Project Engineer II – Controls	$ 304.98
Project Engineer II – Energy	$ 308.91
Project Engineer II – Systems	$ 308.91
Project Manager – Contracts	$ 264.03
Project Engineer Team Leader	$ 308.91
Project Administrator – Contracting	$ 136.23

Annual Costs and Fees

Measurement and Verification – Annual Fee

Briefly describe how the post-retrofit Measurement & Verification annual fee is determined.

The Measurement and Verification Services cost is the annual cost for the services necessary after acceptance of the project to annually verify the Energy Performance Contract guarantees. The cost for the guarantee is based upon the M&V option utilized, the risk of savings failure, the field time to measure building performance, and the time to document and present the report.

Trane takes a thorough but tailored approach to Measurement & Verification fees. This starts early in project development by evaluating each Energy Conservation Measure's potential M&V options and aligning the accuracy and detail of those options against the cost to provide M&V services through the guaranteed term. Most often, remote access through controls, monitoring services provided by Trane, and energy modeling can reduce post-construction M&V costs by providing efficient means to collect and analyze information quickly. This balance provides our customers

© 2023 Trane. All rights reserved.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

with the detail and supporting information to validate performance while ensuring that funds are tightly managed and can be applied to the most needed improvements.

Warranty

Briefly describe how the warranty cost is determined.

Warranty is the burdened labor cost associated with time anticipated to be expended by ESCO staff in supporting their direct purchase equipment warranties; and/or equipment provided by subcontractors. This warranty cost may also include costs for extended equipment warranties in those cases where the required/specified equipment warranty is longer than the equipment warranty offered by the manufacturer.

Trane offers robust warranty programs for Trane manufactured equipment, as well as any other directly purchased equipment including extended warranty options for most equipment. All major equipment in project scopes will have a warranty period defined for both equipment and labor, outlined for each measure or service.

Other

Briefly describe any other fees and how they will be determined.

Equipment/Labor Cost Competition

Briefly describe your company's process to solicit bids on equipment/labor or to ensure price/cost competition and the best value for the Owner.

Trane assembles all aspects of projects to create the most beneficial project for our customers. This includes an open non-manufacturer specific approach for direct material purchase as well as a competitive bidding structure for all major trades where it is mutually determined to add value. Local consultants, subcontractors, and trades are also included in most project scope to ensure that projects are beneficial to communities and owners.

© 2023 Trane. All rights reserved.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

Open Book Pricing

Briefly describe your company's approach to open book pricing and the method for maintaining cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records.

Trane uses open book pricing with the belief that cost transparency gives clients a clear understanding of the full project scope, as well as its financial and operational impact. By involving the client early in the decision-making process – from choosing equipment to selecting subcontractors – Trane maintains the transparency that results in the optimal project solution. We do this by providing linked spreadsheets that represent a breakdown of project costs, pricing, mark-ups, pro-forma details, savings, and contract termination implications. Our local team has extensive experience with open book pricing through the high volume of work that we perform for state and local government public entities. In addition, as an ESCO authorized to serve federal government clients, we have completed many projects that incorporate the federal ESCO open book pricing methodology. We will conform to the pricing transparency methodology that the University desires.

Best Value

Briefly describe how your approach to performance contracting delivers best value for the investment. Describe any utility rebates or other financial incentives or grants you can potentially provide and/or facilitate.

Value is defined for Trane as a mutually beneficial project that accomplishes the outcomes of our customers. Preconstruction and project development efforts are managed closely with transparency and milestones that serve to keep scopes limited to the most impactful improvements, measure, and or initiatives limiting costs in early stages to facilitate more comprehensive projects in implementation. Trane also approaches pricing competitively throughout the project cycles as described above.

Trane has in-house engineering teams that evaluate and facilitate local utility, state, and federal incentives, rebates, and supplemental funding and credits. Trane also has relationships with consultants that can support the facilitation of these items if needed. These services and capabilities are all included to lower overall net costs so that critical, larger, and or more impactful projects can be accomplished.

© 2023 Trane. All rights reserved.

DocuSign Envelope ID: 8D4DD686-83CB-4819-A36F-FADB494FA169

2. Completed forms for Markups, Fees, and Total Cost Response

2. Cost

This section provides supporting information for Factor "B(2) Cost" as shown in Table 1., Evaluation Points Summary.

a) Audit Costs

The State of New Mexico intends to establish standard audit costs for all projects based on GSD purchasing zones found in Figure D.1. These standard costs are shown in Table D.2. Pricing.

Trane agrees to established standard audit costs.

b) Open Book Pricing

Open book pricing is full disclosure by the contractor to the Facility Owner of all costs and markups for materials, labor, and services received during the project development, implementation, and performance period phases. Open book pricing will be required such that all costs, including all costs of subcontractors and Offerors, are fully disclosed.

Trane uses open book pricing with the belief that cost transparency is the key to ensure that customers clearly understand the full project scope and its impact on the financial and operational results. As a leading global provider of indoor comfort systems, Trane has the ability to provide financial advantage to customers who choose to install the systems that Trane manufactures as part of the project. By involving the customer early in the decision-making process – from choosing equipment to selecting subcontractors – Trane maintains the transparency that allows customers to make the choices that best suit their specific needs.

In order to ensure that each customer is receiving the best value, Trane presents an open book project pricing proposal. We do this by providing linked spreadsheets that represent a breakdown of project costs, pricing, mark-ups, proforma detail, savings, and termination implications.

Our Southwest Trane team has extensive experience with open book pricing through the extensive work that we do for state and local government public agencies. In addition, as an ESCO authorized to serve federal government clients, Trane has completed many projects that incorporate the federal ESCO open book pricing methodology.

c) Third Party Review

A fee of one percent of the total project cost will be included in the final project cost to fund an independent third party review of the overall project. This review will include the audit, construction, and commissioning phases.

Offerors **must** agree to all sections of the Factor "B(2) Cost" to pass.

Trane agrees that a fee of one percent of the total project cost will be included in the final project cost to fund an independent third-party review of the overall project.

Trane agrees to all sections of the Factor "B(2) Cost."

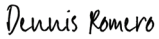
© 2023 Trane. All rights reserved.

Certificate Of Completion

Envelope Id: 8D4DD68683CB4819A36FFADB494FA169
Status: Completed
Subject: Please Electronically Sign: 40-00000-23-00029AG ESCO Award 0128
Source Envelope:
Document Pages: 24
Signatures: 4
Envelope Originator:
Certificate Pages: 5
Initials: 2
Tami Concha
AutoNav: Enabled
1100 S Saint Francis Dr
EnvelopeId Stamping: Enabled
Santa Fe, NM 87502
Time Zone: (UTC-07:00) Mountain Time (US & Canada)
Tami.Concha@gsd.nm.gov
IP Address: 98.230.199.22

Record Tracking

Status: Original
1/13/2024 12:05:11 PM
Holder: Tami Concha
Tami.Concha@gsd.nm.gov
Location: DocuSign
Security Appliance Status: Connected
Pool: StateLocal
Storage Appliance Status: Connected
Pool: GSD
Location: DocuSign

Signer Events	Signature	Timestamp
Natalie Martinez natalie.martinez1@gsd.nm.gov Deputy Director New Mexico General Services Security Level: Email, Account Authentication (None), Login with SSO	 Signature Adoption: Pre-selected Style Using IP Address: 172.59.0.76	Sent: 1/13/2024 12:09:49 PM Viewed: 1/13/2024 12:10:23 PM Signed: 1/13/2024 12:11:13 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Dennis Romero Dennis.Romero@gsd.nm.gov Utility Engineer General Services Department Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 1/13/2024 12:11:15 PM Viewed: 1/13/2024 12:11:49 PM Signed: 1/13/2024 12:11:57 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Tami Concha tami.concha@gsd.nm.gov Procurement Specialist II New Mexico General Services, State Purchasing Division Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 98.230.199.22	Sent: 1/13/2024 12:11:59 PM Viewed: 1/13/2024 12:15:46 PM Signed: 1/13/2024 12:15:57 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
ZULLY DE LA PAVA TORRADO Zully.delapava@trane.com Security Level: Email, Account Authentication (None)	 Signature Adoption: Uploaded Signature Image Using IP Address: 98.6.229.90	Sent: 1/13/2024 12:15:59 PM Resent: 1/17/2024 6:42:02 AM Viewed: 1/17/2024 8:17:08 AM Signed: 1/17/2024 10:43:41 AM
Electronic Record and Signature Disclosure: Accepted: 1/14/2024 9:29:33 PM ID: 26d6612e-1a70-4dc7-9b9c-afa41bbfa3bd		

Signer Events	Signature	Timestamp
Ann Marie Lucero annmarie.lucero@tax.nm.gov District Mgr. State of New Mexico Taxation and Revenue Signing Group: 33300 - CRS Verification Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 6/2/2020 2:28:54 PM ID: 4e14c1ed-cee7-47c4-9f77-dc41a9cef910	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.133.192	Sent: 1/17/2024 10:43:43 AM Viewed: 1/18/2024 11:14:09 AM Signed: 1/18/2024 11:16:18 AM
Dorothy Mendonca dorothy.mendonca@gsd.nm.gov SPD Division Director / State Purchasing Agent General Services Department Signing Group: 35000 - State Purchasing Agent Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/14/2023 7:24:59 AM ID: 51f6380f-50f7-4227-afb5-572b373dfb7c	 Signature Adoption: Uploaded Signature Image Using IP Address: 164.64.62.10	Sent: 1/18/2024 11:16:20 AM Viewed: 1/18/2024 11:21:05 AM Signed: 1/18/2024 11:21:19 AM

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/13/2024 12:09:49 PM
Certified Delivered	Security Checked	1/18/2024 11:21:05 AM
Signing Complete	Security Checked	1/18/2024 11:21:19 AM
Completed	Security Checked	1/18/2024 11:21:19 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a $1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: *GSD.SPDinfo@state.nm.us*

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at *GSD.SPDinfo@state.nm.us* and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at *GSD.SPDinfo@state.nm.us* and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a $1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to *GSD.SPDinfo@state.nm.us* and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:
https://support.docusign.com/guides/signer-guide-signing-system-requirements

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to "I agree to use electronic records and signatures," before you click "CONTINUE" within the DocuSign system.

By selecting the check-box next to "I agree to use electronic records and signatures," you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/1/2025 | 9/23/2024

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, LLC DBA Lockton Insurance Brokers, LLC in CA CA license #0F15767 8110 E Union Ave., Ste. 100 Denver CO 80237 denver-certs@lockton.com	**CONTACT NAME:** Lusine Hovsepyan **PHONE (A/C, No, Ext):** (213) 655-9760 **FAX (A/C, No):** **E-MAIL ADDRESS:** Lusine.Hovsepyan@lockton.com
INSURED 1527991 Yearout Energy Services Company LLC 7601 Jefferson NE, Ste 160 Albuquerque, NM 87109-4496	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** Valley Forge Insurance Company 20508 **INSURER B :** National Fire Insurance Co of Hartford 20478 **INSURER C :** The Continental Insurance Company 35289 **INSURER D :** American Casualty Company of Reading, PA 20427 **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 20861480 **REVISION NUMBER:** XXXXXXX

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	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC X OTHER: Deductible: $100K	N	N	7040271214	10/1/2024	10/1/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 1,000,000 $ 25,000 $ 2,000,000 $ 4,000,000 $ 4,000,000
B	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY	N	N	7040271228	10/1/2024	10/1/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) Comp/Collision	$ 2,000,000 $ XXXXXXX $ XXXXXXX $ XXXXXXX $ $1,000
C	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10,000	N	N	7040271309	10/1/2024	10/1/2025	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000 $ XXXXXXX
D D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: N / N/A If yes, describe under DESCRIPTION OF OPERATIONS below		N	WC 7 40271245 (CA) WC 7 40271231 (AOS)	10/1/2024 10/1/2024	10/1/2025 10/1/2025	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Evidence of Insurance- Yearout Energy Services Company LLC added to the above policies effective 5.1.2024

CERTIFICATE HOLDER

20861480
Evidence of Insurance

CANCELLATION See Attachments

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

© 1988-2015 ACORD CORPORATION. All rights reserved.

City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909
www.santafenm.gov

Alan Webber, Mayor

Councilors:
Signe I. Lindell, Mayor Pro Tem, District 1
Alma G. Castro, District 1
Michael J. Garcia, District 2
Carol Romero-Wirth, District 2
Lee Garcia, District 3
Pilar F.H. Faulkner, District 3
Jamie Cassutt, District 4
Amanda Chavez, District 4

Dear City Staff,

In accordance with State Statute and City Ordinances, this document serves as a blanket ***services'*** determination and is valid until June 30, 2026, for the types of general, professional, and construction services that are clearly one of the types pre-established and approved by the State Purchasing Agent and City CPO.

Please continue to obtain determinations for services that do not clearly and fully fit within the types listed below. For mixed or hybrid services, unclear scopes of work, and design-build projects, specific determinations will be required. In these cases, please email purchasing_det@santafenm.gov to obtain the necessary CPO determinations for your procurement needs.

Should you have any questions or require clarification on a particular service, feel free to contact CPD.

The following are General Services:

- Air/bus, vehicle charter/rental service
- Animal/k9 boarding - basic
- Auctioneers
- Audio-visual equipment setup and routine maintenance for events and presentations (including projectors, microphones, and speakers)
- Automotive mechanical services – all - including vehicle inspection, diagnostics, repair labor, parts replacement, and routine maintenance (e.g., oil changes, brake service, tune-ups, etc.)
- Banking Services (routine, transaction-based)
- Boiler testing/water treatment service
- Bookkeeping service (routine, transaction-based)
- Biohazard clean-up and disinfection services for crime scenes, homicides, suicides, unattended deaths, car accidents, deadly car crashes and cleanup of police units, along with any other biohazard situations. Building alarm systems, service and repair
- Check collection service
- Clothing, textile fabrication repair service

General Services (continued):

- Commercial laundry service, dry cleaning, etc.
- Communications systems installation, servicing, and repair
- Conference and trade show coordination
- Debt collection service
- Delivery/courier service
- Document storage, duplication, retrieval, review, and destruction service
- Drug testing and screening (standard tests)
- Engraving service
- Equipment installation, preventive maintenance, inspection, calibration, and repair
- Equipment rental services
- Exams administration and scoring service
- Executive recruitment
- Firefighting/suppression service
- Food preparation, vending, and catering services
- Health screening, basic diagnostic (wellness, blood pressure monitoring, blood draw, etc.)
- Herbicide application service
- Household goods packing, storage, transportation service
- HVAC system maintenance service - Includes filter changes, inspections, cleaning, minor repairs, and system diagnostics.
- Information Technology - Hosting only
- Information Technology Help Desk Services
- Information Technology Services requiring software or equipment
- Information Technology Software and Hardware Support Services
- Interpretive services: written/oral/sign language
- Inventory service
- Janitorial service, carpet cleaning, window washing
- Laboratory testing and analysis (standard tests only)
- Land clearing/debris removal service
- Landscaping—tree planting, grooming service, lawn mowing, etc. (but not landscape architects)
- Language translation service
- Linen rental service

General Services (continued):

- Marine equipment inspection, certification, and repair
- Medical equipment rental or repair service (wheelchairs, walkers, etc.), including measurements, adjustments, and modifications to meet patient needs
- Metal/pipe/wiring detection service
- Office furnishings installation, refurbishment, and repair service
- Package inspection and crating
- Painting service
- Paper shredding
- Parking lot sweeping/snow removal service
- Pest/weed control service
- Photographic/micrographic processing and delivery, includes aerial and ground photography (if analysis is included, then personal service)
- Printing/duplicating service
- Process serving
- Property management (rent collection, property maintenance, etc.)
- Recycling/disposal/litter pickup service
- Retreat and workshop planning, conduct, coordination, etc.
- Security/armored car services
- Shop welding/metal fabrication service
- Software as a Service
- Steam cleaning, high pressure washing, parts cleaning service
- Studio photography service (does not include portrait painting)
- Telephone interview service (conduct of survey using prescribed survey instrument)
- Towing service
- Traffic control services – including certified flaggers, barricade setup/removal, temporary signage, and traffic control plans (not involving permanent installations or design engineering)
- Training – when offered as a regular course by an institution (such as a college or university)
- Travel service — air, surface, water
- Videotaping and recording service
- Warehouse dry/cold storage rental service
- Weather information service

The following are Professional Services:

- Accountants (certified public accountants and registered public accountants)
- Actuaries
- Analysts of processes, programs, fiscal impact, and compliance
- Appraisers
- Archeologists
- Architects
- Artwork, original (services creating the artwork)
- Audio/video media productions (design, development, and/or oversight of)
- Auditors
- Broadband
- Business process re-engineering
- Counselors
- Consultants (including IT Consultants)
- Curriculum/Examination development
- Data Backup Services
- Data Storage and Management Services
- Design
- Economists
- Engineers
- Environmental monitoring: noise level, safety, hazardous gas detection, radiation monitoring service, etc.
- Financial Advisors
- Grant writing
- Graphic designers (creative or original in nature)
- Hearing officer services
- Independent Verification and Validation
- Information Technology Hosting when it includes Maintenance and Support
- Information Technology Maintenance
- Information Technology Management
- Information Technology Programming
- Information Technology Risk Assessment

Professional Services (Continued):

- Insurance Adjusters/Brokers
- Investigators (personnel-related, etc.)
- Investment advisors and management
- Labor negotiators
- Landscape Architects
- Lawyers
- Lobbyists
- Managed Network Services
- Management and system analysts
- Management consultants
- Marketing consultants (including identifying market opportunities, conduct of marketing programs, planning, promotion, market research surveys, etc.)
- Medical arts practitioners
- Medical – doctors, immunizations, etc.
- Mental health support – Therapists, Counselors, etc.
- Network Cybersecurity Services
- Network Installation
- Physicals
- Planners
- Policy Advisors
- Polygraph services
- Product Development Services
- Program/Project Managers
- Psychologists
- Public relations advisors/Publicists
- Publication development (creation of audio/video productions, brochures, pamphlets, maps, signs, posters, annual reports, etc.)
- Researchers
- Scientists (Bio/Chem/Env/Geo/Hydro/Mech, etc.)
- Social and Human Services - Includes case management, outreach, crisis intervention, supportive housing assistance, and other services intended to support vulnerable or at-risk populations. Services may be delivered by licensed or trained professionals in coordination with public or nonprofit systems.

Professional Services (Continued):

- Speech writers
- Statisticians
- Surveyors
- Trade developers
- Training – when it is specifically designed for an agency as opposed to established courses (such as out of the box training offered to all at a training company, university, or college)
- Veterinarian services
- Web design and development

The following are Construction Services:

- Bid-Build (Standard)
- Construction Managers
- New Construction (including buildings, roads, bridges, utilities)
- Remodeling and Renovations (interior and exterior work)
- Demolition (including site clearance)
- Excavation and Earthwork
- Electrical Work (installation, repair, upgrades)
- Permanent installation or upgrades of audio-visual systems (including wiring and structural modifications)
- Plumbing (installation, repair, maintenance)
- Masonry and Concrete Work
- Roofing (installation, repair, maintenance)
- Structural Repair and Reinforcement
- Stucco installation, repair, and finishing
- Painting and Finishing (for construction purposes)
- Mechanical Work (HVAC systems, etc.)
- Site Preparation and Land Grading
- Utility Installation and Repair (water, sewer, gas lines)

Travis Dutton-Leyda, Chief Procurement Officer

_____ Date: 06/30/2025

Emily Oster, Finance Director

Emily K. Oster Date: 06/30/2025

Services Offered to the City of Santa Fe (2025)

Approved:
These services have been approved by the New Mexico Council for Purchasing from Persons with Disabilities and are available through Horizons of New Mexico.

- ADA Accessibility Consulting Services
- Auctioneering Services
- Bulk Mailing and Sorting
- Call Center Services
- Computer Refurbishing
- Courier Services
- Decontamination, Sanitation and Sterilization Services
- Debris Removal
- Document Imaging
- Document Shredding
- Envelope Stuffing
- General Labor
- Hard Drive Destruction
- Janitorial and Housekeeping Services – Including Carpet Cleaning & Floor Care
- Landscape Irrigation
- Landscaping
- Mailing Services
- Management of an Assistive Technology Reuse and Recycling Program
- Medical Waste Disposal
- Meeting Minute Preparation Services
- Pest Control and Extermination Services
- Printing Services
- Rest Area Maintenance
- Screen Printing
- Snow Removal
- Temporary Staffing Services
- Yard, Grounds, and Lawn Maintenance

Permissive:
The services have been approved by the New Mexico Council for Purchasing from Persons with Disabilities as permissible for sale under the State Use Act through Horizons of New Mexico. While the Council recognizes that certain Horizons of New Mexico members are capable of performing the services listed below, said services are considered permissive and excluded from the mandatory aspect of the State Use Program. Any procurement of the below services through Horizons of New Mexico is at the discretion of the purchasing agent and will be considered by the Council on a case-by-case basis.

- Graphic Design
- Graphic Design - Logo Design
- IT – Enterprise Application
- IT – IV & V
- IT Network and Database Management
- IT Support
- IT Security Services
- IT – Web Design
- IT – Web Programmer
- Marketing
- Social Media Marketing
- Training Services

For the complete State Use service list, please go to: http://horizonsofnewmexico.org/services.html

GB Packet_Yearout DBA ESGS_Microgrid Design_$501k

Final Audit Report 2025-08-05

Created:	2025-08-04
By:	Elizabeth Kahahane (elkahahane@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAiBoclOubl9SSyjv9UkWy245pbxlc_d1H

"GB Packet_Yearout DBA ESGS_Microgrid Design_$501k" History

Document created by Elizabeth Kahahane (elkahahane@santafenm.gov)
2025-08-04 - 4:44:12 PM GMT- IP address: 63.232.20.2

Document emailed to rawheeler@santafenm.gov for signature
2025-08-04 - 4:47:03 PM GMT

Email viewed by rawheeler@santafenm.gov
2025-08-04 - 4:47:46 PM GMT- IP address: 63.232.20.2

Signer rawheeler@santafenm.gov entered name at signing as Regina Wheeler
2025-08-04 - 4:48:09 PM GMT- IP address: 63.232.20.2

Document e-signed by Regina Wheeler (rawheeler@santafenm.gov)
Signature Date: 2025-08-04 - 4:48:11 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Jesse Roach (jdroach@santafenm.gov) for signature
2025-08-04 - 4:48:14 PM GMT

Email viewed by Jesse Roach (jdroach@santafenm.gov)
2025-08-04 - 11:55:43 PM GMT- IP address: 104.47.65.254

Document e-signed by Jesse Roach (jdroach@santafenm.gov)
Signature Date: 2025-08-05 - 0:10:46 AM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to KYLE MORGAN (klmorgan@santafenm.gov) for signature
2025-08-05 - 0:10:48 AM GMT

Email viewed by KYLE MORGAN (klmorgan@santafenm.gov)
2025-08-05 - 0:13:36 AM GMT- IP address: 73.26.154.207

Document e-signed by KYLE MORGAN (klmorgan@santafenm.gov)

Signature Date: 2025-08-05 - 0:14:48 AM GMT - Time Source: server- IP address: 73.26.154.207

Agreement completed.

2025-08-05 - 0:14:48 AM GMT

Powered by
Adobe
Acrobat Sign

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/1/2025 — 9/23/2024

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 Insurance Brokers,LLC CA License #0B99399 777 S. Figueroa Street, 52nd fl. Los Angeles CA 90017 213-689-0065	**CONTACT NAME:** **PHONE (A/C, No, Ext):** **FAX (A/C, No):** **E-MAIL ADDRESS:**
INSURED 1527991 Yearout Energy Services Company LLC 7601 Jefferson NE Ste 160 Albuquerque, NM 87109-4496	**INSURER(S) AFFORDING COVERAGE** — **NAIC #** **INSURER A :** Valley Forge Insurance Company — 20508 **INSURER B :** National Fire Insurance Co of Hartford — 20478 **INSURER C :** The Continental Insurance Company — 35289 **INSURER D :** American Casualty Company of Reading, PA — 20427 **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 20636584 **REVISION NUMBER:** XXXXXXX

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	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC OTHER:	N	N	7040271214	10/1/2024	10/1/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 1,000,000 $ 25,000 $ 2,000,000 $ 4,000,000 $ 4,000,000 $
B	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY	N	N	7040271228	10/1/2024	10/1/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) Comp/Collision	$ 2,000,000 $ XXXXXXX $ XXXXXXX $ XXXXXXX $ $1,000
C	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** CLAIMS-MADE DED X RETENTION $ 10,000	N	N	7040271309	10/1/2024	10/1/2025	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000 $ XXXXXXX
D D	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N: N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	N	WC 7 40271245 (CA) WC 7 40271231 (AOS)	10/1/2024 10/1/2024	10/1/2025 10/1/2025	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

20636584
City of Santa Fe Public Works
Facilities Division
120 S Federal Pl #305
Santa Fe NM 87501-0000

CANCELLATION

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



© 1988-2025 ACORD CORPORATION. All rights reserved.

GB Packet_Yearout DBA ESGS_Microgrid Design_$501k

Final Audit Report 2025-09-03

Created:	2025-08-18
By:	ALYSSA PEREZ (aeperez@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIGkTgWUal42KKxYfEV_9U_9K11Ud-irh

"GB Packet_Yearout DBA ESGS_Microgrid Design_$501k" History

Document created by ALYSSA PEREZ (aeperez@santafenm.gov)
2025-08-18 - 8:26:45 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
2025-08-18 - 8:32:02 PM GMT

Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2025-08-19 - 4:13:41 PM GMT- IP address: 104.47.65.254

Document e-signed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
Signature Date: 2025-08-19 - 4:15:15 PM GMT - Time Source: server- IP address: 63.232.20.2

Document sent to JoAnn Lovato (jdlovato@santafenm.gov) and Travis Dutton-Leyda (tkduttonleyda@santafenm.gov) for signature. One of them to sign
2025-08-19 - 4:15:19 PM GMT

Email viewed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
2025-08-19 - 9:02:17 PM GMT- IP address: 98.97.112.177

Document e-signed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
Signature Date: 2025-08-20 - 9:27:04 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to ERIKA LUJAN (evlujan@santafenm.gov) for signature
2025-08-20 - 9:27:08 PM GMT

Email viewed by ERIKA LUJAN (evlujan@santafenm.gov)
2025-08-25 - 2:26:56 PM GMT- IP address: 104.47.64.254

Document e-signed by ERIKA LUJAN (evlujan@santafenm.gov)

Signature Date: 2025-08-25 - 2:27:16 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature

2025-08-25 - 2:27:19 PM GMT

Email viewed by EMILY OSTER (ekoster@santafenm.gov)

2025-08-29 - 0:12:31 AM GMT- IP address: 104.47.65.254

Email viewed by EMILY OSTER (ekoster@santafenm.gov)

2025-09-03 - 9:27:35 PM GMT- IP address: 104.47.64.254

Document e-signed by EMILY OSTER (ekoster@santafenm.gov)

Signature Date: 2025-09-03 - 9:49:59 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.

2025-09-03 - 9:49:59 PM GMT

CITY OF SANTA FE

Date: July 31, 2025

To: Governing Body

From: Carol Swenson, PW Business Operations Manager

Via: Regina Wheeler, Public Works Department Director RW

Subject: Streets Intersection Markings

ACTION:
Request for Approval of a Budget Amendment Resolution (BAR) to Appropriate the Unspent Balance of an FY25 One Time Appropriation of $290,671 from General Fund Balance to FY26 Complete Streets Supplies for Intersection Markings (Regina Wheeler, Public Works Director, rawheeler@santafenm.gov).

BACKGROUND AND SUMMARY:
Procurement of the markings was completed in FY25, but not in time to issue the purchase order. It is expected that the PO will be issued upon receipt of this funding in FY26 budget.

ATTACHMENTS:
BAR

FUNDING SOURCE:
One-time appropriation FY25
Fund Name/Number: General Fund/100
Munis Org Name/Number: Paint/Sign Operations/Maint/1000412
Munis Object Name/Number: Operating Supplies/530200

Log # *{Finance use only}*:	
Journal # *{Finance use only}*:	

City of Santa Fe, New Mexico
BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME	DATE
Public Works Department/Streets	7/30/2025

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
Streets/Operating Supplies	1000412	530200	ST2510000	290,671	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
				$ 290,671	$ -

JUSTIFICATION: *(use additional page if needed)*
--Attach supporting documentation/memo

To re-appropriate the unspent balance of a FY25 One-Time appropriation of $290,671 from the General Fund Balance to FY26 Complete Streets operating supplies for intersection markings projects city-wide.

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
100	(290,671)
TOTAL:	**(290,671)**

Carol Swenson — Prepared By *{print name}* — 7/30/2025 Date

Regina Wheeler
Regina Wheeler (Aug 6, 2025 17:32:27 MDT)
Division Director Signature *{optional}* — Date

Regina Wheeler
Regina Wheeler (Aug 6, 2025 17:32:27 MDT)
Department Director Signature — Date

{Use this form for Finance Committee/ City Council agenda items ONLY}

CITY COUNCIL APPROVAL

City Council Approval Date

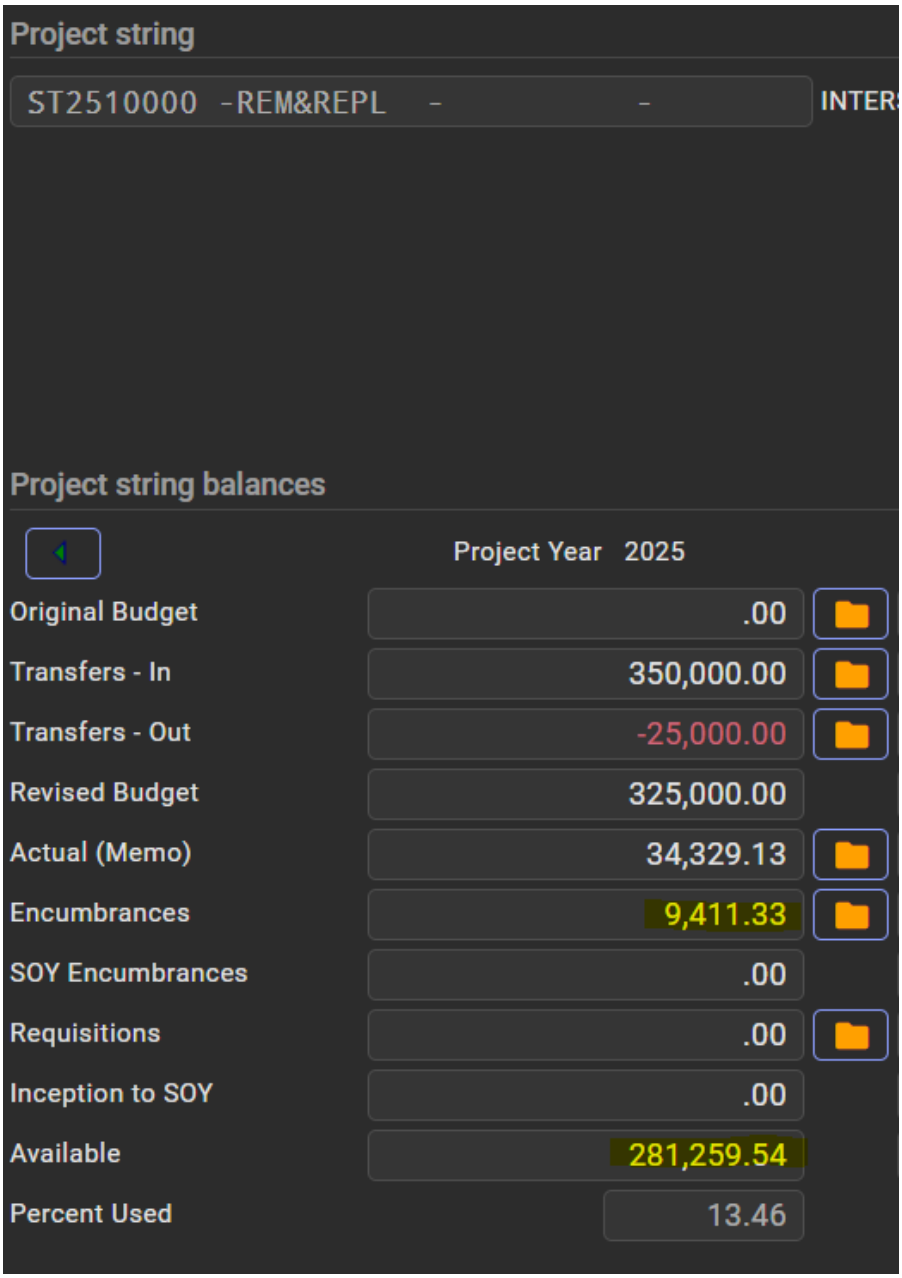
Agenda Item #:

Andy Hopkins
Budget Officer — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

1000412.530200: [PLID: ST2510000] $290,671



CITY OF SANTA FE

The Purchasing Memo

Date: August 18, 2025

To: Governing Body, Finance Committee, and Public Works & Utilities Committee

From: P. Fred Heerbrandt, P.E., Engineer Supervisor P. Fred Heerbrandt, P.E.

Via: Jesse Roach, Interim Public Utilities Director

Michael Dozier, Wastewater Management Division Director

Subject: General Services Contract Approval for Sewage Sludge Disposal Services

Vendor Name: Peter's Trucking, Inc.

Munis Vendor Number: 10041

ITEM AND ISSUE:

The Public Utilities Department respectfully requests your review and approval of a General Services Contract in the amount of $500,000.00 per year over the four year term of the contract, for a total not to exceed amount of $2,000,000.00, including NMGRT, for Sewage Sludge Disposal Services with Peter's Trucking Inc.

Approval of a Budget Adjustment Resolution (BAR) in the amount of $500,000.00 to fund the contract with Peter's Trucking Inc. for FY26.

CONTRACT NUMBER:

The FY26 Munis contract number is 3260090

BACKGROUND AND SUMMARY:

With the closure of NMED Groundwater Permit DP-135, which allowed land disposal of sewage sludge, the Paseo Real Water Reclamation Facility (PRWRF) must now rely more heavily on the use of landfilling to dispose of sewage sludge. During the process of the DP-135 permit closure and submission and approval of the new PRWRF Disposal Plan, residual sewage sludge built up at the facility. This contract will help the facility to catch up on disposal activities and maintain disposal activities over the next four years

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: Wastewater Enterprise Fund/Fund 500

Munis Org Name/Number: Wastewater Operations Admin/5000361

Munis Object Name/Number: Service Contracts/510310

Budget Officer / Designee: Andy Hopkins **Date:** 08/19/2025

Budget Officer Comment/Exceptions: -

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-102, ITB

ITB 25164 was released on June 2, 2025. Bids were opened on July 2, 2025 with two compliant bidders

Chief Procurement Officer (CPO)/Designee: _____ **Date:** 08/22/2025

CPO Comment/Exceptions: _____

ASSOCIATED APPROVALS:

IT Components included? ☐ Yes | ☒ No

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Treasury/Point of Sale 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:

CPO Service Determination Email
Vendor's Bid
bar

Certificate of Liability Insurance (COI)
General Services Contract

Item#:_____
Munis Contract #: 3260090
ITB #: 25164

CITY OF SANTA FE
GENERAL SERVICES CONTRACT

DEWATERED SEWAGE SLUDGE DISPOSAL

THIS CONTRACT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City," and **Peter's Trucking Inc.** herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Contract and the price for each. Product and service descriptions may be amended with the prior approval of the Contract Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

2. Scope of Work

3.

4. The City is the operator of the Paseo Real Wastewater Reclamation Facility (PRWRF) which produces about 1000 wet tons per month of bio-solids in conducting its dewatering operations. Some of the resulting dewatered sewage sludge is composted, but the rest will be transported to a landfill for disposal. However, no minimum volume of dewatered sewage sludge is guaranteed. The actual quantity of material may vary from the estimated amount and could be reduced to zero. The City of Santa Fe reserves the right to utilize dewatered sewage sludge in any manner allowed by law with a corresponding reduction in the volume of material being disposed of at the landfills.

5.

A. The Contractor shall perform the following work:

The Contractor shall transport of dewatered sewage sludge (NM Special Waste) from the Paseo Real Wastewater Reclamation Facility (PRWRF) to either the Caja del Rio Landfill, Santa Fe, NM, Estancia Valley Regional Landfill, Moriarty, NM, or the WM Valencia Regional Landfill, Los Lunas, NM., Sandoval County Landfill, Rio Rancho, NM, Northeastern New Mexico Regional Landfill, Wagon Mound, NM, Cerro Colorado Landfill, Albuquerque, NM, as directed by the City. The Contractor shall supply the appropriate vehicles that will be used in the transportation process. The required trips will vary depending on the needs of the facility. WWMD will dictate which one of the 6 locations to deliver to at the time of the order. All tip

fees will be paid directly to the landfill by the Contractor and billed to the City, including the proposed handling fee.

Storage capacity at the facility is limited and operations are generally 8 hours per day, 5 days per week. PRWRF staff will notify contractor of the sludge hauling needs on a weekly basis, providing a minimum of 48 hours' notice of the need for hauling services. The Contractor will be available for hauling loads at the frequency and interval that keeps the dewatering facility operational. The Contractor will work with PRWRF to develop communication protocols that engender an efficient and safe biosolids operation.

Service Requirements
Required trips will vary depending on the needs of the facility. Each time the truck is loaded, the Contractor's driver will be responsible for acquiring a paint filter test and pH test report, conducted by the PRWRF in-house laboratory before leaving the facility and provide the landfill with a copy of the passing test results. If this test(s) fails, then no load will commence. The Contractor's driver will also be provided with a completed Special Waste Manifest for the destination landfill. The Contractor's driver will be required to carry copies provided by PRWRF staff of the PRWRF Special Waste Spill Response Plan. The Contractors' drivers must also hold a Special Waste Hauler Registration with the New Mexico Environment Department, Solid Waste Bureau. This Waste Hauler Registration will remain active and current throughout the term of the price agreement and must be submitted to the City before an award and contract are issued.

Full Loads Required:
The Contractor will be required to haul a full load. PRWRF will assist with loading and will check trailers for full loads. Overfilled loads can spill over the corners of the trailer and a certain amount of expansion of loads has been observed during summer months. The Contractor's driver will be expected to take all overfill and underfill considerations into account on a per trip basis.

Equipment Requirements:
The Contractor will supply all equipment (truck, tarp, etc.) necessary for hauling of the dewatered sewage sludge to the landfill. Minimum load capacity shall be 10 tons. The Contractor is responsible for maintaining their vehicles in good mechanical condition and maintaining compliance with all applicable local, state, and federal laws and regulations.

Operating Expenses
Contractor agrees to bear *all* costs and expenses incidental to the operation of the equipment, whether empty or loaded, including without limitation, all risks of depreciation, all maintenance (including cleaning and washing), oil, tires, repairs, business taxes, consumption and sales taxes, personal taxes, transportation taxes, insurance coverage required herein, workers compensation premiums if required, payroll taxes, licenses, vehicle registration renewal fees, base plates, and all highway tolls. If the City is required to withhold or pay any taxes or make any other payment with respect to fees owed by Contractor, Contractor will reimburse the City, or permit the City to

make deductions for taxes or other payments required from any monies owed to Contractor. **Contractor will pay all tipping fees directly to the relevant disposal site and bill the City, including the proposed handling fee**. A valid **Certificate of Liability Insurance** must be submitted to the City before the contract is awarded and must remain current throughout the term of the price agreement. A valid **Truck Insurance Policy** with at least the minimum New Mexico statutory required limits for this type of Hauling must be submitted to the City before the price agreement is awarded. This Truck Insurance Policy must remain active throughout the term of the price agreement.
Contractor must list below the Dispatching Operations Base (DOB) address where trucks will leave and return. This DOB must remain the same throughout the term of the Agreement.

DOB Address: _24 Taylor Road, Santa Fe, NM 87508

Payment
Loads transported to the landfills will be paid on a per trip basis as calculated in the bid award, attached hereto as Exhibit A. The trip will also include beginning and ending truck odometer mileage for the Round Trip on the invoice. Trips to the landfill will be paid based on actual hours required to complete the trip at the hourly rate defined in the Price Item Schedule. Round Trip will be calculated from the DOB address of the awarded Contractors (above).

Minimum Requirements of Qualifications:
Contractor must be a registered Special Waste Hauler under the New Mexico Environment Department.

3. Compensation.

Payment:
The total compensation under this Agreement shall not exceed $500,000.00 per year over the four-year term of this contract, including New Mexico gross receipts tax paid at the rate of 8.1875%. 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 services, in excess of the total compensation amount being provided.

Payment shall be made upon Acceptance of each Deliverable and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the City no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

D. Performance Bond.
Not Applicable. The Parties agree there is no Performance Bond.

5. **Term**

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This contract shall terminate **four (4) years from date of final signature.** In no event shall the contract exceed a total of ten (10) years in accordance with NMSA 1978, Sections 13-1-150 through 152.

6. **Default and Force Majeure**

The City reserves the right to cancel all, or any part of any orders placed under this contract without cost to the City, if the Contractor fails to meet the provisions of this contract 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 sub-contractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the sub-contractor 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 paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. **Termination**

A. Grounds. The City may terminate this Contract 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 Contract based upon the City's uncured, material breach of this Contract.

B. Notice: City Opportunity to Cure.

1) The City shall give the 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 Contract 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 Contract 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 Contract, the Contractor is suspended or debarred by the City; or (iii) the Contract is terminated pursuant to Paragraph 17, "Appropriations", of this Contract.

C. Liability. Except as otherwise expressly allowed or provided under this Contract, 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 Contract. 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 CONTRACT.*

8. **Amendment**

A. This Contract 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 Paragraph 7 herein, or to agree to the reduced funding.

9. **Status of Contractor**

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City because of this Contract. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. **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.

11. **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.

12. **Non-Collusion**

In signing this Contract, 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.

13. **Inspection of Plant**

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

The Contractor agrees that the tangible personal property or services furnished under this Contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that 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. The contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Contract, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Contract and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. 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.

17. **Appropriations**

The terms of this Contract, and any orders placed under it, 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 legislature, this Contract, and any orders placed under it, shall terminate 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.

18. **Release**

The Contractor, upon final payment of the amount due under this Contract, releases the City, its officers, and employees, from all liabilities, claims and obligations whatsoever arising from or under this Contract. 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.

19. **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 prior written approval by the City.

20. **Conflict of Interest**

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. The Contractor shall comply

with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

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 Paragraph 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 Paragraph 20 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 Paragraph 20 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.

21. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

22. **Scope of Contract; 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 **ITB # 25164 - Dewatered Sewage Sludge Disposal** and the Contractor's response to such document(s) are incorporated herein by reference and is included in the order of precedence.

23. **Notice**

The Procurement Code, 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 bribes, gratuities, and kickbacks.

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure 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.

25. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

26. **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.

27. **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.

28. **Limitation of Liability**

The Contractor's liability to the City, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the City's, claim. The foregoing limitation does not apply to paragraph 25 of this Contract or to damages resulting from personal injury caused by the Contractor's negligence.

29. **Incorporation by Reference and Precedence**

If this Contract has been procured pursuant to a request for proposals, this Contract is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Contract, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Contract in reverse chronological order; (2) the Contract, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

30. **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.

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

A. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Contract requires. The City has the right to inspect and test all services contemplated under this Contract to the extent practicable at all times and places during the term of the Contract. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Contract, the City may require the Contractor to re-perform the services in conformity with the requirements of this Contract at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Contract; and

(2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Contract, the City may:

(1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or

(2) terminate the contract for default.

33. **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.

34. **Impracticality of Performance**

A party shall be excused from performance under this Contract for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

35. **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.

36. **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.

37. **Patent, Copyright and Trade Secret Indemnification**

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Contract infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret

infringement relating to any product or services provided under this Contract, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

1) give the Contractor prompt written notice within 48 hours of any claim;
2) allow the Contractor to control the defense of settlement of the claim; and
3) cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

1) provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
2) replace or modify the product or service so that it becomes non-infringing; or,
3) accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

38. **Survival**

The Contract paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Contract. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Contract shall survive this Contract.

39. **Disclosure Regarding Responsibility**

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars ($60,000.00) with any City for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. The Contractor shall provide immediate written notice to the City if, at any time during the term of this Contract, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Contract. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Contract. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Contract pursuant to the conditions set forth in Paragraph 7 of this Contract.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person

in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Contract. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City may terminate the involved contract for cause. Still further the City may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City.

40. **Suspension, Delay or Interruption of Work**

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Contract.

41. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the City: Ron Lujan
73 Paseo Real
Santa Fe, NM 87507
pfheerbrandt@santafenm.gov

To the Contractor: Pedro Luis Marquez Carbajal
Peter's Trucking Inc.
2 Tusa Drive
Santa Fe, NM 87508
peterstruckinginc23@gmail.com

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

To the Contractor: Pedro Luis Marquez Carbajal
Peter's Trucking Inc.

2 Tusa Drive
Santa Fe, NM 87508
peterstruckinginc23@gmail.com

42. **Succession**

This Contract shall extend to and be binding upon the successors and assigns of the parties.

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, MAYOR

DATE:_____

CONTRACTOR:
PETER'S TRUCKING INC.

Pedro l. Marquez C.
Pedro l. Marquez C. (Aug 6, 2025 18:46:47 MDT)
Pedro Luis Marquez Carbajal, President

DATE: Aug 6, 2025

NMBTIN#: 03-625002-003

ATTEST:

_____
CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Aug 7, 2025 09:48:53 MDT)
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
FINANCE DIRECTOR

Item	Approx. Qty.	UOM	Article and Description	Unit Price	Comments
1	5	HR - Hours	Number of hours necessary to deliver sludge from the Paseo Real Wastewater Reclamation Facility to Estancia Valley Regional Landfill.	$1,050 @ $210/hr	5 hours round trip. This includes loading and unloading time. We are estimating this amount of time because the sludge tends to stick to the trailer, so it takes longer to unload. This travel time is also taking into consideration that a semi-truck takes longer to reach a location than a conventional vehicle.
2	2	HR - Hours	Number of hours necessary to deliver sludge from the Paseo Real Wastewater Reclamation Facility to Caja del Rio landfill.	$420 @ $210/hr	2 hours round trip. This includes loading and unloading time. We are estimating this amount of time because the sludge tends to stick to the trailer, so it takes longer to unload. This travel time is also taking into consideration that a semi-truck takes longer to reach a location than a conventional vehicle.
3	7	HR - Hours	Number of hours necessary to deliver sludge from the Paseo Real Wastewater Reclamation Facility to Waste Management Valencia Regional Landfill.	$1,470 @ $210/hr	7 hours round trip. This includes loading and unloading time. We are estimating this amount of time because the sludge tends to stick to the trailer, so it takes longer to unload. This travel time is also taking into consideration that a semi-truck takes longer to reach a location than a conventional vehicle.
4	5	HR - Hours	Number of hours necessary to deliver sludge from the Paseo Real Wastewater Reclamation Facility to Sandoval County Landfill, Rio Rancho, NM	$1,050 @ $210/hr	5 hours round trip. This includes loading and unloading time. We are estimating this amount of time because the sludge tends to stick to the trailer, so it takes longer to unload. This travel time is also taking into consideration that a semi-truck takes longer to reach a location than a conventional vehicle.
5	8	HR - Hours	Number of hours necessary to deliver sludge from the Paseo Real Wastewater Reclamation Facility to Northeastern New Mexico Regional Landfill, Wagon Mound, NM.	$1,680 @ $210/hr	8 hours round trip. This includes loading and unloading time. We are estimating this amount of time because the sludge tends to stick to the trailer, so it takes longer to unload. This travel time is also taking into consideration that a semi-truck takes longer to reach a location than a conventional vehicle.
6	7	HR - Hours	Number of hours necessary to deliver sludge from the Paseo Real Wastewater Reclamation Facility to Cerro Colorado Landfill, Albuquerque, NM	$1,470 @ $210/hr	7 hours round trip. This includes loading and unloading time. We are estimating this amount of time because the sludge tends to stick to the trailer, so it takes longer to unload. This travel time is also taking into consideration that a semi-truck takes longer to reach a location than a conventional vehicle.
7	1	$/HR.	Hourly rate for sludge Hauling Services including all labor, fuel, licenses, and incidentals.	$210/hr	
8	1	%	Handling fee for direct payment of tip fees	$ 160.00	

MACALLISTER, LINDA M. (Contractor)

From: DUTTON-LEYDA, TRAVIS K.
Sent: Wednesday, April 23, 2025 9:43 AM
To: HEERBRANDT, PAUL F.; Purchasing DET
Cc: MACALLISTER, LINDA M.
Subject: RE: Scope of Work Determination

Greetings,

The scope of work as written would be General Services. This determination relates only to that question and is no comment on whether the scope of work or procurement method meet all legal standards. I reserve the right to change this determination if the scope of work differs from the scope of work submitted for the original determination. This procurement must be conducted using the processes and procedures set forth by the City of Santa Fe, Central Purchasing, the Procurement Manual, and state statutes.

Please note:

- Save this email as a PDF and upload it into the corresponding Munis records.
- Check with WorkQuest dba Horizons of New Mexico (vendor # 8673) (mloehman@horizonsofnewmexico.org) if this service appears on their approved list.
- If your request includes anything that needs to be reviewed and preapproved by another City Department/Division, please send the same SOW to the corresponding email address and include their response in your packet/Munis.

  -Treasury (Point of Sale Systems) – questions: drsena@santafenm.gov; clromero@santafenm.gov. Request signature from: clromero@santafenm.gov

  -IT components (everything IT) – questions: ereview@santafenm.gov. Request signature from: edcandelaria@santafenm.gov;
  Copy: zxdushdurova@santafenm.gov; lenobes@santafenm.gov; lfworstell@santafenm.gov

  -Vehicles – questions: fleet@santafenm.gov. Request signature from: dmjaramillo@santafenm.gov

  -Grants – questions: grants@santafenm.gov. Request signature from: evlujan@santafenm.gov

  - Construction, Facilities, Furniture, Fixtures, Equipment, etc. – questions: fmdreview@santafenm.gov. Request signature from: jsburnett@santafenm.gov

  -Emergency Related Purchases – questions oem@santafenm.govand. Request signature from: bgwilliams@santafenm.gov

  -Asset over $5k – questions: accountspayable@santafenm.gov. Request signature from: jxbolden@santafenm.gov

- Ensure that the appropriate templates and forms are used https://intranet.santafenm.gov/finance_1 and documented procedures/laws/rules are followed.

- > $20k per year, when processing this procurement, please ensure the procurement number issued by Munis and the procurement name are used in the appropriate documents and the subject of emails.
- If you are processing a procurement where the forecasted amount is =/> $60k, per NMSA 1978, Section 13-1-102, the procurement method must be ITB (if you choose not to use a cooperative or an existing contract). If you feel you need to process an RFP, you must get an Authorization and Plan approved before you process.
- < $20k per year, one quote is acceptable.
- From $20k to $60k per year, if you aren't using a cooperative or existing contract, you'll need to provide 3 quotes in your req. Must use the Munis Bid Module after 12/21/2023.
- Please keep this as part of the procurement file for future reference.
- Figure out your funding source and **inform Purchasing**. To ensure that the proper documents and language are used, it is important to identify the funding source for the subsequent contract. For instance, if federal funds are involved, the procurement request and subsequent contract must include the necessary federal language. Therefore, it is crucial to determine the funding source beforehand.
- Please review the pages linked below to determine whether any of the existing contracts/price agreements or cooperative agreements are applicable to this request. You might be able to use an existing price agreement to save time and money.
    - https://www.generalservices.state.nm.us/state-purchasing/statewide-price-agreements/ (if you choose to use a Statewide, you do not need to ask Horizons if they can do the work. State Purchasing must offer the SOW to Horizons prior to placing the award on their website.)
    - https://naspovaluepoint.org/categories/
    - https://www.omniapartners.com/publicsector/contracts
    - https://www.buyboard.com/home.aspx
    - https://www.h-gac.com/Home
    - https://www.gsaelibrary.gsa.gov/
    - https://www.sourcewell-mn.gov/contract-search

- Submit or send your request to the appropriate MS Teams channel or email address:
    - RFPs requests to https://teams.microsoft.com/l/channel/19%3ad63b9c8b586d424fa5eed34177146ac5%40thread.tacv2/RFP%2520Requests?groupId=a367d8c2-992f-4c74-8e7d-0ccb6950c9a1&tenantId=77b69f5a-55ed-4363-8616-4867b0bc707f
    - ITBs requests to https://teams.microsoft.com/l/channel/19%3a48e1e4588c0440a09cfbd9b907ed42d4%40thread.tacv2/ITB%2520Requests?groupId=a367d8c2-992f-4c74-8e7d-0ccb6950c9a1&tenantId=77b69f5a-55ed-4363-8616-4867b0bc707f
    - Determination requests to purchasing_det@santafenm.gov
    - And all other requests to purchasing@santafenm.gov

Thank you for submitting this scope of work for my review.

Book time to meet with me

Regards,

Travis Dutton-Leyda
Chief Procurement Officer
City of Santa Fe

200 Lincoln Avenue
Santa Fe, NM 87501
505-629-8351
tkduttonleyda@santafenm.gov

https://santafenm.gov/finance-2/purchasing-1

Vendor Registration and Current Procurement Opportunities:
https://cityofsantafenmvendors.munisselfservice.com/Vendors/VBids/SearchResults.aspx

Internal Link: https://intranet.santafenm.gov/central_purchasing_division_cpd

CITY OF SANTA FE
FINANCE

"A journey of a thousand miles begins with a single step" ~ Lao Tzu

---

From: HEERBRANDT, PAUL F. <pfheerbrandt@santafenm.gov>
Sent: Wednesday, April 16, 2025 11:00 AM
To: Purchasing DET <purchasing_det@santafenm.gov>
Cc: MACALLISTER, LINDA M. <lmmacallister@santafenm.gov>
Subject: Scope of Work Determination

I have two trucking companies under contract now. Looking to get more to increase rate of disposal now that I have more landfill options.

Dewatered Sewage Sludge Hauling
Specifications:

The City of Santa Fe's (The City) Wastewater Management Division (WWMD) is seeking bids for On-Call services for transport of dewatered sewage sludge (NM Special Waste) from the Paseo Real Wastewater Reclamation Facility (PRWRF) to either the Caja del Rio Landfill, Santa Fe, NM, Estancia Valley Regional Landfill, Moriarty, NM, or the WM Valencia Regional Landfill, Los Lunas, NM., Sandoval County Landfill, Rio Rancho, NM, Northeastern New Mexico Regional Landfill, Wagon Mound, NM, Cerro Colorado Landfill, Albuquerque, NM, as directed by the City. The awarc Bidder will supply the appropriate vehicles that will be used in the transportation process. The required trips will va depending on the needs of the facility. WWMD will dictate which one of the 6 locations to deliver to at the time of th order. All tip fees will be paid directly to the landfill by the Contractor and billed to the City, including the proposed handling fee.

The City is the operator of the Paseo Real Wastewater Reclamation Facility (PRWRF) which produces about 1000 w tons per month of bio-solids in conducting its dewatering operations. Some of the resulting dewatered sewage slud composted, but the rest will be transported to a landfill for disposal. However, no minimum volume of dewatered sewage sludge is guaranteed. The actual quantity of material may vary from the estimated amount and could be reduced to zero. The City of Santa Fe reserves the right to utilize dewatered sewage sludge in any manner allowed b law with a corresponding reduction in the volume of material being disposed of at the landfills.

Storage capacity at the facility is limited and operations are generally 8 hours per day, 5 days per week. PRWRF sta notify contractor of the sludge hauling needs on a weekly basis, providing a minimum of 48 hours' notice of the nee hauling services. The Contractor will be available for hauling loads at the frequency and interval that keeps the dewatering facility operational. The awarded bidder will work with PRWRF to develop communication protocols tha engender an efficient and safe biosolids operation.

Service Requirements
Required trips will vary depending on the needs of the facility. Each time the truck is loaded, the driver will be responsible for acquiring a paint filter test and pH test report, conducted by the PRWRF in-house laboratory before leaving the facility and provide the landfill with a copy of the passing test results. If this test(s) fails, then no load wil commence. The driver will also be provided with a completed Special Waste Manifest for the destination landfill. Tl driver will be required to carry copies provided by PRWRF staff of the PRWRF Special Waste Spill Response Plan. Th Contractors' drivers must also hold a Special Waste Hauler Registration with the New Mexico Environment Departr Solid Waste Bureau. This Waste Hauler Registration will remain active and current throughout the term of the price agreement and must be submitted to the City before an award is issued.

Full Loads Required:
The Contractor will be required to haul a full load. PRWRF will assist with loading and will check trailers for full loac Overfilled loads can spill over the corners of the trailer and a certain amount of expansion of loads has been observ during summer months. The contracted biosolids hauler will be expected to take all overfill and underfill considera into account on a per trip basis.

Equipment Requirements:
The Contractor will supply all equipment (truck, tarp, etc.) necessary for hauling of the dewatered sewage sludge to landfill. Minimum load capacity shall be 10 tons. The awarded bidder is responsible for maintaining their vehicles ir good mechanical condition and maintaining compliance with all applicable local, state, and federal laws and regulations.

Operating Expenses
Contractor agrees to bear *all* costs and expenses incidental to the operation of the equipment, whether empty or loaded, including without limitation, all risks of depreciation, all maintenance (including cleaning and washing), oil, tires, repairs, business taxes, consumption and sales taxes, personal taxes, transportation taxes, insurance covera required herein, workers compensation premiums if required, payroll taxes, licenses, vehicle registration renewal f base plates, and all highway tolls. If the City is required to withhold or pay any taxes or make any other payment wit respect to fees owed by contractor, contractor will reimburse the City or permit the City to make deduction for taxe other payments required from any monies owed to contractor. **Contractor will pay all tipping fees directly to the relevant disposal site and bill the City, including the proposed handling fee**. A valid **Certificate of Liability Insurance** must be submitted to the City before the contract is awarded and must remain current throughout the te of the price agreement. A valid **Truck Insurance Policy** with at least the minimum New Mexico statutory required li for this type of Hauling must be submitted to the City before the price agreement is awarded. This Truck Insurance F must remain active throughout the term of the price agreement.
Bidder must list below the Dispatching Operations Base (DOB) address with Bid Submittal. This DOB must remain t same throughout the term of the Price Agreement. The DOB is defined as where the trucks will leave and return.

DOB Address: _____

Payment
Loads transported to the landfills will be paid on a per trip basis as calculated in the bid award. Trip will also include beginning and ending truck odometer mileage for the Round Trip on the invoice. Trips to the landfill will be paid bas actual hours required to complete the trip at the hourly rate defined in the Price Item Schedule. Round Trip will be calculated from the DOB address of the awarded contractors (above).

Minimum Requirements of Qualifications:
Contractor must be a registered Special Waste Hauler under the New Mexico Environment Department.

P. Fred Heerbrandt, P.E.

Engineer Supervisor Wastewater

City of Santa Fe

505-955-4623

pfheerbrandt@santafenm.gov

Log # *{Finance use only}*	
Journal # *{Finance use only}*	

City of Santa Fe, New Mexico
BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME	DATE
Public Utilities/Wastewater	8/18/2025

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WW Operatins Admin/ervice Contracts	5000361	510310		$ 500,000	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
JUSTIFICATION: *(use additional page if needed)* *--Attach supporting documentation/memo*				$ 500,000	$ -

To increase account 510310 for PERTER'S TRUCKING. Plese see memo for detail and please add **PETERS** for posting of BAR

{Complete section below if BAR results in a net change to ANY Fund}	
Fund(s) Affected	Fund Balance Increase/(Decrease)
500	(500,000)
TOTAL:	**(500,000)**

Linda MacAllister 8/18/2025
Prepared By *{print name}* Date

Division Director Signature *{optional}* Date

Department Director Signature Date

{Use this form for Finance Committee/ City Council agenda items ONLY}

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins 08/19/2025
Budget Officer Date

Finance Director *{≤ $5,000}* Date

City Manager *{≤ $60,000}* Date

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 07/29/2025

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	CONTACT NAME: Nikki Lopez	
Insurance del Norte 810 Calle Mejia Suite 105 Santa Fe NM 87501	PHONE (A/C, No, Ext): (505) 820-6726	FAX (A/C, No): (505) 424-0242
	E-MAIL ADDRESS: nlopez@delnorteins.com	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
Peter's Trucking Inc 2 Tusa Dr Santa Fe NM 87508	INSURER A : United Financial Casualty Comp	11770
	INSURER B : Markel Insurance Company	38970F
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** CL2572915844 **REVISION NUMBER:**

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	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:	Y		968073452	04/01/2025	04/01/2026	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☒ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY	Y		968073452	04/01/2025	04/01/2026	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) Policy Fee	$ 1,000,000 $ $ $ $
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION $						EACH OCCURRENCE AGGREGATE	$ $ $
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N: Y If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		MWC0165568-06	03/04/2025	03/04/2026	☐ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 100,000 $ 100,000 $ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

2010 Peterbilt 387 Vin # 1XP7D49X8AD799030
1992 Trail Trailer Vin # 1TKS0422XNM051061
2017 Armor Lite Trai Trailer Vin # 56EA65D24HA000324
1996 Peterbilt 377 Vin # 1XPCD69X0TN418598

CERTIFICATE HOLDER

City of Santa Fe
Po Box 909
Santa Fe NM 87504

CANCELLATION

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

Shannon N. Lopez+

© 1988-2015 ACORD CORPORATION. All rights reserved.

AGENCY CUSTOMER ID: 00013627

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Insurance del Norte	Peter's Trucking Inc
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance: Notes

2010 Peterbilt 387 Vin # 1XP7D49X8AD799030
1992 Trail Trailer Vin # 1TKS0422XNM051061
2017 Armor Lite Trai Trailer Vin # 56EA65D24HA000324
1996 Peterbilt 377 Vin # 1XPCD69X0TN418598

© 2008 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD

ADDITIONAL COVERAGES

Ref #	Description	Coverage Code	Form No.	Edition Date
	GL COV PROP DMG	GLCPD		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
1,000,000	2,000,000				

Ref #	Description	Coverage Code	Form No.	Edition Date
	Products/Completed Ops Aggregate	PRDCO		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
2,000,000					

Ref #	Description	Coverage Code	Form No.	Edition Date
	MDEXP	MDEXP		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
5,000					

Ref #	Description	Coverage Code	Form No.	Edition Date
	GL COV BI	GLCBI		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
1,000,000	2,000,000				

Ref #	Description	Coverage Code	Form No.	Edition Date
	Fire Damage	FIRDM		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
100,000					

Ref #	Description	Coverage Code	Form No.	Edition Date
	Personal & Advertising Injury	PIADV		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
1,000,000					

Ref #	Description	Coverage Code	Form No.	Edition Date
	Premium discount	PDIS		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

Ref #	Description	Coverage Code	Form No.	Edition Date
	Catastrophe	CATAS		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
					$4.00

Ref #	Description	Coverage Code	Form No.	Edition Date
	Schedule rate adjustment	SRA		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
					$212.00

Ref #	Description	Coverage Code	Form No.	Edition Date
	Expense constant	EXCNT		

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
					$160.00

Ref #	Description	Coverage Code	Form No.	Edition Date

Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

OFADTLCV

Copyright 2001, AMS Services, Inc.

PETERS packet ITB GENERAL SERVICES int sign

Final Audit Report 2025-08-19

Created:	2025-08-19
By:	ALYSSA PEREZ (aeperez@santafenm.gov)
Status:	Canceled / Declined
Transaction ID:	CBJCHBCAABAA4gdKDDkAozjdOQBIwI9EdGguZs04LSw-

"PETERS packet ITB GENERAL SERVICES int sign" History

Document created by ALYSSA PEREZ (aeperez@santafenm.gov)
2025-08-19 - 7:20:08 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
2025-08-19 - 7:23:47 PM GMT

Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2025-08-19 - 8:32:27 PM GMT- IP address: 104.47.64.254

Document declined by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
Decline reason: The FY26 WWD budget already includes $1M for sludge hauling services (split 50/50 between Serrano Trucking and GM Emulsion). This BAR should not be necessary until that current $1M has been spent.
2025-08-19 - 8:36:01 PM GMT- IP address: 63.232.20.2

CITY OF SANTA FE

The Purchasing Memo

Date: August 11, 2025

To: Governing Body, Finance Committee, and Public Works & Utilities Committee

From: P. Fred Heerbrandt, P.E., Engineer Supervisor P. Fred Heerbrandt, P.E.

Via: Michael Dozier, Wastewater Management Division Director

Via: Jesse Roach, Interim Public Utilities Director

Subject: On-Call Collection System Construction Contract

Vendor Name: AnchorBuilt, Inc.

Munis Vendor Number: 9672

ITEM AND ISSUE:

The Public Utilities Department respectfully requests your review and approval of a On-Call construction contract in the amount of $1,081,875.00 per year for a total of $4,327,500.00 including NMGRT for Construction Services over a four-year term with AnchorBuilt, Inc.

Request for Approval of a Budget Adjustment Resolution (BAR) in the amount of $1,081,875.00 for Fiscal year 2026.

CONTRACT NUMBER:

The FY26 Munis contract number is 3260110

BACKGROUND AND SUMMARY:

The City of Santa Fe, Public Utilities Department, Wastewater Management Division (Division) wishes to establish a Price Agreement for On-Call Repair, Replacement, Extension, and Rehabilitation of Sewer Collection System Construction services work by New Mexico licensed contractors to provide miscellaneous repairs, upgrades, improvements, replacements, new construction services and material for facilities throughout the Paseo Real Wastewater Reclamation Facility, the Sanitary Sewer Collection System, and other remote locations.

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: Enterprise Fund/Fund 500

Munis Org Name/Number: Wastewater Capital Projects/5000375

Munis Object Name/Number: WIP Construction/572970

Budget Officer / Designee: Andy Hopkins **Date:** 08/19/2025

Budget Officer Comment/Exceptions: _____

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-102, ITB

ITB 25119 – On-Call Collection System Construction Services – 3 Awards

Chief Procurement Officer (CPO)/Designee: _____ **Date:** 08/22/2025

CPO Comment/Exceptions: _____

ASSOCIATED APPROVALS:

IT Components included? ☐ Yes | ☒ No

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Treasury/Point of Sale 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:

CPO Service Determination Email
On call Construction Contract-rate sheet
Certificate of Liability Insurance (COI)

Item #: _____
Munis Contract #: 3260110
ITB #: 25119

CITY OF SANTA FE

CONSTRUCTION PRICE AGREEMENT

ON-CALL COLLECTION SYSTEM CONSTRUCTION SERVICES

THIS PRICE AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **AnchorBuilt, 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 City, through its Governing Body, is authorized to enter into a construction Price Agreement for the project; and

WHEREAS, the City has procured this Price Agreement according to the established State and Local Purchasing procedures for Price Agreements of the type and amount; and

The City and the Contractor hereby agree as follows:

1. Scope of Work

A. The Contractor shall perform the following work:

The City of Santa Fe, Public Utilities Department, Wastewater Management Division (Division) wishes to establish a Price Agreement for On-Call Repair, Replacement, Extension, and Rehabilitation of Sewer Collection System Construction services work by New Mexico licensed contractors to provide miscellaneous repairs, upgrades, improvements, replacements, new construction services and material for facilities throughout the Paseo Real Wastewater Reclamation Facility, the Sanitary Sewer Collection System, and other remote locations.

The Division shall provide, at a minimum, a detailed scope of work and/or drawings, generally defining the construction work required for the project. The Contractor shall be responsible for verifications of all existing conditions, measurements, and dimensions for bidding.
The award of this Price Agreement is without assurance of quantity or dollar amount of work to be performed.

Contractors shall have the technical staff to perform diagnostic services and provide professionally prepared, stamped drawings, if needed, to obtain installation or construction permits. The Contractor is responsible for obtaining all required licenses, fees and permits required to perform the work. Contractor shall be responsible for any applicable Local, County, State and Federal requirements and permits including, but not limited to, the City of Santa Fe's Stormwater Pollution Prevention Program and Stormwater BMPs.

The City of Santa Fe Wastewater Management Division shall be able to utilize this On-Call Price Agreement as needed and as funding is available.

Wage Rates:

All work covered by this Price Agreement shall be in accordance with applicable City and State laws and is subject to the minimum wage rate determination issued by the Department of Workforce Solutions (DWS), if applicable.

A wage rate decision is required by the Public Works minimum Wage Act for construction, demolition or renovation purposes on projects costing sixty thousand dollars ($60,000) or more. The Contractor agrees to comply with the current prevailing wage rate schedule when applicable. For current wage rates or for additional information, visit: http://www.dws.state.nm.us . The Division will request a wage rate determination from the DWS for each project that is $60,000 or more.

When submitting a quote for a specific project valued at more than sixty thousand dollars ($60,000) for any portion of a public works project that is subject to the New Mexico Public Works Act, the Contractor is required to be registered with the Labor and Industrial Division of the Department of Workforce Solutions prior to submitting its quote. The Division may reject any quote that fails to provide a Public Works registration number for the prime Contractor and all other listed Contractors or subcontractors.

Other:

All work shall be in accordance with applicable City and state laws, the International Building Code (IBC) and the New Mexico building codes. The Contractor shall be responsible for all permits associated with this work as required by the governmental Authority Having Jurisdiction (AHJ). All work shall be in strict compliance with the national and state building mechanical, plumbing and electrical codes including SMACNA, and ASHRAE standards.

Contractors shall be capable of providing all coordination, supervision and services required for comprehensive general construction, facilities replacement, upgrade and improvement projects and to provide new construction services including incidental design. It can include site and utility work, mechanical work, pavement restoration, facilities repair, renovation, backfill services, digging, ditching, rock stabilization, concrete, and pour in place and form place finish. The utility work shall include pumping systems, gravity sewers, manholes, force mains, and related facilities. It may also include demolition and abatement projects.

All material shall be new and of the highest quality available for the type of work being performed. The purchase of major equipment or material must be preceded by submission of submittal data on the proposed equipment or material and shall be reviewed and approved by the Division.

The requesting entity reserves the right to purchase materials or specialty services directly from existing Statewide Price Agreements and other sources, and to provide these materials to the Contractor. The Contractor shall provide an itemized, quantifiable list of materials required for the project. Specialty services provided from Statewide Price Agreements and other sources shall be coordinated by the Contractor.

If the Contractor is requesting reimbursement for materials used on the work, copies of the invoices for the materials must be included when submitting invoices/pay applications. The Contractor may NOT add markups for the materials purchased.

The Division reserves the right to obtain quotes from multiple vendors covered under this Price Agreement and award a project to a contractor based on the quotes.

The Division reserves the right to provide an escort and/or full-time supervision of the Contractor and its employees during any or all phases of a project, should the Division feel it is in its best interest to provide these extraordinary security services.

The Division reserves the right to escort any or all employees of the Contractor off its property, for any inappropriate conduct or actions that jeopardize the safety, security, or wellbeing of the facility or any individual. Inappropriate behavior by the Contractor, its employees or subcontractors may be grounds for immediate removal from this Price Agreement. Any employee of the Contractor found in violation of any law, while on City property, will be prosecuted.

Contractor:

No person shall act as a Contractor without a license issued by the Construction Industries Division (CID), classified to cover the type of work to be performed. No bid on a Price Agreement shall be submitted unless the Contractor has a valid Contractor's license issued by the CID to bid and to perform the type of work to be undertaken, as set forth in §60-13-12, NMSA 1978.

Safety shall be of main concern and enforced by the Contractor on site. The Contractor shall comply with all local, state and federal laws governing safety, health and sanitation. The on-site superintendent shall always have a minimum OSHA 10 and preferably OSHA 30 card with them when on the jobsite. The Division shall not in any way be responsible for any fines set forth for such violations of codes, OSHA standards or any other governing agency having jurisdiction at the work site. The Contractor shall provide all needed safeguards, safety devices, protective equipment and take any actions necessary to protect the life and health of employees on the job; the safety of the public and to protect the property of the Division in connection with the performance of the work covered by this price Agreement.
All personnel working on the project and providing these services shall be experienced and certified in all areas related to this work and required by this Price Agreement. Journeymen level personnel shall have the ability and necessary skills to diagnose problems and to make the appropriate decisions needed to provide these services.

The Contractor shall follow the Occupational Safety and Health Act (OSHA) 29 CFR 1910.147 Standard pertaining to "Lockout/Tagout" procedures for hazardous energy.

The Contractor shall agree to provide required labor within 24 hours for emergency situations.

Contractor's price shall include labor costs, permits, overhead, profit, insurance, equipment, tools and any other fees required to successfully complete the work requested. The Contractor shall be capable of providing a work force with supervision, adequate to perform work for a forty (40) hour work week during normal working hours with the option of working non normal or overtime hours if

required. The Contractor shall be responsible for all permits, fees, and State and/or City inspections associated with their work.
Subcontracting of work is allowed and shall have prior approval by the Division. Subcontractors shall have the appropriate current valid Contractor's licenses for their work. Proof of licenses shall be furnished upon request.

There will be NO markups allowed for adding subcontractor costs or to cover general conditions (administrative costs and other related expenses) allowed on any of the quotes issued pursuant to this Price Agreement. If a subcontractor is hired for the project the reimbursement must be at actual cost of the subcontractor's cost. The cost of the subcontractor will be added at time of invoicing as a separate item to be paid by the Department.
Furnishing of submittal data for any/all new equipment and materials as well as O&M' s is required. Training of site personnel for the proper operation of newly installed equipment/systems and its related controls will be required for completion. This training will be acceptable to the person in charge of the facility and/or the City's Project manager in charge of the project.

The Contractor shall provide all protective coverings necessary to protect existing, adjacent finishes while performing its work. If any damage is encountered during the contractor's work, the contractor will be held responsible for repairing any damage done by his employees, subcontractors, and vendors. The Contractor shall restore any damage to existing and/or adjacent finishes damaged while performing work and to make new work inconspicuous with the existing adjacent finishes.

The Contractor and its employees agree to cooperate with and to abide by the rules and requirements of the Division to not interfere with the daily operations of the Division or to jeopardize the health, safety or welfare of the employees or general public conducting business with the Division.

Clean Up and Storage:

A. The Contractor will provide off-site legal disposal of all waste products, trash, and debris. The Division's trash receptacles will not be used by the Contractor. Sanitary facilities will "not" be available at the job site. Contractor shall be responsible for the provision and maintenance of portable toilets.
B. The Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of the Work, the Contractor shall remove the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials and shall then thoroughly clean the premises and the site to the Division's satisfaction.
C. Materials or equipment shall be delivered to the project in the manufacturer's original sealed, labeled containers and shall be adequately protected against moisture, dust, tampering or damage from improper handling or storage. Materials shall not be delivered to the site before they are needed.
D. Storage of materials and construction equipment shall be coordinated with the Division.

Task Order:

The Contractor shall be required to provide On-Call Construction Services for any number of the activities listed under Scope of Work upon the request of the Division. When a service is identified, the Division shall provide, at a minimum, a detailed scope of work and/or drawings defining work

required. Each project will be individually described in a "Task Order". The Task Order will describe the scope of work, the duration of the project with the date of Substantial Completion and if there are liquidated damages for not meeting the date of substantial completion. The date of Substantial Completion is the date when the space can be occupied or the Work used/operated and is turned over to the User Agency. Final completion is the date when the project is totally complete, the punch list work complete and the Contractor's final pay application/invoice is approved. The terms and conditions of the Contractor's Price Agreement will apply to all Task Orders.

Upon receiving the City's Task Order, the Contractor shall promptly visit the site and compare the Division's scope of work and/or drawings to the existing conditions and provide all services called for in addition to the requirements set forth in this Price Agreement. The Contractor will be required to provide a written quote (based upon the rates submitted in the Bid Form) sub-contractors list (including subcontractor's CID licenses) and cost summary to include the work to be performed, sub-contractors cost and the amount of time required for the completion of the project and submit to the Division at no cost to the Division. Project schedules, negotiated price, and completion dates shall be determined on a project-by-project basis and dependent upon the urgency of that task.

If any equipment or system cannot be economically repaired or has reached the end of its life cycle, the Contractor shall justify with costs and other information they need for replacement. If replacement is recommended, the Contractor will provide written justification for system and/or the model, size, and type of unit recommended along with any applicable efficiency data. The Division's standards will be discussed and taken into consideration when proposing replacement units or systems. Any replacement unit shall be reviewed and approved by the requesting entity.

Change Orders:

Any change orders to the project scope will require an additional Task Order with backup materials and labor costs and shall be substantiated that there was no way of knowing the additional services were needed when the original quote was provided. Change orders shall be managed closely by the Division. Preventative measures shall be taken by both the contractor and the Division prior to issuing the Notice to Proceed. Such measures may include soil tests (soil boring); clarification of ambiguity in the project plan, the scope of work, the Task Order, the drawings, etc.; the project scope should be completely defined and agreed upon before any work begins.

Other Construction Related Terms and Conditions:

Mediation:

Any controversy or claim arising between the parties shall be settled by mediation if the parties cannot reach a mutually agreeable solution. The parties shall endeavor to resolve their disagreement by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the procedures of the New Mexico Public Works Mediation Act (NMSA §13-4C-1 et seq.) except that before any party may select a mediator it must confer in good faith with the other party concerning the selection of a mutually acceptable mediator. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of notice of mediation session, unless stayed for a longer period by agreement of the parties or court order.

Inspection of Work:

If a Purchase Order is issued for the purchase of services, the following terms shall apply when applicable:

A. Services include services performed, workmanship, and material furnished or utilized in the performance of services.
B. The Contractor shall provide and maintain an inspection system acceptable to the Division covering the services under the Purchase Order. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Division during the term of performance of the Work and for as long thereafter as required.
C. The Division has the right to inspect and test all services contemplated to the extent practicable at all times and places during the term of the Project. The Division shall perform inspections and tests in a manner that will not unduly delay or interfere with the Contractor's performance.
D. If the Division performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Purchase Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
E. If any part of the services does not conform with the requirements, the Division may require the Contractor to re-perform the services in conformity with the requirements at no increase in Purchase Order amount. When the defects in services cannot be corrected by re-performance, the Division may:
   (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements; and
   (2) reduce the Purchase Order price to reflect the reduced value of the services performed.
F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements, the Division may:
   (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the Division that is directly related to the performance of such service; or
   (2) cancel the Purchase Order for default.

Suspension, Delay or Interruption of Work:

The Division may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period as the Division may determine. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized.

If at any time there is a delay in the critical path of the Work due to postponement, due to the Contractor's efforts to justify an extension of the time or an increase in the Agreement Price beyond the deadlines or due to the Contractor's refusal to proceed with any of the approved Work, such delay and any Contractor costs resulting from it shall not serve as the basis for the extension of the Time for Completion or Agreement Completion Date or for an increase in the Price Agreement Price.

Permits and Fees:

A. IF APPLICABLE- The Contractor shall secure and pay for the Building Permit and other permits and governmental fees, licenses and inspections and Certificate of Occupancy necessary for

proper execution and completion of the Work. Changes or modifications to the Work shall include all requirements of this paragraph.

B. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.
C. IF APPLICABLE- Certificates of Inspection, use and occupancy will be delivered to the Division upon completion of the Work in sufficient time for occupation of the facility in accordance with the approved schedule for the Work. Contractor shall deliver a photocopy of the Building Permit to the Design Professional and requesting entity as soon as it is obtained.

Schedule, Progress Meetings and Reports:

A. The Contractor, promptly after being awarded a Project and before the first payment application, shall prepare and submit for the Division's information a Critical Path Construction Schedule for the Work that indicates the intended start and completion of the various construction activities, which shall be implemented and adhered to by the Contractor, Subcontractors, material suppliers and equipment suppliers. At a minimum, the schedule shall be a GANTT type schedule and shall not exceed time limits allowed by the Task Order or Notice to Proceed with no fewer work breakdown events than line items of the Schedule of Values.
B. The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Division.
C. Progress meetings shall be scheduled on a regular basis. The purpose will be to review the upcoming activities, any open issues and current progress. The Contractor shall keep any meeting minutes as needed. Progress schedules shall be updated regularly. A three-week look-ahead schedule should be presented at every project meeting. A new schedule shall be presented with any change orders.
D. The Contractor shall prepare a daily report each day the Contractor, subcontractors or any other entity are on the project. The daily reports shall be maintained at the site and be well organized. The Division may request copies at any time. The reports may include:
    1. report date and who prepared the report;
    2. weather conditions - low temp, visibility, humidity, wind, wind direction, cloud conditions, precipitation amount, other notes;
    3. companies present by name and their number of workers, work location, total man hours that day for each company;
    4. equipment-type, source, units of work done, location of work, hour meter reading;
    5. material brought to site-description, units, quantity, quality, location, time;
    6. visitors to site -name, company, time;
    7. safety concerns-company, contact, noticed by, work activity, safety issue, requirement, outcome: and
    8. quality assurance and control -company, description of issue, specification section, issued by.

Close-out Requirements:

The Contractor shall submit to the Division a separate and detailed Closeout Schedule indicating the date of Final Completion and all work to be completed before Final Completion including Close-Out requirements. The punch list of incomplete or inadequate work shall also be submitted when the work is substantially complete. Failure to include any item on the punch list does not alter the responsibility of the Contractor to complete all work in accordance with the Price Agreement Documents.

Before final completion can be achieved, all Work must be complete and accepted including the following as applicable:

a. Work associated with Punch List(s);
b. testing, balance or performance operations complete and in agreement that associated work is in compliance with the Price Agreement Documents;
c. one hard copy and one electronic copy in .pdf format of final approved test, balance or performance report(s) complete with directory of contents submitted to the Division;
d. as-Built drawings delivered in AutoCAD or electronic format;
e. written certification signed by the Division of delivery and stocking of extra material, equipment or components required by the Purchase Order at a location established by the Division;
f. delivery of all warranties required by the Work;
g. all keys, passes, codes, software or other methods or components of control or security which have been correctly and adequately accounted for and closed-out;
i. Start-up of any new equipment and training of staff on all new equipment;
l. Operations and Maintenance Manuals;
m. a certified statement of Release of Liens (AlA Document G706A or approved form) and Consent of Surety.

Warranty:

The Contractor shall warrant its work (non-roofing and equipment), for materials and for workmanship furnished and performed under this Price Agreement for a period of one (1) year minimum from the date of acceptance or Substantial Completion. The Contractor shall warrant its work for repairs or restoration of existing systems and work for ninety (90) days from the date of acceptance or Substantial Completion. It is understood that some equipment is far beyond its normal life and a warranty cannot be extended/supplied. Contractor must pass on to the Division warranties of replaced roofs and equipment offered by the manufacturer.

Bid information:

Hourly rates are requested for the three (3) levels of personnel.

Superintendent: a person with supervisory experience who maintains control of the work and work site. This person may or may not actually perform work on the project.

Journeyman or Experienced Worker: a person licensed by the State for work required and being performed or a person with many years of experience with a high rate of pay.

Laborer: a person with minimal experience, performing minor forms of labor.

Materials and Parts:

Contractor shall submit billings, based on actual Contractor costs for materials, less any applicable percentage for discounts. If there is no discount to be offered, enter zero. Contractor shall provide verification that materials purchased were used for the project. Any unused, billed for materials shall be turned over to the Division for which the work was provided.

The City of Santa Fe requires that all materials shall be new and of the highest quality and at the

best attainable price available for the type of work being performed.

No used materials shall be used on the project. Recycled materials specifically prepared for reuse to meet "LEED" certification may be permitted with the requesting entity's approval.

The City of Santa Fe reserves the right to award this Price Agreement to multiple vendors. Bidders must include pricing for all items starting from item 001 through item 008 in order to allow for accurate comparisons. If a Bidder fails to include one or more of those items his Bid may be rejected.

2. **Compensation**

A. The total amount payable to the Contractor under this Price Agreement, including gross receipts tax and expenses, shall not exceed one million dollars eighty one thousand eight hundred seventy five dollars ($1,081,875.00) per fiscal year, for a total of four million three hundred twenty seven thousand five hundred dollars ($4,327,500.00) including gross receipts tax for the four (4) year term of this Contract. The applicable gross receipts tax shall be shown as a separate amount on each billing or request for payment made under the contract, consistent with NMSA 1978, Section 13-1-108. Wage rates will be paid as set forth in Exhibit A.

B. 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.

C. 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 twenty-one days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.

D. 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.

E. **Notice of Extended Payment Provision for Grant Funded Price Agreements**. This price agreement allows the City to make payment within 45 days after submission of an undisputed request for payment for price agreements funded by grant money consistent with NMSA 1978, sec. 57-28-5(B).

A. **Term**

THIS PRICE AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This price agreement shall terminate **four (4) years from the date of final signature**.

B. Termination

A. Grounds. The City may terminate this price agreement for convenience or cause. For price agreements 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 Price Agreement based upon the City's uncured, material breach of this Price Agreement.

B. Notice; City Opportunity to Cure.

1) Except as otherwise provided in Paragraphs 7.A and 17, 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 Price 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 Price 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 Price Agreement, the Contractor is suspended or debarred by the City; or (iii) the Price Agreement is terminated pursuant to Paragraph 5, "Appropriations," of this Price Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Price 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 Price 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 PRICE AGREEMENT.*

C. **Appropriations**

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

D. **Status of Contractor**

The Contractor and its agents and employees are independent contractors performing construction 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 Price 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.

E. Construction Price Agreement **Performance and Payment Bond**

A. When a construction Task Order is approved 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 approval of the Task Order. 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. Approval of a task order 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 Task Order; 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 Task Order, 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 Task Order.

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.

F. **Assignment**

The Contractor shall not assign or transfer any interest in this Price Agreement or assign any claims for money due or to become due under this Price Agreement without the prior written approval of the City.

G. **Subcontracting**

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

H. **Release**

Final payment of the amounts due under this Price 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 Price Agreement.

I. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Price 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.

J. **Product of Service -- Copyright**

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

K. **Conflict of Interest; Governmental Conduct Act**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Price 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 Price Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Price Agreement, will continue to comply with, and that this Price 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 Price 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 Price 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 Price 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 Price 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 Price Agreement to the contrary, the City may immediately terminate the Price Agreement.

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

L. **Amendment**

A. This Price 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 Price 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 Price Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

M. **Change Orders**

A. Changes. The Contractor may only make changes or revisions within the Task Order as defined by Article 1 and/or Exhibit 1 after receipt of written approval by the Project 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 Task Order;
2) Due date of any Deliverable, as outlined in the Task Order;
3) Compensation of any Deliverable, as outlined in the Task Order;
4) Price Agreement compensation, as outlined in Article 2; or
5) Price Agreement termination, as outlined in Article 4.

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

1) The Contractor shall draft a written Change Request for review and approval by the Project Manager to include:
(a) the name of the person requesting the change;
(b) a summary of the required change;
(c) the start date for the change;
(d) the reason and necessity for change;
(e) the elements to be altered; and
(f) the impact of the change.

2. The Project 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 Project Manager are final. Change Requests, once approved, become a part of the Task Order, and become binding as a part of the original Task Order.

N. **Merger**

This Price 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 Price Agreement.

All terms and conditions of the **ITB #25119 – On-Call Collection System Construction Services,** 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 Price Agreement.

O. 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.

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

Q. Applicable Law

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

R. 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 Price Agreement may be terminated by the City.

S. Other Insurance

If the services contemplated under this Price Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Price 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 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. **Broader Coverage and Limits**. The insurance requirements under this Price Agreement shall be the greater of (1) the minimum coverage and limits specified in this Price 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 Price Agreement are sufficient to cover the obligations of Contractor hereunder.

C. Contractor shall maintain the above insurance for the term of this Price 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.

T. 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 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 under this Price Agreement shall not foreclose the right of the City to recover excessive or illegal payments

U. 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 Price 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 Price 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 Price 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.

V. New Mexico Tort Claims Act

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

W. Invalid Term or Condition

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

X. Enforcement of Price Agreement

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

Y. Notices

Any notice required to be given to either party by this Price 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: Gilbert Rodriguez
73 Paseo Real
Santa Fe, NM 87507

To the Contractor: Raymond Zamora
P. O. Box 27688
Albuquerque, NM 87125-7688

Z. Authority

If Contractor is other than a natural person, the individual(s) signing this Price 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 Price Agreement.

AA. Progress Payments

Based upon Application for Payment submitted to the City by the Contractor and Certificates for Payment issued by the City, the City shall make progress payments on account of the Price Agreement sum to the Contractor as provided in the Price Agreement documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Price Agreement Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Price Agreement sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the City; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Price Agreement sum, less such amounts as the City shall determine for all incomplete work and unsettled claims as provided in the Price Agreement documents.

BB. Final Payment

Final payment, constituting the entire unpaid balance of the Price Agreement sum, unless it is a disputed payment, shall be paid by the City to the Contractor within twenty-one (21) calendar days, after all deficiencies to the Price Agreement document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Price Agreement has been fully performed and a final Certificate for Payment has been issued by the City. In addition, the Contractor shall provide to the City a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

CC. General and Special Provisions

A. Terms used in this Price Agreement which are defined in the Conditions of the Price Agreement shall have the meanings designated in those Conditions.

B. An enumeration of the Contractor's General Comprehensive Liability Insurance requirements appears in the General Conditions of the Price Agreement for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts, which the City could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to comply with the law.

C. This Price Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Price Agreement.

D. The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration and the State Auditor. The City shall have the right to audit billings both before and after payment. Payment under this Price Agreement shall not foreclose the right of the City to recover excessive illegal payments.

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

F. The Contractor hereby warrants that the Contractor complies with the Americans with Disabilities Act, 29 CFR 1630.

G. Gender, Singular/Plural. Words of any gender used in this Price Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

H. Captions and Section Headings. The captions and section headings contained in this Price Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Price Agreement.

I. Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Price Agreement shall be attached to this Price Agreement at the time of execution and are hereby incorporated by reference as though set forth in full in this Price Agreement to the extent they are consistent with its conditions and terms.

J. Separability. If any clause or provision of this Price Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Price Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Price Agreement shall not be affected thereby.

K. Words and Phrases. Words, phrases, and abbreviations, which have well-known technical or trade meanings used in the Price Agreement documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.

L. Relationship of Price Agreement Documents. The Price Agreement Documents are complementary, and any
requirement of one Price Agreement Document shall be as binding as if required by all.

M. Pursuant to NMSA 1978, section 13-1-191, reference is hereby made to the Criminal Laws of New Mexico (including NMSA 1978, sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (NMSA 1978, sections 13-1-28 through 13-1-199) imposes civil and criminal penalties for its violation.

N. Pursuant to NMSA 1978, section 13-4-11. Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

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

CITY OF SANTA FE:

_____
ALAN WEBBER, MAYOR

DATE: _____

CONTRACTOR:

Raymond Zamora
_____
Raymond Zamora, President

DATE: Aug 11, 2025

NMBTIN#: 02-387068-00-0

ATTEST:

_____
ANDRÉA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Aug 11, 2025 14:46:27 MDT)
_____
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
_____
EMILY OSTER, FINANCE DIRECTOR

Bidder Instructions: *(Replace Department Instructions, prior to ITB release. Be sure to check row height to ensure the entire instructions are displayed.)*
Items - Bidders do not have the ability to add or delete items.
Approx. Qty. - Quantities provides are estimates, only, and do not establish a definite quantity contract. Actual quantities purchased under a resulting agreement may vary. Bidders may not change the Approx. Qty.
UOM (Unit of Measure) - Bidders do not have the ability to change the UOM. Any variation from the UOM identified may be provided in the Comments.
Article and Description - Bidder cannot change Article and Description. Any clarification, explanation, brand name identification, etc. must be provided in the
Unit Price - Bidders must provide pricing that conforms with the identified Unit Price.
Comments - Bidders may only provide comments to explain or clarify an item, identify a brand name, or provide information as specifically stated in the corresponding ITB document. Changes and additions to the items, including variations in pricing for an item, are not permitted. Any comments that do not conform to the requirements in the ITB or on this form will be disregarded, and will not be included in the resulting award, if bidder is awarded.

Item	Approx. Qty.	UOM	Article and Description	Unit Price	Comments
			Wage Rates for Projects Under $60,000.00		
1	1	Hourly	Superintendent – Regular Hourly Rate	$ 90.00	
2	1	Hourly	Superintendent – Overtime Hourly Rate	$ 90.00	
3	1	Hourly	Journeyman or experienced worker – Regular Hourly	$ 75.00	
4	1	Hourly	Journeyman or experienced worker – Overtime	$ 112.50	
5	1	Hourly	Laborer – Regular Hourly Rate	$ 45.00	
6	1	Hourly	Laborer – Overtime Hourly Rate	$ 67.50	
			Wage Rates for Projects Over $60,000.00		
7	1	Hourly	Superintendent – Regular Hourly Rate	$ 90.00	
8	1	Hourly	Superintendent – Overtime Hourly Rate	$ 90.00	
9	1	Hourly	Journeyman or experienced worker – Regular Hourly	$ 80.00	
10	1	Hourly	Journeyman or experienced worker – Overtime	$ 120.00	
11	1	Hourly	Laborer – Regular Hourly Rate	$ 50.00	
12	1	Hourly	Laborer – Overtime Hourly Rate	$ 75.00	
			Wage Rates for Emergency Response		
13	1	Hourly	Superintendent – Regular Hourly Rate	$ 90.00	
14	1	Hourly	Superintendent – Overtime Hourly Rate	$ 90.00	
15	1	Hourly	Journeyman or experienced worker – Regular Hourly	$ 80.00	
16	1	Hourly	Journeyman or experienced worker – Overtime	$ 120.00	
17	1	Hourly	Laborer – Regular Hourly Rate	$ 50.00	
18	1	Hourly	Laborer – Overtime Hourly Rate	$ 75.00	
			Other Rates		
19	1	Daily	Sanitary/toilet facilities, rental rates	$6.75	$200/Month
20	1	Rate/Mile	Travel Rate from the Contractors facility to the work site, pursuant to the New Mexico Per Diem and Mileage Act.	$1.25	

Item	Approx. Qty.	UOM	Article and Description	Unit Price	Comments
21	1	Disc	Discount off parts	0%	

Outlook

RE: Collection System On Call Construction

From DUTTON-LEYDA, TRAVIS K. <tkduttonleyda@santafenm.gov>
Date Thu 1/23/2025 11:52 AM
To HEERBRANDT, PAUL F. <pfheerbrandt@santafenm.gov>; Purchasing DET <purchasing_det@santafenm.gov>
Cc MACALLISTER, LINDA M. <lmmacallister@santafenm.gov>

Greetings,

The scope of work as written would be Construction. This determination relates only to that question and is no comment on whether the scope of work or procurement method meet all legal standards. I reserve the right to change this determination if the scope of work differs from the scope of work submitted for the original determination. This procurement must be conducted using the processes and procedures set forth by the City of Santa Fe, Central Purchasing, the Procurement Manual, and state statutes.

Please note:

- Save this email as a PDF and upload it into the corresponding Munis records.
- Check with WorkQuest dba Horizons of New Mexico (vendor # 8673) (mloehman@horizonsofnewmexico.org) if this service appears on their approved list.
- If your request includes anything that needs to be reviewed and preapproved by another City Department/Division, please send the same SOW to the corresponding email address and include their response in your packet/Munis.
  -IT components (anything IT) - ereview@santafenm.gov
  -Vehicles – dmjaramillo@santafenm.gov
  -Grants - grants@santafenm.gov
  - Construction, Facilities, Furniture, Fixtures, Equipment, etc. - jsburnett@santafenm.gov
  -Emergency Related Purchases - bgwilliams@santafenm.gov
  -Asset over $5k - jxbolden@santafenm.gov
- Ensure that the appropriate templates and forms are used https://intranet.santafenm.gov/finance_1 and documented procedures/laws/rules are followed.
- > $20k per year, when processing this procurement, please ensure the procurement number issued by Munis and the procurement name are used in the appropriate documents and the subject of emails.
- If you are processing a procurement where the forecasted amount is =/> $60k, per NMSA 1978, Section 13-1-102, the procurement method must be ITB (if you choose not to use a cooperative or an existing contract). If you feel you need to process an RFP, you must get an Authorization and Plan approved before you process.
- < $20k per year, one quote is acceptable.
- From $20k to $60k per year, if you aren't using a cooperative or existing contract, you'll need to provide 3 quotes in your req. Must use the Munis Bid Module after 12/21/2023.
- Please keep this as part of the procurement file for future reference.
- Figure out your funding source and **inform Purchasing**. To ensure that the proper documents and language are used, it is important to identify the funding source for the subsequent contract. For instance, if federal funds are involved, the procurement request and subsequent contract must

include the necessary federal language. Therefore, it is crucial to determine the funding source beforehand.

- Please review the pages linked below to determine whether any of the existing contracts/price agreements or cooperative agreements are applicable to this request. You might be able to use an existing price agreement to save time and money.
    - https://www.generalservices.state.nm.us/state-purchasing/statewide-price-agreements/ (if you choose to use a Statewide, you do not need to ask Horizons if they can do the work. State Purchasing must offer the SOW to Horizons prior to placing the award on their website.)
    - https://naspovaluepoint.org/categories/
    - https://www.omniapartners.com/publicsector/contracts
    - https://www.buyboard.com/home.aspx
    - https://www.h-gac.com/Home
    - https://www.gsaelibrary.gsa.gov/
    - https://www.sourcewell-mn.gov/contract-search

- Submit or send your request to the appropriate MS Teams channel or email address:
    - RFPs requests to https://teams.microsoft.com/l/channel/19%3ad63b9c8b586d424fa5eed34177146ac5%40thread.tacv2/RFP%2520Requests?groupId=a367d8c2-992f-4c74-8e7d-0ccb6950c9a1&tenantId=77b69f5a-55ed-4363-8616-4867b0bc707f
    - ITBs requests to https://teams.microsoft.com/l/channel/19%3a48e1e4588c0440a09cfbd9b907ed42d4%40thread.tacv2/ITB%2520Requests?groupId=a367d8c2-992f-4c74-8e7d-0ccb6950c9a1&tenantId=77b69f5a-55ed-4363-8616-4867b0bc707f
    - Determination requests to purchasing_det@santafenm.gov
    - And all other requests to purchasing@santafenm.gov

Thank you for submitting this scope of work for my review.

Regards,

Travis Dutton-Leyda
Chief Procurement Officer
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87501
505-629-8351
tkduttonleyda@santafenm.gov

https://santafenm.gov/finance-2/purchasing-1

Vendor Registration and Current Procurement Opportunities:
https://cityofsantafenmvendors.munisselfservice.com/Vendors/VBids/SearchResults.aspx

Internal Link: https://intranet.santafenm.gov/finance_1

CITY OF SANTA FE
FINANCE

"The future belongs to those who believe in the beauty of their dreams." — Eleanor Roosevelt

From: HEERBRANDT, PAUL F. <pfheerbrandt@santafenm.gov>
Sent: Thursday, January 23, 2025 10:52 AM
To: Purchasing DET <purchasing_det@santafenm.gov>
Cc: MACALLISTER, LINDA M. <lmmacallister@santafenm.gov>
Subject: Collection System On Call Construction

Requesting the determination of the contract type and procurement method for the following scope of work. Thanks

Collection System On Call Construction

The City of Santa Fe, Public Utilities Department, Wastewater Management Division (Division) wishes to establish a Price Agreement for On-Call Repair, Replacement, Extension, and Rehabilitation of Sewer Collection System Construction services work by New Mexico licensed contractors to provide miscellaneous repairs, upgrades, improvements, replacements, new construction services and material for facilities throughout the Paseo Real Wastewater Reclamation Facility, the Sanitary Sewer Collection System, and other remote locations.

The Division shall provide, at a minimum, a detailed scope of work and/or drawings, generally defining the construction work required for the project. The Contractor shall be responsible for verifications of all existing conditions, measurements, and dimensions for bidding.

The award of this Price Agreement is without assurance of quantity or dollar amount of work to be performed.

Contractors shall have the technical staff to perform diagnostic services and provide professionally prepared, stamped drawings, if needed, to obtain installation or construction permits. The Contractor is responsible for obtaining all required licenses, fees and permits required to perform the work. Contractor shall be responsible for any applicable Local, County, State and Federal requirements and permits including, but not limited to, the City of Santa Fe's Stormwater Pollution Prevention Program and Stormwater BMPs.

The City of Santa Fe Wastewater Management Division shall be able to utilize this On-Call Contract as needed and as funding is available.

Wage Rates:

All work covered by this Price Agreement shall be in accordance with applicable City and State laws and is subject to the minimum wage rate determination issued by the Department of Workforce Solutions (DWS), if applicable.

A wage rate decision is required by the Public Works minimum Wage Act for construction, demolition or renovation purposes on projects costing sixty thousand dollars ($60,000) or more. The Contractor agrees to comply with the current prevailing wage rate schedule when applicable. For current wage rates or for additional information, visit: http://www.dws.state.nm.us . The Division will request a wage rate determination from the DWS for each project that is $60,000 or more.

When submitting a quote for a specific project valued at more than sixty thousand dollars ($60,000) for any portion of a public works project that is subject to the New Mexico Public Works Act, the Contractor is required to be registered with the Labor and Industrial Division of the Department of Workforce Solutions prior to submitting its quote. The Division may reject any quote that fails to provide a Public Works registration number for the prime Contractor and all other listed Contractors or subcontractors.

Other:

All work shall be in accordance with applicable City and state laws, the International Building Code (IBC) and the New Mexico building codes. The Contractor shall be responsible for all permits associated with this work as required by the governmental Authority Having Jurisdiction (AHJ).

All work shall be in strict compliance with the national and state building mechanical, plumbing and electrical codes including SMACNA, and ASHRAE standards.

Contractors shall be capable of providing all coordination, supervision and services required for comprehensive general construction, facilities replacement, upgrade and improvement projects and to provide new construction services including incidental design. It can include site and utility work, mechanical work, pavement restoration, facilities repair, renovation, backfill services, digging, ditching, rock stabilization, concrete, and pour in place and form place finish. The utility work shall include pumping systems, gravity sewers, manholes, force mains, and related facilities. It may also include demolition and abatement projects.

All material shall be new and of the highest quality available for the type of work being performed. The purchase of major equipment or material must be preceded by submission of submittal data on the proposed equipment or material and shall be reviewed and approved by the Division.

The requesting entity reserves the right to purchase materials or specialty services directly from existing Statewide Price Agreements and other sources, and to provide these materials to the Contractor. The Contractor shall provide an itemized, quantifiable list of materials required for the project. Specialty services provided from Statewide Price Agreements and other sources shall be coordinated by the Contractor.

If the Contractor is requesting reimbursement for materials used on the work, copies of the invoices for the materials must be included when submitting invoices/pay applications. The Contractor may NOT add markups for the materials purchased.

The Division reserves the right to obtain quotes from multiple vendors covered under this Price Agreement and award a project to a contractor based on the quotes.

The Division reserves the right to provide an escort and/or full-time supervision of the Contractor and its employees during any or all phases of a project, should the Division feel it is in its best interest to provide these extraordinary security services.

The Division reserves the right to escort any or all employees of the Contractor off its property, for any inappropriate conduct or actions that jeopardize the safety, security, or wellbeing of the facility or any individual. Inappropriate behavior by the Contractor, its employees or subcontractors may be grounds for immediate removal from this Price Agreement. Any employee of the Contractor found in violation of any law, while on City property, will be prosecuted.

Contractor:

No person shall act as a Contractor without a license issued by the Construction Industries Division (CID), classified to cover the type of work to be performed. No bid on a contract shall be submitted unless the Contractor has a valid Contractor's license issued by the CID to bid and to perform the type of work to be undertaken, as set forth in §60-13-12, NMSA 1978.

Safety shall be of main concern and enforced by the Contractor on site. The Contractor shall comply with all local, state and federal laws governing safety, health and sanitation. The on-site superintendent shall always have a minimum OSHA 10 and preferably OSHA 30 card with them when on the jobsite. The Division shall not in any way be responsible for any fines set forth for such violations of codes, OSHA standards or any other governing agency having jurisdiction at the work site. The Contractor shall provide all needed safeguards, safety devices, protective equipment and take any actions necessary to protect the life and health of employees on the job; the safety of the public and to protect the property of the Division in connection with the performance of the work covered by this price Agreement.

All personnel working on the project and providing these services shall be experienced and certified in all areas related to this work and required by this Price Agreement. Journeymen level personnel shall have the ability and necessary skills to diagnose problems and to make the appropriate decisions needed to provide these services.

The Contractor shall follow the Occupational Safety and Health Act (OSHA) 29 CFR 1910.147 Standard pertaining to "Lockout/Tagout" procedures for hazardous energy.

The Contractor shall agree to provide required labor within 24 hours for emergency situations.

Contractor's price shall include labor costs, permits, overhead, profit, insurance, equipment, tools and any other fees required to successfully complete the work requested. The Contractor shall be capable of providing a work force with supervision, adequate to perform work for a forty (40) hour work week during normal working hours with the option of working non normal or overtime hours if required. The Contractor shall be responsible for all permits, fees, and State and/or City inspections associated with their work.

Subcontracting of work is allowed and shall have prior approval by the Division. Subcontractors shall have the appropriate current valid Contractor's licenses for their work. Proof of licenses shall be furnished upon request.

There will be NO markups allowed for adding subcontractor costs or to cover general conditions (administrative costs and other related expenses) allowed on any of the quotes issued pursuant to this Price Agreement. If a subcontractor is hired for the project the reimbursement must be at actual cost of the subcontractor's cost. The cost of the subcontractor will be added at time of invoicing as a separate item to be paid by the Department.

Furnishing of submittal data for any/all new equipment and materials as well as O&M' s is required. Training of site personnel for the proper operation of newly installed equipment/systems and its related controls will be required for completion. This training will be acceptable to the person in charge of the facility and/or the City's Project manager in charge of the project.

The Contractor shall provide all protective coverings necessary to protect existing, adjacent finishes while performing its work. If any damage is encountered during the contractor's work, the contractor will be held responsible for repairing any damage done by his employees, subcontractors, and vendors. The Contractor shall restore any damage to existing and/or adjacent finishes damaged while performing work and to make new work inconspicuous with the existing adjacent finishes.

The Contractor and its employees agree to cooperate with and to abide by the rules and requirements of the Division to not interfere with the daily operations of the Division or to jeopardize the health, safety or welfare of the employees or general public conducting business with the Division.

Clean Up and Storage:

A. The Contractor will provide off-site legal disposal of all waste products, trash, and debris. The Division's trash receptacles will not be used by the Contractor. Sanitary facilities will "not" be available at the job site. Contractor shall be responsible for the provision and maintenance of portable toilets.

B. The Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of the Work, the Contractor shall remove the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials and shall then thoroughly clean the premises and the site to the Division's satisfaction.

C. Materials or equipment shall be delivered to the project in the manufacturer's original sealed, labeled containers and shall be adequately protected against moisture, dust, tampering or damage from improper handling or storage. Materials shall not be delivered to the site before they are needed.

D. Storage of materials and construction equipment shall be coordinated with the Division.

Task Order:

The Contractor shall be required to provide On-Call Construction Services for any number of the activities listed under Scope of Work upon the request of the Division. When a service is identified, the Division shall provide, at a minimum, a detailed scope of work and/or drawings defining work required. Each project will be individually described in a "Task Order". The Task Order will describe the scope of work, the duration of the project with the date of Substantial Completion and if there are liquidated damages for not meeting the date of substantial completion. The date of Substantial Completion is the date when the space can be occupied or the Work used/operated and is turned over to the User Agency. Final completion is the date when the project is totally complete, the punch list work complete and the Contractor's final pay application/invoice is approved. The terms and conditions of the Contractor's Price Agreement will apply to all Task Orders.

Upon receiving the City's Task Order, the Contractor shall promptly visit the site and compare the Division's scope of work and/or drawings to the existing conditions and provide all services called for in addition to the requirements set forth in this Price Agreement. The Contractor will be required to provide a written quote (based upon the rates submitted in the Bid Form) sub-contractors list (including subcontractor's CID licenses) and cost summary to include the work to be performed, sub-contractors cost and the amount of time required for the completion of the project and submit to the Division at no cost to the Division. Project schedules, negotiated price, and completion dates shall be determined on a project-by-project basis and dependent upon the urgency of that task.

If any equipment or system cannot be economically repaired or has reached the end of its life cycle, the Contractor shall justify with costs and other information they need for replacement. If replacement is recommended, the Contractor will provide written justification for system and/or the model, size, and type of unit recommended along with any applicable efficiency data. The Division's standards will be discussed and taken into consideration when proposing replacement units or systems. Any replacement unit shall be reviewed and approved by the requesting entity.

Change Orders:

Any change orders to the project scope will require an additional Task Order with backup materials and labor costs and shall be substantiated that there was no way of knowing the additional services were needed when the original quote was provided. Change orders shall be managed closely by the Division. Preventative measures shall be taken by both the contractor and the Division prior to issuing the Notice to Proceed. Such measures may include soil tests (soil boring); clarification of ambiguity in the project plan, the scope of work, the Task Order, the drawings, etc.; the project scope should be completely defined and agreed upon before any work begins.

Other Construction Related Terms and Conditions:

Mediation:

Any controversy or claim arising between the parties shall be settled by mediation if the parties cannot reach a mutually agreeable solution. The parties shall endeavor to resolve their disagreement by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the procedures of the New Mexico Public Works Mediation Act (NMSA §13-4C-1 et seq.) except that before any party may select a mediator it must confer in good faith with the other party concerning the selection of a mutually acceptable mediator. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of notice of mediation session, unless stayed for a longer period by agreement of the parties or court order.

Inspection of Work:

If a Purchase Order is issued for the purchase of services, the following terms shall apply when applicable:

A. Services include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the Division covering the services under the Purchase Order. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Division during the term of performance of the Work and for as long thereafter as required.

C. The Division has the right to inspect and test all services contemplated to the extent practicable at all times and places during the term of the Project. The Division shall perform inspections and tests in a manner that will not unduly delay or interfere with the Contractor's performance.

D. If the Division performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Purchase Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services does not conform with the requirements, the Division may require the Contractor to re-perform the services in conformity with the requirements at no increase in Purchase Order amount. When the defects in services cannot be corrected by re-performance, the Division may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements; and
(2) reduce the Purchase Order price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements, the Division may:

(1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the Division that is directly related to the performance of such service; or
(2) cancel the Purchase Order for default.

THE PROVISIONS OF THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE REQUESTING ENTITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THE PURCHASE ORDER/PRICE AGREEMENT.

Suspension, Delay or Interruption of Work:

The Division may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period as the Division may determine. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized.

If at any time there is a delay in the critical path of the Work due to postponement, due to the Contractor's efforts to justify an extension of the time or an increase in the Agreement Price beyond the deadlines or due to the Contractor's refusal to proceed with any of the approved Work, such delay and any Contractor costs resulting from it shall not serve as the basis for the extension of the Time for Completion or Agreement Completion Date or for an increase in the Contract Price.

Permits and Fees:

A. IF APPLICABLE- The Contractor shall secure and pay for the Building Permit and other permits and governmental fees, licenses and inspections and Certificate of Occupancy necessary for proper execution and completion of the Work. Changes or modifications to the Work shall include all requirements of this paragraph.

B. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

C. IF APPLICABLE- Certificates of Inspection, use and occupancy will be delivered to the Division upon completion of the Work in sufficient time for occupation of the facility in accordance with the approved schedule for the Work. Contractor shall deliver a photocopy of the Building Permit to the Design Professional and requesting entity as soon as it is obtained.

Schedule, Progress Meetings and Reports:

A. The Contractor, promptly after being awarded a Project and before the first payment application, shall prepare and submit for the Division's information a Critical Path Construction Schedule for the Work that indicates the intended start and completion of the various construction activities, which shall be implemented and adhered to by the Contractor, Subcontractors, material suppliers and equipment suppliers. At a minimum, the schedule shall be a GANTT type schedule and shall not exceed time limits allowed by the Task Order or Notice to Proceed with no fewer work breakdown events than line items of the Schedule of Values.

B. The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Division.

C. Progress meetings shall be scheduled on a regular basis. The purpose will be to review the upcoming activities, any open issues and current progress. The Contractor shall keep any meeting minutes as needed. Progress schedules shall be updated regularly. A three-week look-ahead schedule should be presented at every project meeting. A new schedule shall be presented with any change orders.

D. The Contractor shall prepare a daily report each day the Contractor, subcontractors or any other entity are on the project. The daily reports shall be maintained at the site and be well organized. The Division may request copies at any time. The reports may include:

1. report date and who prepared the report;
2. weather conditions - low temp, visibility, humidity, wind, wind direction, cloud conditions, precipitation amount, other notes;
3. companies present by name and their number of workers, work location, total man hours that day for each company;
4. equipment-type, source, units of work done, location of work, hour meter reading;
5. material brought to site-description, units, quantity, quality, location, time;
6. visitors to site -name, company, time;
7. safety concerns-company, contact, noticed by, work activity, safety issue, requirement, outcome: and
8. quality assurance and control -company, description of issue, specification section, issued by.

Close-out Requirements:

The Contractor shall submit to the Division a separate and detailed Closeout Schedule indicating the date of Final Completion and all work to be completed before Final Completion including Close-Out requirements. The punch list of incomplete or inadequate work shall also be submitted when the work is substantially complete. Failure to include any item on the punch list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents.

Before final completion can be achieved, all Work must be complete and accepted including the following as applicable:

a. Work associated with Punch List(s);
b. testing, balance or performance operations complete and in agreement that associated work is in compliance with the Contract Documents;
c. one hard copy and one electronic copy in .pdf format of final approved test, balance or performance report(s) complete with directory of contents submitted to the Division;

d. as-Built drawings delivered in AutoCAD or electronic format;
e. written certification signed by the Division of delivery and stocking of extra material, equipment or components required by the Purchase Order at a location established by the Division;
f. delivery of all warranties required by the Work;
g. all keys, passes, codes, software or other methods or components of control or security which have been correctly and adequately accounted for and closed-out;
i. Start-up of any new equipment and training of staff on all new equipment;
l. Operations and Maintenance Manuals;
m. a certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety.

Warranty:

The Contractor shall warrant its work (non-roofing and equipment), for materials and for workmanship furnished and performed under this Price Agreement for a period of one (1) year minimum from the date of acceptance or Substantial Completion. The Contractor shall warrant its work for repairs or restoration of existing systems and work for ninety (90) days from the date of acceptance or Substantial Completion. It is understood that some equipment is far beyond its normal life and a warranty cannot be extended/supplied. Contractor must pass on to the Division warranties of replaced roofs and equipment offered by the manufacturer.

Bid information:

Hourly rates are requested for the three (3) levels of personnel.

Superintendent: a person with supervisory experience who maintains control of the work and work site. This person may or may not actually perform work on the project.

Journeyman or Experienced Worker: a person licensed by the State for work required and being performed or a person with many years of experience with a high rate of pay.

Laborer: a person with minimal experience, performing minor forms of labor.

Materials and Parts:

Contractor shall submit billings, based on actual Contractor costs for materials, less any applicable percentage for discounts. If there is no discount to be offered, enter zero. Contractor shall provide verification that materials purchased were used for the project. Any unused, billed for materials shall be turned over to the Division for which the work was provided.

The City of Santa Fe requires that all materials shall be new and of the highest quality and at the best attainable price available for the type of work being performed.

No used materials shall be used on the project. Recycled materials specifically prepared for reuse to meet "LEED" certification may be permitted with the requesting entity's approval.

The City of Santa Fe reserves the right to award this Price Agreement to multiple vendors. Bidders must include pricing for all items starting from item 001 through item 016 in order to allow for accurate comparisons. If a Bidder fails to include one or more of those items his Bid may be rejected.

P. Fred Heerbrandt, P.E.

Engineer Supervisor Wastewater

City of Santa Fe

505-955-4623

pfheerbrandt@santafenm.gov



Log # *{Finance use only}*:	
Journal # *{Finance use only}*:	

City of Santa Fe, New Mexico
BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME	DATE
Public Utilities/Wastewater	8/5/2025

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WW Capital Projects/WIP Construction	5000375	572970	n/a	$ 1,081,875	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
				$ 1,081,875	$ -

JUSTIFICATION: *(use additional page if needed)*
--Attach supporting documentation/memo
To increase account 572970 for Anchorbuilt. Plese see memo for detail and please add **Anchorbuilt COLLECTION** for posting of BAR

ON-CALL NO PL#

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
500	(1,081,875)
TOTAL:	**(1,081,875)**

Linda MacAllister 8/5/2025
Prepared By *{print name}* Date

Division Director Signature *{optional}* Date

Department Director Signature Date

{Use this form for Finance Committee/ City Council agenda items ONLY}

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins 08/19/2025
Budget Officer Date

Finance Director *{≤ $5,000}* Date

City Manager *{≤ $60,000}* Date

Client#: 1144006 ANCHOINC1

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 6/24/2025

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Bridget Brakeall
USI Insurance Services, LLC 4100 Osuna Road NE Suite 2-203 Albuquerque, NM 87109	PHONE (A/C, No, Ext): 602.374.1331 FAX (A/C, No): E-MAIL ADDRESS: bridget.brakeall@usi.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Continental Casualty Company	20443
INSURER B : Builders Trust of New Mexico	99999
INSURER C : Valley Forge Insurance Company	20508
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
AnchorBuilt, Inc.
P.O. Box 27688
Albuquerque, NM 87125-7688

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY	X	X	6080684959	03/10/2025	03/10/2026	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$100,000
							MED EXP (Any one person)	$15,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:							$
C	AUTOMOBILE LIABILITY	X	X	6080684962	03/10/2025	03/10/2026	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB X OCCUR			6080684976	03/10/2025	03/10/2026	EACH OCCURRENCE	$5,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$5,000,000
	DED X RETENTION $10,000							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N		X	WC1000003908	03/10/2025	03/10/2026	X PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y	N / A					E.L. EACH ACCIDENT	$2,000,000
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$2,000,000
							E.L. DISEASE - POLICY LIMIT	$2,000,000
A	Stored Material			6080684959	03/10/2025	03/10/2026	*See Desc Of Ops	
C	HAPD			6080684962	03/10/2025	03/10/2026	*See Desc Of Ops	
A	Leased/Rented Eq			6080684959	03/10/2025	03/10/2026	*See Desc Of Ops	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Insurer A - Stored Material - Limit $750,000; Deductible $2,5000 - Temp Storage - Limit $300,000
Insurer C- HAPD - Limit $75,000 - Compensation Deductible $500; Collison Deductible $1,000
Insurer A - Leased and Rented Equipment - Limit $500,000; Deductible $1,0000

The General Liability and Automobile Liability policies include an automatic Additional Insured endorsement
(See Attached Descriptions)

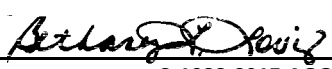
CERTIFICATE HOLDER

City of Santa Fe
2651 Siringo Road, Building E
Santa Fe, NM 87505-0000

CANCELLATION

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



© 1988-2015 ACORD CORPORATION. All rights reserved.

DESCRIPTIONS (Continued from Page 1)

that provides Additional Insured status to the Certificate Holder, only when there is a written contract or written agreement between the named insured and the certificate holder and with regard to work performed by or on behalf of the named insured. The General Liability and Automobile Liability policies contain a special endorsement with "Primary and Noncontributory" wording, when required by written contract. The General Liability, Automobile Liability, and Workers' Compensation policies provide a Blanket Waiver of Subrogation in favor of the same, when required by written contract. Aggregate limits apply per project. The General Liability, Automobile Liability, and Workers Compensation are in the underlying schedule of the Umbrella policy.

1. ADDITIONAL INSUREDS

a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs **A.** through **H.** below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph **A.** through **H.** below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury** or **property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:

a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or

b. the construction, erection, or removal of elevators; or

c. the ownership, maintenance or use of any elevators covered by this insurance; or

2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

a. **Bodily injury**, **property damage** or **personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or

b. **Bodily injury** or **property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** caused by:

40020005960806849595847

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

a. the **Named Insured's** acts or omissions; or

b. the acts or omissions of those acting on the **Named Insured's** behalf,

in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.

2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision **2.**, the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph **3.** in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph **4.** below, any organization in which a **Named Insured** has management control:

a. on the effective date of this **Coverage Part**; or

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

(a) any partnership, limited liability company or joint venture; or

(b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, management control means:

A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; or

B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.

4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph **3.** above, this insurance does not apply to:

a. bodily injury or **property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor

b. personal or advertising injury caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.

5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

6. BROADENED LIABILITY COVERAGE FOR DAMAGE TO YOUR PRODUCT AND YOUR WORK

A. Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusions **k.** and **l.** and replace them with the following:

This insurance does not apply to:

k. Damage to Your Product

Property damage to **your product** arising out of it, or any part of it except when caused by or resulting from:

(1) fire;

(2) smoke;

(3) collapse; or

(4) explosion.

l. Damage to Your Work

Property damage to **your work** arising out of it, or any part of it and included in the **products-completed operations hazard**.

This exclusion does not apply:

(1) If the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor; or

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

4002005960806849595848

(2) If the cause of loss to the damaged work arises as a result of:

(a) fire;

(b) smoke;

(c) collapse; or

(d) explosion.

B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to **5.** above, $100,000 is the most the Insurer will pay under **Coverage A** for the sum of **damages** arising out of any one **occurrence** because of **property damage** to **your product** and **your work** that is caused by fire, smoke, collapse or explosion and is included within the **product-completed operations hazard**. This sublimit does not apply to **property damage** to **your work** if the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor.

C. This **Broadened Liability Coverage For Damage To Your Product And Your Work** Provision does not apply if an endorsement of the same name is attached to this policy.

7. CONTRACTUAL LIABILITY – RAILROADS

With respect to operations performed within 50 feet of railroad property, the definition of **insured contract** is replaced by the following:

Insured Contract means:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner is not an **insured contract**;

b. A sidetrack agreement;

c. Any easement or license agreement;

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement;

f. That part of any other contract or agreement pertaining to the **Named Insured's** business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Named Insured** assumes the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

(1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

(2) Under which the **Insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(1)** above and supervisory, inspection, architectural or engineering activities.

8. ELECTRONIC DATA LIABILITY

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

A. Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion **p. Electronic Data** and replace it with the following:

This insurance does not apply to:

p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

(1) any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

(2) the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data** that does not result from physical injury to tangible property.

However, unless Paragraph **(1)** above applies, this exclusion does not apply to **damages** because of **bodily injury**.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relation expenses or any other loss, cost or expense incurred by the **Named Insured** or others arising out of that which is described in Paragraph **(1)** or **(2)** above.

B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to **5.** above, $100,000 is the most the Insurer will pay under **Coverage A** for all **damages** arising out of any one **occurrence** because of **property damage** that results from physical injury to tangible property and arises out of **electronic data**.

C. The following definition is added to **DEFINITIONS**:

Electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

D. For the purpose of the coverage provided by this **ELECTRONIC DATA LIABILITY** Provision, the definition of **property damage** in **DEFINITIONS** is replaced by the following:

Property damage means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it; or

c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate **electronic data**, resulting from physical injury to tangible property. All such loss of **electronic data** shall be deemed to occur at the time of the **occurrence** that caused it.

For the purposes of this insurance, **electronic data** is not tangible property.

E. If Electronic Data Liability is provided at a higher limit by another endorsement attached to this policy, then the $100,000 limit provided by this **ELECTRONIC DATA LIABILITY** Provision is part of, and not in addition to, that higher limit.

9. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

4002005960806849595849

claims arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

10. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily injury or **property damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

11. GENERAL AGGREGATE LIMITS OF INSURANCE - PER PROJECT

A. For each construction project away from premises the **Named Insured** owns or rents, a separate Construction Project General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:

1. All **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and

2. All medical expenses under **Coverage C**,

that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Construction Project General Aggregate Limit of any other construction project.

B. All:

1. **Damages** under **Coverage B**, regardless of the number of locations or construction projects involved;

2. **Damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single construction project, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and

3. Medical expenses under **Coverage C** caused by accidents which cannot be attributed solely to ongoing operations at a single construction project,

will reduce the General Aggregate Limit shown in the Declarations.

C. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Construction Project General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular construction project.

D. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of projects involved.

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

E. If a single construction project away from premises owned by or rented to the **Insured** has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

F. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

12. IN REM ACTIONS

A quasi in rem action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were in personam against the **Named Insured**.

13. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

A. Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Insuring Agreement** is amended to replace Paragraphs **1.b.(1)** and **1.b.(2)** with the following:

b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:

(1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.

(2) the **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and

B. Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:

i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).

ii. delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

iii. add the following additional exclusions:

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, including but not limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

Dishonesty or Crime

Any actual or alleged dishonest, criminal or malicious act, error or omission.

Medicare/Medicaid Fraud

4002000596080684959595850

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement

Any **health care incident** for which coverage is excluded by endorsement.

C. DEFINITIONS is amended to:

i. add the following definitions:

Health care incident means an act, error or omission by the **Named Insured's employees** or **volunteer workers** in the rendering of:

a. **professional health care services** on behalf of the **Named Insured** or

b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

a. Physician;

b. Nurse;

c. Nurse practitioner;

d. Emergency medical technician;

e. Paramedic;

f. Dentist;

g. Physical therapist;

h. Psychologist;

i. Speech therapist;

j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

ii. delete the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

iii. amend the definition of **Insured** to:

a. add the following:

the **Named Insured's employees** are **Insureds** with respect to:

(1) **bodily injury** to a co-**employee** while in the course of the co-**employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

(2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

the **Named Insured's volunteer workers** are **Insureds** with respect to:

(1) **bodily injury** to a co-**volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

b. delete Subparagraphs **(a)**, **(b)**, **(c) and (d)** of Paragraph **2.a.(1)** of **WHO IS AN INSURED**.

D. The **Other Insurance** condition is amended to delete Paragraph **b.(1)** in its entirety and replace it with the following:

Other Insurance

b. Excess Insurance

(1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

14. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

No person or organization is an **Insured** with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **Named Insured** in the Declarations, except that if the **Named Insured** was a joint venturer, partner, or member of a limited liability company and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

a. any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense first occurred after such termination date;

b. the **bodily injury** or **property damage** first occurred after such termination date; and

c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company; and

If the joint venture, partnership or limited liability company is or was insured under a **consolidated (wrap-up) insurance program**, then such insurance will always be considered valid and collectible for the purpose of paragraph **c.** above. But this provision will not serve to exclude **bodily injury**, **property damage** or **personal and advertising injury** that would otherwise be covered under the **Contractors General Liability Extension Endorsement** provision entitled **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS**. Please see that provision for the definition of **consolidated (wrap-up) insurance program**.

15. LEGAL LIABILITY – DAMAGE TO PREMISES / ALIENATED PREMISES / PROPERTY IN THE NAMED INSURED'S CARE, CUSTODY OR CONTROL

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion **j. Damage to Property** in its entirety and replace it with the following:

This insurance does not apply to:

4002005960806849595851

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

j. Damage to Property

Property damage to:

(1) Property the **Named Insured** owns, rents, or occupies, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises the **Named Insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;

(3) Property loaned to the **Named Insured**;

(4) Personal property in the care, custody or control of the **Insured**;

(5) That particular part of real property on which the **Named Insured** or any contractors or subcontractors working directly or indirectly on the **Named Insured's** behalf are performing operations, if the **property damage** arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

Paragraphs **(1), (3)** and **(4)** of this exclusion do not apply to **property damage** (other than damage by fire) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

Paragraph **(2)** of this exclusion does not apply if the premises are **your work**.

Paragraphs (**3), (4), (5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph **(6)** of this exclusion does not apply to **property damage** included in the **products-completed operations hazard**.

Paragraphs **(3)** and **(4)** of this exclusion do not apply to **property damage** to:

i. tools, or equipment the **Named Insured** borrows from others, nor

ii. other personal property of others in the **Named Insured's** care, custody or control while being used in the **Named Insured's** operations away from any **Named Insured's** premises.

However, the coverage granted by this exception to Paragraphs **(3)** and **(4)** does not apply to:

a. property at a job site awaiting or during such property's installation, fabrication, or erection;

b. property that is **mobile equipment** leased by an **Insured**;

c. property that is an **auto**, aircraft or watercraft;

d. property in transit; or

e. any portion of **property damage** for which the **Insured** has available other valid and collectible insurance, or would have such insurance but for exhaustion of its limits, or but for application of one of its exclusions.

A separate limit of insurance and deductible apply to such property of others. See **LIMITS OF INSURANCE** as amended below.

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in **LIMITS OF INSURANCE**.

C. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to **5.** above, $25,000 is the most the Insurer will pay under **Coverage A** for **damages** arising out of any one **occurrence** because of the sum of all **property damage** to borrowed tools or equipment, and to other personal property of others in the **Named Insured's** care, custody or control, while being used in the **Named Insured's** operations away from any **Named Insured's** premises. The Insurer's obligation to pay such **property damage** does not apply until the amount of such **property damage** exceeds $1,000. The Insurer has the right but not the duty to pay any portion of this $1,000 in order to effect settlement. If the Insurer exercises that right, the **Named Insured** will promptly reimburse the Insurer for any such amount.

D. Paragraph **6.**, Damage To Premises Rented To You Limit, of **LIMITS OF INSURANCE** is deleted and replaced by the following:

6. Subject to Paragraph **5.** above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under **Coverage A** for **damages** because of **property damage** to any one premises while rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, including contents of such premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. The Damage To Premises Rented To You Limit is the greater of:

a. $500,000; or

b. The Damage To Premises Rented To You Limit shown in the Declarations.

E. Paragraph **4.b.(1)(a)(ii)** of the **Other Insurance** Condition is deleted and replaced by the following:

(ii) That is property insurance for premises rented to the **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

16. LIQUOR LIABILITY

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Liquor Liability**.

This **LIQUOR LIABILITY** provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

17. MEDICAL PAYMENTS

A. LIMITS OF INSURANCE is amended to delete Paragraph **7.** (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph **5.** above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

(1) $15,000 unless a different amount is shown here: $N,NNN,NNN,NNN; or

(2) the amount shown in the Declarations for Medical Expense Limit.

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

4002000596080684959852

B. Under **COVERAGES**, the **Insuring Agreement** of **Coverage C** – **Medical Payments** is amended to replace Paragraph **1.a.(3)(b)** with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

18. NON-OWNED AIRCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;

2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and

3. the aircraft is not being used to carry persons or property for a charge.

19. NON-OWNED WATERCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph **(2)** of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

(2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:

(a) less than 75 feet long; and

(b) not being used to carry persons or property for a charge.

20. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

B. Under **COVERAGES**, **Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

Knowing Violation of Rights of Another

Personal and advertising injury caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

(a) the **Named Insured**; or

(b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.

2. add the following exclusions:

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

This insurance does not apply to:

Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

Premises Related Discrimination

discrimination or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

Provision **1. ADDITIONAL INSURED** of this endorsement; or

attachment of an additional insured endorsement to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

21. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY

A. Under **COVERAGES**, **Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability**.

B. Solely for the purpose of the coverage provided by this **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** provision, the following changes are made to the section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B:**

1. Paragraph **2.d.** is replaced by the following:

d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph **2.f.(2)(b)** is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

C. This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B –Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

22. PROPERTY DAMAGE – ELEVATORS

A. Under **COVERAGES**, **Coverage A** – **Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs **(3)**, **(4)** and **(6)** of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.

4002005960806849595853

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

A. Paragraph **1.b.** is amended to delete the $250 limit shown for the cost of bail bonds and replace it with a $5,000. limit; and

B. Paragraph **1.d.** is amended to delete the limit of $250 shown for daily loss of earnings and replace it with a $1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or

2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and

2. was executed prior to the **bodily injury**, **property damage** or **personal and advertising injury** giving rise to the **claim**.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury**, **property damage**, or **personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

CNA

CNA PARAMOUNT

Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

I. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **Coverage Part**, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:

A. In the performance of your ongoing operations subject to such **written contract**; or

B. In the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury** or **property damage** included in the **products-completed operations hazard**, and only if:

1. The **written contract** requires you to provide the additional insured such coverage; and

2. This **Coverage Part** provides such coverage; and

C. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

1. Coverage broader than what you are required to provide by the **written contract**; or

2. A higher limit of insurance than what you are required to provide by the **written contract**.

Any coverage granted by this Paragraph **I.** shall apply solely to the extent permissible by law.

II. If the written contract requires additional insured coverage under the 07-04 edition of CG2010 or CG2037, then paragraph **I.** above is deleted in its entirety and replaced by the following:

WHO IS AN INSURED is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **Coverage Part**, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:

A. In the performance of your ongoing operations subject to such **written contract**; or

B. In the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury** or **property damage** included in the **products-completed operations hazard**, and only if:

1. The **written contract** requires you to provide the additional insured such coverage; and

2. This **Coverage Part** provides such coverage.

III. But if the **written contract** requires:

A. Additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or

B. Additional insured coverage with “arising out of” language;

then paragraph **I.** above is deleted in its entirety and replaced by the following:

WHO IS AN INSURED is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **Coverage Part**, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of **your work** that is subject to such **written contract**.

4002005960806849595859

Copyright CNA All Rights Reserved.

IV. But if the **written contract** requires additional insured coverage to the greatest extent permissible by law, then paragraph **I.** above is deleted in its entirety and replaced by the following:

WHO IS AN INSURED is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **Coverage Part**, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of **your work** that is subject to such **written contract**.

V. The insurance granted by this endorsement to the additional insured does not apply to **bodily injury**, **property damage**, or **personal and advertising injury** arising out of:

A. 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; and

2. Supervisory, inspection, architectural or engineering activities; or

B. Any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **Coverage Part**.

VI. Under **COMMERCIAL GENERAL LIABILITY CONDITIONS,** the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this **Coverage Part**:

Primary and Noncontributory Insurance

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

1. Primary and non-contributing with other insurance available to the additional insured; or

2. Primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

VII. Solely with respect to the insurance granted by this endorsement, the section entitled **COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. Give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;

2. Send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and

3. Make available any other insurance, and endeavor to tender the defense and indemnity of any **claim** to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph **3.** does not apply to other insurance under which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

Copyright CNA All Rights Reserved.

Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

VIII. Solely with respect to the insurance granted by this endorsement, the section entitled **DEFINITIONS** is amended to add the following definition:

Written contract means a written contract or written agreement that requires you to make a person or organization an additional insured on this **Coverage Part**, provided the contract or agreement:

A. Was executed prior to:

1. The **bodily injury** or **property damage**; or

2. The offense that caused the **personal and advertising injury**;

for which the additional insured seeks coverage; and

B. Is still in effect at the time of the **bodily injury** or **property damage occurrence** or **personal and advertising injury** offense.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

4002005960806849595860

Copyright CNA All Rights Reserved.

CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured**:

1. **a.** Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,

   b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.

2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

   The insurance afforded by this provision **A.2.**:

   a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.

   b. Does not apply to:

   (1) **Bodily injury** or **property damage** caused by an **accident** that occurred before you acquired or formed the organization; or

   (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.

3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.

4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured,** includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or

2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2),** the limit for the cost of bail bonds is changed from $2,000 to $5,000; and

2. In **a.(4),** the limit for the loss of earnings is changed from $250 to $500 a day.

© Copyright CNA All Rights Reserved. Includes copyrighted material of the Insurance Services Office, Inc., used with its permission.

(4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.**:

(6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.**:

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.**:

Regardless of the provisions of Paragraphs **5.a.** and **5.d.** above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

© Copyright CNA All Rights Reserved. Includes copyrighted material of the Insurance Services Office, Inc., used with its permission.

BUILDERS TRUST®
OF NEW MEXICO

WAIVER OF SUBROGATION

Insured Name: ANCHORBUILT INC
Insured Policy Number: WC100-0003908-2025A

Builders Trust of New Mexico waives any right of recovery of subrogation against the certificate holder named on this certificate of insurance, but only to the extent that the employers to whom we provide coverage performs work under a written contract with the certificate holder that requires this waiver.

Name of Person	Name of Organization
	Blanket Waiver of Subrogation

Date: 12/11/2024 Countersigned by Randy L. Akin

Agency Number: 2 – 4
Agency Name: USI Insurance Services LLC

(505) 345-3477 ■ 1-800-640-3369 ■ FAX (505) 344-7245
5931 OFFICE BOULEVARD, NE SUITE 3 ALBUQUERQUE, NM 87109 ■ P.O. BOX 91330 ALBUQUERQUE, NM 87199-1330
www.builderstrust.com

CITY OF SANTA FE

The Purchasing Memo

Date: August 13, 2025

To: Governing Body, Finance Committee, and Public Works & Utilities Committee

From: P. Fred Heerbrandt, P.E., Engineer Supervisor P. Fred Heerbrandt, P.E.

Via: Michael Dozier, Wastewater Management Division Director

Via: Jesse Roach, Interim Public Utilities Director

Subject: On-Call Collection System Construction Contract

Vendor Name: SKE Contractors, LLC

Munis Vendor Number: 10552

ITEM AND ISSUE:

The Public Utilities Department respectfully requests your review and approval of a On-Call construction contract in the amount of $1,081,875.00 per year for a total of $4,327,500.00 including NMGRT for Construction Services over a four-year term with SKE Contractors, LLC.

Request for Approval of a Budget Adjustment Resolution (BAR) in the amount of $1,081,875.00 for Fiscal year 2026 from the Enterprise Fund to WIP Construction.

CONTRACT NUMBER:

The FY26 Munis contract number is 3260111

BACKGROUND AND SUMMARY:

The City of Santa Fe, Public Utilities Department, Wastewater Management Division (Division) wishes to establish a Price Agreement for On-Call Repair, Replacement, Extension, and Rehabilitation of Sewer Collection System Construction services work by New Mexico licensed contractors to provide miscellaneous repairs, upgrades, improvements, replacements, new construction services and material for facilities throughout the Paseo Real Wastewater Reclamation Facility, the Sanitary Sewer Collection System, and other remote locations.

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: Enterprise Fund/Fund 500

Munis Org Name/Number: Wastewater Capital Projects/5000375

Munis Object Name/Number: WIP Construction/572970

Budget Officer / Designee: Andy Hopkins **Date:** 08/19/2025

Budget Officer Comment/Exceptions: -

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-102, ITB

ITB 25119 – On-Call Collection System Construction Services – 3 Awards

Chief Procurement Officer (CPO)/Designee: _____ **Date:** 08/22/2025

CPO Comment/Exceptions: _____

ASSOCIATED APPROVALS:

IT Components included? ☐ Yes | ☒ No

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Treasury/Point of Sale 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:

CPO Service Determination Email
Certificate of Liability Insurance (COI)
On Call Construction Contract

Rate Sheet

Item #: _____
Munis Contract #: 3260111
ITB #: 25119

CITY OF SANTA FE

CONSTRUCTION PRICE AGREEMENT

ON-CALL COLLECTION SYSTEM CONSTRUCTION SERVICES

THIS PRICE AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **SKE Contractors, LLC,** 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 City, through its Governing Body, is authorized to enter into a construction Price Agreement for the project; and

WHEREAS, the City has procured this Price Agreement according to the established State and Local Purchasing procedures for Price Agreements of the type and amount; and

The City and the Contractor hereby agree as follows:

1. Scope of Work

A. The Contractor shall perform the following work:

The City of Santa Fe, Public Utilities Department, Wastewater Management Division (Division) wishes to establish a Price Agreement for On-Call Repair, Replacement, Extension, and Rehabilitation of Sewer Collection System Construction services work by New Mexico licensed contractors to provide miscellaneous repairs, upgrades, improvements, replacements, new construction services and material for facilities throughout the Paseo Real Wastewater Reclamation Facility, the Sanitary Sewer Collection System, and other remote locations.

The Division shall provide, at a minimum, a detailed scope of work and/or drawings, generally defining the construction work required for the project. The Contractor shall be responsible for verifications of all existing conditions, measurements, and dimensions for bidding.
The award of this Price Agreement is without assurance of quantity or dollar amount of work to be performed.

Contractors shall have the technical staff to perform diagnostic services and provide professionally prepared, stamped drawings, if needed, to obtain installation or construction permits. The Contractor is responsible for obtaining all required licenses, fees and permits required to perform the work. Contractor shall be responsible for any applicable Local, County, State and Federal requirements and permits including, but not limited to, the City of Santa Fe's Stormwater Pollution Prevention Program and Stormwater BMPs.

The City of Santa Fe Wastewater Management Division shall be able to utilize this On-Call Price Agreement as needed and as funding is available.

Wage Rates:

All work covered by this Price Agreement shall be in accordance with applicable City and State laws and is subject to the minimum wage rate determination issued by the Department of Workforce Solutions (DWS), if applicable.

A wage rate decision is required by the Public Works minimum Wage Act for construction, demolition or renovation purposes on projects costing sixty thousand dollars ($60,000) or more. The Contractor agrees to comply with the current prevailing wage rate schedule when applicable. For current wage rates or for additional information, visit: http://www.dws.state.nm.us . The Division will request a wage rate determination from the DWS for each project that is $60,000 or more.

When submitting a quote for a specific project valued at more than sixty thousand dollars ($60,000) for any portion of a public works project that is subject to the New Mexico Public Works Act, the Contractor is required to be registered with the Labor and Industrial Division of the Department of Workforce Solutions prior to submitting its quote. The Division may reject any quote that fails to provide a Public Works registration number for the prime Contractor and all other listed Contractors or subcontractors.

Other:

All work shall be in accordance with applicable City and state laws, the International Building Code (IBC) and the New Mexico building codes. The Contractor shall be responsible for all permits associated with this work as required by the governmental Authority Having Jurisdiction (AHJ). All work shall be in strict compliance with the national and state building mechanical, plumbing and electrical codes including SMACNA, and ASHRAE standards.

Contractors shall be capable of providing all coordination, supervision and services required for comprehensive general construction, facilities replacement, upgrade and improvement projects and to provide new construction services including incidental design. It can include site and utility work, mechanical work, pavement restoration, facilities repair, renovation, backfill services, digging, ditching, rock stabilization, concrete, and pour in place and form place finish. The utility work shall include pumping systems, gravity sewers, manholes, force mains, and related facilities. It may also include demolition and abatement projects.

All material shall be new and of the highest quality available for the type of work being performed. The purchase of major equipment or material must be preceded by submission of submittal data on the proposed equipment or material and shall be reviewed and approved by the Division.

The requesting entity reserves the right to purchase materials or specialty services directly from existing Statewide Price Agreements and other sources, and to provide these materials to the Contractor. The Contractor shall provide an itemized, quantifiable list of materials required for the project. Specialty services provided from Statewide Price Agreements and other sources shall be coordinated by the Contractor.

If the Contractor is requesting reimbursement for materials used on the work, copies of the invoices for the materials must be included when submitting invoices/pay applications. The Contractor may NOT add markups for the materials purchased.

The Division reserves the right to obtain quotes from multiple vendors covered under this Price Agreement and award a project to a contractor based on the quotes.

The Division reserves the right to provide an escort and/or full-time supervision of the Contractor and its employees during any or all phases of a project, should the Division feel it is in its best interest to provide these extraordinary security services.

The Division reserves the right to escort any or all employees of the Contractor off its property, for any inappropriate conduct or actions that jeopardize the safety, security, or wellbeing of the facility or any individual. Inappropriate behavior by the Contractor, its employees or subcontractors may be grounds for immediate removal from this Price Agreement. Any employee of the Contractor found in violation of any law, while on City property, will be prosecuted.

Contractor:

No person shall act as a Contractor without a license issued by the Construction Industries Division (CID), classified to cover the type of work to be performed. No bid on a Price Agreement shall be submitted unless the Contractor has a valid Contractor's license issued by the CID to bid and to perform the type of work to be undertaken, as set forth in §60-13-12, NMSA 1978.

Safety shall be of main concern and enforced by the Contractor on site. The Contractor shall comply with all local, state and federal laws governing safety, health and sanitation. The on-site superintendent shall always have a minimum OSHA 10 and preferably OSHA 30 card with them when on the jobsite. The Division shall not in any way be responsible for any fines set forth for such violations of codes, OSHA standards or any other governing agency having jurisdiction at the work site. The Contractor shall provide all needed safeguards, safety devices, protective equipment and take any actions necessary to protect the life and health of employees on the job; the safety of the public and to protect the property of the Division in connection with the performance of the work covered by this price Agreement.
All personnel working on the project and providing these services shall be experienced and certified in all areas related to this work and required by this Price Agreement. Journeymen level personnel shall have the ability and necessary skills to diagnose problems and to make the appropriate decisions needed to provide these services.

The Contractor shall follow the Occupational Safety and Health Act (OSHA) 29 CFR 1910.147 Standard pertaining to "Lockout/Tagout" procedures for hazardous energy.

The Contractor shall agree to provide required labor within 24 hours for emergency situations.

Contractor's price shall include labor costs, permits, overhead, profit, insurance, equipment, tools and any other fees required to successfully complete the work requested. The Contractor shall be capable of providing a work force with supervision, adequate to perform work for a forty (40) hour work week during normal working hours with the option of working non normal or overtime hours if

required. The Contractor shall be responsible for all permits, fees, and State and/or City inspections associated with their work.
Subcontracting of work is allowed and shall have prior approval by the Division. Subcontractors shall have the appropriate current valid Contractor's licenses for their work. Proof of licenses shall be furnished upon request.

There will be NO markups allowed for adding subcontractor costs or to cover general conditions (administrative costs and other related expenses) allowed on any of the quotes issued pursuant to this Price Agreement. If a subcontractor is hired for the project the reimbursement must be at actual cost of the subcontractor's cost. The cost of the subcontractor will be added at time of invoicing as a separate item to be paid by the Department.
Furnishing of submittal data for any/all new equipment and materials as well as O&M' s is required. Training of site personnel for the proper operation of newly installed equipment/systems and its related controls will be required for completion. This training will be acceptable to the person in charge of the facility and/or the City's Project manager in charge of the project.

The Contractor shall provide all protective coverings necessary to protect existing, adjacent finishes while performing its work. If any damage is encountered during the contractor's work, the contractor will be held responsible for repairing any damage done by his employees, subcontractors, and vendors. The Contractor shall restore any damage to existing and/or adjacent finishes damaged while performing work and to make new work inconspicuous with the existing adjacent finishes.

The Contractor and its employees agree to cooperate with and to abide by the rules and requirements of the Division to not interfere with the daily operations of the Division or to jeopardize the health, safety or welfare of the employees or general public conducting business with the Division.

Clean Up and Storage:

A. The Contractor will provide off-site legal disposal of all waste products, trash, and debris. The Division's trash receptacles will not be used by the Contractor. Sanitary facilities will "not" be available at the job site. Contractor shall be responsible for the provision and maintenance of portable toilets.
B. The Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of the Work, the Contractor shall remove the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials and shall then thoroughly clean the premises and the site to the Division's satisfaction.
C. Materials or equipment shall be delivered to the project in the manufacturer's original sealed, labeled containers and shall be adequately protected against moisture, dust, tampering or damage from improper handling or storage. Materials shall not be delivered to the site before they are needed.
D. Storage of materials and construction equipment shall be coordinated with the Division.

Task Order:

The Contractor shall be required to provide On-Call Construction Services for any number of the activities listed under Scope of Work upon the request of the Division. When a service is identified, the Division shall provide, at a minimum, a detailed scope of work and/or drawings defining work

required. Each project will be individually described in a "Task Order". The Task Order will describe the scope of work, the duration of the project with the date of Substantial Completion and if there are liquidated damages for not meeting the date of substantial completion. The date of Substantial Completion is the date when the space can be occupied or the Work used/operated and is turned over to the User Agency. Final completion is the date when the project is totally complete, the punch list work complete and the Contractor's final pay application/invoice is approved. The terms and conditions of the Contractor's Price Agreement will apply to all Task Orders.

Upon receiving the City's Task Order, the Contractor shall promptly visit the site and compare the Division's scope of work and/or drawings to the existing conditions and provide all services called for in addition to the requirements set forth in this Price Agreement. The Contractor will be required to provide a written quote (based upon the rates submitted in the Bid Form) sub-contractors list (including subcontractor's CID licenses) and cost summary to include the work to be performed, sub-contractors cost and the amount of time required for the completion of the project and submit to the Division at no cost to the Division. Project schedules, negotiated price, and completion dates shall be determined on a project-by-project basis and dependent upon the urgency of that task.

If any equipment or system cannot be economically repaired or has reached the end of its life cycle, the Contractor shall justify with costs and other information they need for replacement. If replacement is recommended, the Contractor will provide written justification for system and/or the model, size, and type of unit recommended along with any applicable efficiency data. The Division's standards will be discussed and taken into consideration when proposing replacement units or systems. Any replacement unit shall be reviewed and approved by the requesting entity.

Change Orders:

Any change orders to the project scope will require an additional Task Order with backup materials and labor costs and shall be substantiated that there was no way of knowing the additional services were needed when the original quote was provided. Change orders shall be managed closely by the Division. Preventative measures shall be taken by both the contractor and the Division prior to issuing the Notice to Proceed. Such measures may include soil tests (soil boring); clarification of ambiguity in the project plan, the scope of work, the Task Order, the drawings, etc.; the project scope should be completely defined and agreed upon before any work begins.

Other Construction Related Terms and Conditions:

Mediation:

Any controversy or claim arising between the parties shall be settled by mediation if the parties cannot reach a mutually agreeable solution. The parties shall endeavor to resolve their disagreement by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the procedures of the New Mexico Public Works Mediation Act (NMSA §13-4C-1 et seq.) except that before any party may select a mediator it must confer in good faith with the other party concerning the selection of a mutually acceptable mediator. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of notice of mediation session, unless stayed for a longer period by agreement of the parties or court order.

Inspection of Work:

If a Purchase Order is issued for the purchase of services, the following terms shall apply when applicable:

A. Services include services performed, workmanship, and material furnished or utilized in the performance of services.
B. The Contractor shall provide and maintain an inspection system acceptable to the Division covering the services under the Purchase Order. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Division during the term of performance of the Work and for as long thereafter as required.
C. The Division has the right to inspect and test all services contemplated to the extent practicable at all times and places during the term of the Project. The Division shall perform inspections and tests in a manner that will not unduly delay or interfere with the Contractor's performance.
D. If the Division performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Purchase Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
E. If any part of the services does not conform with the requirements, the Division may require the Contractor to re-perform the services in conformity with the requirements at no increase in Purchase Order amount. When the defects in services cannot be corrected by re-performance, the Division may:
   (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements; and
   (2) reduce the Purchase Order price to reflect the reduced value of the services performed.
F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements, the Division may:
   (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the Division that is directly related to the performance of such service; or
   (2) cancel the Purchase Order for default.

Suspension, Delay or Interruption of Work:

The Division may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period as the Division may determine. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized.

If at any time there is a delay in the critical path of the Work due to postponement, due to the Contractor's efforts to justify an extension of the time or an increase in the Agreement Price beyond the deadlines or due to the Contractor's refusal to proceed with any of the approved Work, such delay and any Contractor costs resulting from it shall not serve as the basis for the extension of the Time for Completion or Agreement Completion Date or for an increase in the Price Agreement Price.

Permits and Fees:

A. IF APPLICABLE- The Contractor shall secure and pay for the Building Permit and other permits and governmental fees, licenses and inspections and Certificate of Occupancy necessary for

proper execution and completion of the Work. Changes or modifications to the Work shall include all requirements of this paragraph.

B. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.
C. IF APPLICABLE- Certificates of Inspection, use and occupancy will be delivered to the Division upon completion of the Work in sufficient time for occupation of the facility in accordance with the approved schedule for the Work. Contractor shall deliver a photocopy of the Building Permit to the Design Professional and requesting entity as soon as it is obtained.

Schedule, Progress Meetings and Reports:

A. The Contractor, promptly after being awarded a Project and before the first payment application, shall prepare and submit for the Division's information a Critical Path Construction Schedule for the Work that indicates the intended start and completion of the various construction activities, which shall be implemented and adhered to by the Contractor, Subcontractors, material suppliers and equipment suppliers. At a minimum, the schedule shall be a GANTT type schedule and shall not exceed time limits allowed by the Task Order or Notice to Proceed with no fewer work breakdown events than line items of the Schedule of Values.
B. The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Division.
C. Progress meetings shall be scheduled on a regular basis. The purpose will be to review the upcoming activities, any open issues and current progress. The Contractor shall keep any meeting minutes as needed. Progress schedules shall be updated regularly. A three-week look-ahead schedule should be presented at every project meeting. A new schedule shall be presented with any change orders.
D. The Contractor shall prepare a daily report each day the Contractor, subcontractors or any other entity are on the project. The daily reports shall be maintained at the site and be well organized. The Division may request copies at any time. The reports may include:
    1. report date and who prepared the report;
    2. weather conditions - low temp, visibility, humidity, wind, wind direction, cloud conditions, precipitation amount, other notes;
    3. companies present by name and their number of workers, work location, total man hours that day for each company;
    4. equipment-type, source, units of work done, location of work, hour meter reading;
    5. material brought to site-description, units, quantity, quality, location, time;
    6. visitors to site -name, company, time;
    7. safety concerns-company, contact, noticed by, work activity, safety issue, requirement, outcome: and
    8. quality assurance and control -company, description of issue, specification section, issued by.

Close-out Requirements:

The Contractor shall submit to the Division a separate and detailed Closeout Schedule indicating the date of Final Completion and all work to be completed before Final Completion including Close-Out requirements. The punch list of incomplete or inadequate work shall also be submitted when the work is substantially complete. Failure to include any item on the punch list does not alter the responsibility of the Contractor to complete all work in accordance with the Price Agreement Documents.

Before final completion can be achieved, all Work must be complete and accepted including the following as applicable:

a. Work associated with Punch List(s);
b. testing, balance or performance operations complete and in agreement that associated work is in compliance with the Price Agreement Documents;
c. one hard copy and one electronic copy in .pdf format of final approved test, balance or performance report(s) complete with directory of contents submitted to the Division;
d. as-Built drawings delivered in AutoCAD or electronic format;
e. written certification signed by the Division of delivery and stocking of extra material, equipment or components required by the Purchase Order at a location established by the Division;
f. delivery of all warranties required by the Work;
g. all keys, passes, codes, software or other methods or components of control or security which have been correctly and adequately accounted for and closed-out;
i. Start-up of any new equipment and training of staff on all new equipment;
l. Operations and Maintenance Manuals;
m. a certified statement of Release of Liens (AlA Document G706A or approved form) and Consent of Surety.

Warranty:

The Contractor shall warrant its work (non-roofing and equipment), for materials and for workmanship furnished and performed under this Price Agreement for a period of one (1) year minimum from the date of acceptance or Substantial Completion. The Contractor shall warrant its work for repairs or restoration of existing systems and work for ninety (90) days from the date of acceptance or Substantial Completion. It is understood that some equipment is far beyond its normal life and a warranty cannot be extended/supplied. Contractor must pass on to the Division warranties of replaced roofs and equipment offered by the manufacturer.

Bid information:

Hourly rates are requested for the three (3) levels of personnel.

Superintendent: a person with supervisory experience who maintains control of the work and work site. This person may or may not actually perform work on the project.

Journeyman or Experienced Worker: a person licensed by the State for work required and being performed or a person with many years of experience with a high rate of pay.

Laborer: a person with minimal experience, performing minor forms of labor.

Materials and Parts:

Contractor shall submit billings, based on actual Contractor costs for materials, less any applicable percentage for discounts. If there is no discount to be offered, enter zero. Contractor shall provide verification that materials purchased were used for the project. Any unused, billed for materials shall be turned over to the Division for which the work was provided.

The City of Santa Fe requires that all materials shall be new and of the highest quality and at the

best attainable price available for the type of work being performed.

No used materials shall be used on the project. Recycled materials specifically prepared for reuse to meet "LEED" certification may be permitted with the requesting entity's approval.

The City of Santa Fe reserves the right to award this Price Agreement to multiple vendors. Bidders must include pricing for all items starting from item 001 through item 008 in order to allow for accurate comparisons. If a Bidder fails to include one or more of those items his Bid may be rejected.

2. **Compensation**

A. The total amount payable to the Contractor under this Price Agreement, including gross receipts tax and expenses, shall not exceed one million dollars eighty one thousand eight hundred seventy five dollars ($1,081,875.00) per fiscal year, for a total of four million three hundred twenty seven thousand five hundred dollars ($4,327,500.00) including gross receipts tax for the four (4) year term of this Contract. The applicable gross receipts tax shall be shown as a separate amount on each billing or request for payment made under the contract, consistent with NMSA 1978, Section 13-1-108. Wage rates will be paid as set forth in Exhibit A.

B. 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.

C. 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 twenty-one days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.

D. 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.

E. **Notice of Extended Payment Provision for Grant Funded Price Agreements**. This price agreement allows the City to make payment within 45 days after submission of an undisputed request for payment for price agreements funded by grant money consistent with NMSA 1978, sec. 57-28-5(B).

3. Term

THIS PRICE AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This price agreement shall terminate **four (4) years from the date of final signature**.

4. Termination

A. Grounds. The City may terminate this price agreement for convenience or cause. For price agreements 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 Price Agreement based upon the City's uncured, material breach of this Price Agreement.

B. Notice; City Opportunity to Cure.

1) Except as otherwise provided in Paragraphs 7.A and 17, 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 Price 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 Price 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 Price Agreement, the Contractor is suspended or debarred by the City; or (iii) the Price Agreement is terminated pursuant to Paragraph 5, "Appropriations," of this Price Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Price 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 Price 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 PRICE AGREEMENT.*

5. Appropriations

The terms of this Price Agreement are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Price Agreement. If sufficient appropriations and authorization are not made by the Governing Body, this Price 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 Price Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Price 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 construction 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 Price 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 Price Agreement **Performance and Payment Bond**

A. When a construction Task Order is approved 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 approval of the Task Order. 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. Approval of a task order 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 Task Order; 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 Task Order, 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 Task Order.

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 Price Agreement or assign any claims for money due or to become due under this Price 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 Price Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Price Agreement, nor shall any subcontract obligate direct payment from the City.

10. Release

Final payment of the amounts due under this Price 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 Price Agreement.

11. Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of this Price 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 Price Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Price Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Price 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 Price 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 Price Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Price Agreement, will continue to comply with, and that this Price 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 Price 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 Price 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 Price 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 Price 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 Price Agreement to the contrary, the City may immediately terminate the Price Agreement.

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

14. Amendment

A. This Price 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 Price 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 Price Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

15. Change Orders

A. Changes. The Contractor may only make changes or revisions within the Task Order as defined by Article 1 and/or Exhibit 1 after receipt of written approval by the Project 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 Task Order;
2) Due date of any Deliverable, as outlined in the Task Order;
3) Compensation of any Deliverable, as outlined in the Task Order;
4) Price Agreement compensation, as outlined in Article 2; or
5) Price Agreement termination, as outlined in Article 4.

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

1) The Contractor shall draft a written Change Request for review and approval by the Project Manager to include:
(a) the name of the person requesting the change;
(b) a summary of the required change;
(c) the start date for the change;
(d) the reason and necessity for change;
(e) the elements to be altered; and
(f) the impact of the change.

2. The Project 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 Project Manager are final. Change Requests, once approved, become a part of the Task Order, and become binding as a part of the original Task Order.

16. Merger

This Price 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 Price Agreement.

All terms and conditions of the **ITB #25119 – On-Call Collection System Construction Services,** 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 Price Agreement.

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

19. Applicable Law

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

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 Price Agreement may be terminated by the City.

21. Other Insurance

If the services contemplated under this Price Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Price 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 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. **Broader Coverage and Limits**. The insurance requirements under this Price Agreement shall be the greater of (1) the minimum coverage and limits specified in this Price 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 Price Agreement are sufficient to cover the obligations of Contractor hereunder.

C. Contractor shall maintain the above insurance for the term of this Price 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.

22. 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 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 under this Price Agreement shall not foreclose the right of the City to recover excessive or illegal payments

23. 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 Price 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 Price 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 Price 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.

24. New Mexico Tort Claims Act

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

25. Invalid Term or Condition

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

26. Enforcement of Price Agreement

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

27. Notices

Any notice required to be given to either party by this Price 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: Gilbert Rodriguez
73 Paseo Real
Santa Fe, NM 87507

To the Contractor: Brent Costlow
44 Coyote Mountain Rd.
Santa Fe, NM 87507

28. Authority

If Contractor is other than a natural person, the individual(s) signing this Price 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 Price Agreement.

29. Progress Payments

Based upon Application for Payment submitted to the City by the Contractor and Certificates for Payment issued by the City, the City shall make progress payments on account of the Price Agreement sum to the Contractor as provided in the Price Agreement documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Price Agreement Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Price Agreement sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the City; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Price Agreement sum, less such amounts as the City shall determine for all incomplete work and unsettled claims as provided in the Price Agreement documents.

30. Final Payment

Final payment, constituting the entire unpaid balance of the Price Agreement sum, unless it is a disputed payment, shall be paid by the City to the Contractor within twenty-one (21) calendar days, after all deficiencies to the Price Agreement document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Price Agreement has been fully performed and a final Certificate for Payment has been issued by the City. In addition, the Contractor shall provide to the City a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

31. General and Special Provisions

A. Terms used in this Price Agreement which are defined in the Conditions of the Price Agreement shall have the meanings designated in those Conditions.

B. An enumeration of the Contractor's General Comprehensive Liability Insurance requirements appears in the General Conditions of the Price Agreement for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts, which the City could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to comply with the law.

C. This Price Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Price Agreement.

D. The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration and the State Auditor. The City shall have the right to audit billings both before and after payment. Payment under this Price Agreement shall not foreclose the right of the City to recover excessive illegal payments.

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

F. The Contractor hereby warrants that the Contractor complies with the Americans with Disabilities Act, 29 CFR 1630.

G. Gender, Singular/Plural. Words of any gender used in this Price Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

H. Captions and Section Headings. The captions and section headings contained in this Price Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Price Agreement.

I. Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Price Agreement shall be attached to this Price Agreement at the time of execution and are hereby incorporated by reference as though set forth in full in this Price Agreement to the extent they are consistent with its conditions and terms.

J. Separability. If any clause or provision of this Price Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Price Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Price Agreement shall not be affected thereby.

K. Words and Phrases. Words, phrases, and abbreviations, which have well-known technical or trade meanings used in the Price Agreement documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.

L. Relationship of Price Agreement Documents. The Price Agreement Documents are complementary, and any requirement of one Price Agreement Document shall be as binding as if required by all.

M. Pursuant to NMSA 1978, section 13-1-191, reference is hereby made to the Criminal Laws of New Mexico (including NMSA 1978, sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (NMSA 1978, sections 13-1-28 through 13-1-199) imposes civil and criminal penalties for its violation.

N. Pursuant to NMSA 1978, section 13-4-11. Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

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

CITY OF SANTA FE:

_____
ALAN WEBBER, MAYOR

DATE: _____

CONTRACTOR:

Karl W. Eberhart
Karl W. Eberhart (Aug 12, 2025 12:33:23 CDT)
Karl Eberhart, President

DATE: Aug 12, 2025

NMBTIN#: _____

ATTEST:

_____
ANDRÉA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Aug 12, 2025 13:07:28 MDT)
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
EMILY OSTER, FINANCE DIRECTOR

EXHIBIT A

Santa Fe sewer maintanence bid sheet

Bidder Instructions: *(Replace Department Instructions, prior to ITB release. Be sure to check row height to ensure the entire instructions are displayed.)*

Items - Bidders do not have the ability to add or delete items.

Approx. Qty. - Quantities provides are estimates, only, and do not establish a definite quantity contract. Actual quantities purchased under a resulting agreement may vary. Bidders may not change the Approx. Qty.

UOM (Unit of Measure) - Bidders do not have the ability to change the UOM. Any variation from the UOM identified may be provided in the Comments.

Article and Description - Bidder cannot change Article and Description. Any clarification, explanation, brand name identification, etc. must be provided in the

Unit Price - Bidders must provide pricing that conforms with the identified Unit Price.

Comments - Bidders may only provide comments to explain or clarify an item, identify a brand name, or provide information as specifically stated in the corresponding ITB document. Changes and additions to the items, including variations in pricing for an item, are not permitted. Any comments that do not conform to the requirements in the ITB or on this form will be disregarded, and will not be included in the resulting award, if bidder is awarded.

Item	Approx. Qty.	UOM	Article and Description	Unit Price	Comments
			Wage Rates for Projects Under $60,000.00		
1	1	Hourly	Superintendent – Regular Hourly Rate	$89.00	
2	1	Hourly	Superintendent – Overtime Hourly Rate	$133.50	
3	1	Hourly	Journeyman or expirenced worker – Regular Hourly	$49.00	
4	1	Hourly	Journeyman or experienced worker – Overtime	$73.50	
5	1	Hourly	Laborer – Regular Hourly Rate	$45.00	
6	1	Hourly	Laborer – Overtime Hourly Rate	$67.50	
			Wage Rates for Projects Over $60,000.00		
7	1	Hourly	Superintendent – Regular Hourly Rate	$85.00	
8	1	Hourly	Superintendent – Overtime Hourly Rate	$127.50	
9	1	Hourly	Journeyman or expirienced worker – Regular Hourly	$45.00	
10	1	Hourly	Journeyman or expirienced worker – Overtime Hourly	$67.50	
11	1	Hourly	Laborer – Regular Hourly Rate	$40.00	
12	1	Hourly	Laborer – Overtime Hourly Rate	$60.00	
			Wage Rates for Emergency Response		
13	1	Hourly	Superintendent – Regular Hourly Rate	$95.00	
14	1	Hourly	Superintendent – Overtime Hourly Rate	$142.50	
15	1	Hourly	Journeyman or expirienced worker – Regular Hourly	$54.00	
16	1	Hourly	Journeyman or expirienced worker – Overtime Hourly	81	
17	1	Hourly	Laborer – Regular Hourly Rate	48	
18	1	Hourly	Laborer – Overtime Hourly Rate	$72.00	
			Other Rates		
19	1	Daily	Sanitary/toilet facilities, rental rates	$35.00	
20	1	Rate/Mile	Travel Rate from the Contractors facility to the work site, pursuant to the New Mexico Per Diem and Mileage Act.	0.70	
21	1	Disc	Discount off parts	0%	

Outlook

RE: Collection System On Call Construction

From DUTTON-LEYDA, TRAVIS K. <tkduttonleyda@santafenm.gov>
Date Thu 1/23/2025 11:52 AM
To HEERBRANDT, PAUL F. <pfheerbrandt@santafenm.gov>; Purchasing DET <purchasing_det@santafenm.gov>
Cc MACALLISTER, LINDA M. <lmmacallister@santafenm.gov>

Greetings,

The scope of work as written would be Construction. This determination relates only to that question and is no comment on whether the scope of work or procurement method meet all legal standards. I reserve the right to change this determination if the scope of work differs from the scope of work submitted for the original determination. This procurement must be conducted using the processes and procedures set forth by the City of Santa Fe, Central Purchasing, the Procurement Manual, and state statutes.

Please note:

- Save this email as a PDF and upload it into the corresponding Munis records.
- Check with WorkQuest dba Horizons of New Mexico (vendor # 8673) (mloehman@horizonsofnewmexico.org) if this service appears on their approved list.
- If your request includes anything that needs to be reviewed and preapproved by another City Department/Division, please send the same SOW to the corresponding email address and include their response in your packet/Munis.
  -IT components (anything IT) - ereview@santafenm.gov
  -Vehicles – dmjaramillo@santafenm.gov
  -Grants - grants@santafenm.gov
  - Construction, Facilities, Furniture, Fixtures, Equipment, etc. - jsburnett@santafenm.gov
  -Emergency Related Purchases - bgwilliams@santafenm.gov
  -Asset over $5k - jxbolden@santafenm.gov
- Ensure that the appropriate templates and forms are used https://intranet.santafenm.gov/finance_1 and documented procedures/laws/rules are followed.
- > $20k per year, when processing this procurement, please ensure the procurement number issued by Munis and the procurement name are used in the appropriate documents and the subject of emails.
- If you are processing a procurement where the forecasted amount is =/> $60k, per NMSA 1978, Section 13-1-102, the procurement method must be ITB (if you choose not to use a cooperative or an existing contract). If you feel you need to process an RFP, you must get an Authorization and Plan approved before you process.
- < $20k per year, one quote is acceptable.
- From $20k to $60k per year, if you aren't using a cooperative or existing contract, you'll need to provide 3 quotes in your req. Must use the Munis Bid Module after 12/21/2023.
- Please keep this as part of the procurement file for future reference.
- Figure out your funding source and **inform Purchasing**. To ensure that the proper documents and language are used, it is important to identify the funding source for the subsequent contract. For instance, if federal funds are involved, the procurement request and subsequent contract must

include the necessary federal language. Therefore, it is crucial to determine the funding source beforehand.

- Please review the pages linked below to determine whether any of the existing contracts/price agreements or cooperative agreements are applicable to this request. You might be able to use an existing price agreement to save time and money.
  - https://www.generalservices.state.nm.us/state-purchasing/statewide-price-agreements/ (if you choose to use a Statewide, you do not need to ask Horizons if they can do the work. State Purchasing must offer the SOW to Horizons prior to placing the award on their website.)
  - https://naspovaluepoint.org/categories/
  - https://www.omniapartners.com/publicsector/contracts
  - https://www.buyboard.com/home.aspx
  - https://www.h-gac.com/Home
  - https://www.gsaelibrary.gsa.gov/
  - https://www.sourcewell-mn.gov/contract-search

- Submit or send your request to the appropriate MS Teams channel or email address:
  - RFPs requests to https://teams.microsoft.com/l/channel/19%3ad63b9c8b586d424fa5eed34177146ac5%40thread.tacv2/RFP%2520Requests?groupId=a367d8c2-992f-4c74-8e7d-0ccb6950c9a1&tenantId=77b69f5a-55ed-4363-8616-4867b0bc707f
  - ITBs requests to https://teams.microsoft.com/l/channel/19%3a48e1e4588c0440a09cfbd9b907ed42d4%40thread.tacv2/ITB%2520Requests?groupId=a367d8c2-992f-4c74-8e7d-0ccb6950c9a1&tenantId=77b69f5a-55ed-4363-8616-4867b0bc707f
  - Determination requests to purchasing_det@santafenm.gov
  - And all other requests to purchasing@santafenm.gov

Thank you for submitting this scope of work for my review.

Regards,

Travis Dutton-Leyda
Chief Procurement Officer
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87501
505-629-8351
tkduttonleyda@santafenm.gov

https://santafenm.gov/finance-2/purchasing-1

Vendor Registration and Current Procurement Opportunities:
https://cityofsantafenmvendors.munisselfservice.com/Vendors/VBids/SearchResults.aspx

Internal Link: https://intranet.santafenm.gov/finance_1

CITY OF SANTA FE
FINANCE

"The future belongs to those who believe in the beauty of their dreams." — Eleanor Roosevelt

From: HEERBRANDT, PAUL F. <pfheerbrandt@santafenm.gov>
Sent: Thursday, January 23, 2025 10:52 AM
To: Purchasing DET <purchasing_det@santafenm.gov>
Cc: MACALLISTER, LINDA M. <lmmacallister@santafenm.gov>
Subject: Collection System On Call Construction

Requesting the determination of the contract type and procurement method for the following scope of work. Thanks

Collection System On Call Construction

The City of Santa Fe, Public Utilities Department, Wastewater Management Division (Division) wishes to establish a Price Agreement for On-Call Repair, Replacement, Extension, and Rehabilitation of Sewer Collection System Construction services work by New Mexico licensed contractors to provide miscellaneous repairs, upgrades, improvements, replacements, new construction services and material for facilities throughout the Paseo Real Wastewater Reclamation Facility, the Sanitary Sewer Collection System, and other remote locations.

The Division shall provide, at a minimum, a detailed scope of work and/or drawings, generally defining the construction work required for the project. The Contractor shall be responsible for verifications of all existing conditions, measurements, and dimensions for bidding.

The award of this Price Agreement is without assurance of quantity or dollar amount of work to be performed.

Contractors shall have the technical staff to perform diagnostic services and provide professionally prepared, stamped drawings, if needed, to obtain installation or construction permits. The Contractor is responsible for obtaining all required licenses, fees and permits required to perform the work. Contractor shall be responsible for any applicable Local, County, State and Federal requirements and permits including, but not limited to, the City of Santa Fe's Stormwater Pollution Prevention Program and Stormwater BMPs.

The City of Santa Fe Wastewater Management Division shall be able to utilize this On-Call Contract as needed and as funding is available.

Wage Rates:

All work covered by this Price Agreement shall be in accordance with applicable City and State laws and is subject to the minimum wage rate determination issued by the Department of Workforce Solutions (DWS), if applicable.

A wage rate decision is required by the Public Works minimum Wage Act for construction, demolition or renovation purposes on projects costing sixty thousand dollars ($60,000) or more. The Contractor agrees to comply with the current prevailing wage rate schedule when applicable. For current wage rates or for additional information, visit: http://www.dws.state.nm.us . The Division will request a wage rate determination from the DWS for each project that is $60,000 or more.

When submitting a quote for a specific project valued at more than sixty thousand dollars ($60,000) for any portion of a public works project that is subject to the New Mexico Public Works Act, the Contractor is required to be registered with the Labor and Industrial Division of the Department of Workforce Solutions prior to submitting its quote. The Division may reject any quote that fails to provide a Public Works registration number for the prime Contractor and all other listed Contractors or subcontractors.

Other:

All work shall be in accordance with applicable City and state laws, the International Building Code (IBC) and the New Mexico building codes. The Contractor shall be responsible for all permits associated with this work as required by the governmental Authority Having Jurisdiction (AHJ).

All work shall be in strict compliance with the national and state building mechanical, plumbing and electrical codes including SMACNA, and ASHRAE standards.

Contractors shall be capable of providing all coordination, supervision and services required for comprehensive general construction, facilities replacement, upgrade and improvement projects and to provide new construction services including incidental design. It can include site and utility work, mechanical work, pavement restoration, facilities repair, renovation, backfill services, digging, ditching, rock stabilization, concrete, and pour in place and form place finish. The utility work shall include pumping systems, gravity sewers, manholes, force mains, and related facilities. It may also include demolition and abatement projects.

All material shall be new and of the highest quality available for the type of work being performed. The purchase of major equipment or material must be preceded by submission of submittal data on the proposed equipment or material and shall be reviewed and approved by the Division.

The requesting entity reserves the right to purchase materials or specialty services directly from existing Statewide Price Agreements and other sources, and to provide these materials to the Contractor. The Contractor shall provide an itemized, quantifiable list of materials required for the project. Specialty services provided from Statewide Price Agreements and other sources shall be coordinated by the Contractor.

If the Contractor is requesting reimbursement for materials used on the work, copies of the invoices for the materials must be included when submitting invoices/pay applications. The Contractor may NOT add markups for the materials purchased.

The Division reserves the right to obtain quotes from multiple vendors covered under this Price Agreement and award a project to a contractor based on the quotes.

The Division reserves the right to provide an escort and/or full-time supervision of the Contractor and its employees during any or all phases of a project, should the Division feel it is in its best interest to provide these extraordinary security services.

The Division reserves the right to escort any or all employees of the Contractor off its property, for any inappropriate conduct or actions that jeopardize the safety, security, or wellbeing of the facility or any individual. Inappropriate behavior by the Contractor, its employees or subcontractors may be grounds for immediate removal from this Price Agreement. Any employee of the Contractor found in violation of any law, while on City property, will be prosecuted.

Contractor:

No person shall act as a Contractor without a license issued by the Construction Industries Division (CID), classified to cover the type of work to be performed. No bid on a contract shall be submitted unless the Contractor has a valid Contractor's license issued by the CID to bid and to perform the type of work to be undertaken, as set forth in §60-13-12, NMSA 1978.

Safety shall be of main concern and enforced by the Contractor on site. The Contractor shall comply with all local, state and federal laws governing safety, health and sanitation. The on-site superintendent shall always have a minimum OSHA 10 and preferably OSHA 30 card with them when on the jobsite. The Division shall not in any way be responsible for any fines set forth for such violations of codes, OSHA standards or any other governing agency having jurisdiction at the work site. The Contractor shall provide all needed safeguards, safety devices, protective equipment and take any actions necessary to protect the life and health of employees on the job; the safety of the public and to protect the property of the Division in connection with the performance of the work covered by this price Agreement.

All personnel working on the project and providing these services shall be experienced and certified in all areas related to this work and required by this Price Agreement. Journeymen level personnel shall have the ability and necessary skills to diagnose problems and to make the appropriate decisions needed to provide these services.

The Contractor shall follow the Occupational Safety and Health Act (OSHA) 29 CFR 1910.147 Standard pertaining to "Lockout/Tagout" procedures for hazardous energy.

The Contractor shall agree to provide required labor within 24 hours for emergency situations.

Contractor's price shall include labor costs, permits, overhead, profit, insurance, equipment, tools and any other fees required to successfully complete the work requested. The Contractor shall be capable of providing a work force with supervision, adequate to perform work for a forty (40) hour work week during normal working hours with the option of working non normal or overtime hours if required. The Contractor shall be responsible for all permits, fees, and State and/or City inspections associated with their work.

Subcontracting of work is allowed and shall have prior approval by the Division. Subcontractors shall have the appropriate current valid Contractor's licenses for their work. Proof of licenses shall be furnished upon request.

There will be NO markups allowed for adding subcontractor costs or to cover general conditions (administrative costs and other related expenses) allowed on any of the quotes issued pursuant to this Price Agreement. If a subcontractor is hired for the project the reimbursement must be at actual cost of the subcontractor's cost. The cost of the subcontractor will be added at time of invoicing as a separate item to be paid by the Department.

Furnishing of submittal data for any/all new equipment and materials as well as O&M' s is required. Training of site personnel for the proper operation of newly installed equipment/systems and its related controls will be required for completion. This training will be acceptable to the person in charge of the facility and/or the City's Project manager in charge of the project.

The Contractor shall provide all protective coverings necessary to protect existing, adjacent finishes while performing its work. If any damage is encountered during the contractor's work, the contractor will be held responsible for repairing any damage done by his employees, subcontractors, and vendors. The Contractor shall restore any damage to existing and/or adjacent finishes damaged while performing work and to make new work inconspicuous with the existing adjacent finishes.

The Contractor and its employees agree to cooperate with and to abide by the rules and requirements of the Division to not interfere with the daily operations of the Division or to jeopardize the health, safety or welfare of the employees or general public conducting business with the Division.

Clean Up and Storage:

A. The Contractor will provide off-site legal disposal of all waste products, trash, and debris. The Division's trash receptacles will not be used by the Contractor. Sanitary facilities will "not" be available at the job site. Contractor shall be responsible for the provision and maintenance of portable toilets.

B. The Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of the Work, the Contractor shall remove the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials and shall then thoroughly clean the premises and the site to the Division's satisfaction.

C. Materials or equipment shall be delivered to the project in the manufacturer's original sealed, labeled containers and shall be adequately protected against moisture, dust, tampering or damage from improper handling or storage. Materials shall not be delivered to the site before they are needed.

D. Storage of materials and construction equipment shall be coordinated with the Division.

Task Order:

The Contractor shall be required to provide On-Call Construction Services for any number of the activities listed under Scope of Work upon the request of the Division. When a service is identified, the Division shall provide, at a minimum, a detailed scope of work and/or drawings defining work required. Each project will be individually described in a "Task Order". The Task Order will describe the scope of work, the duration of the project with the date of Substantial Completion and if there are liquidated damages for not meeting the date of substantial completion. The date of Substantial Completion is the date when the space can be occupied or the Work used/operated and is turned over to the User Agency. Final completion is the date when the project is totally complete, the punch list work complete and the Contractor's final pay application/invoice is approved. The terms and conditions of the Contractor's Price Agreement will apply to all Task Orders.

Upon receiving the City's Task Order, the Contractor shall promptly visit the site and compare the Division's scope of work and/or drawings to the existing conditions and provide all services called for in addition to the requirements set forth in this Price Agreement. The Contractor will be required to provide a written quote (based upon the rates submitted in the Bid Form) sub-contractors list (including subcontractor's CID licenses) and cost summary to include the work to be performed, sub-contractors cost and the amount of time required for the completion of the project and submit to the Division at no cost to the Division. Project schedules, negotiated price, and completion dates shall be determined on a project-by-project basis and dependent upon the urgency of that task.

If any equipment or system cannot be economically repaired or has reached the end of its life cycle, the Contractor shall justify with costs and other information they need for replacement. If replacement is recommended, the Contractor will provide written justification for system and/or the model, size, and type of unit recommended along with any applicable efficiency data. The Division's standards will be discussed and taken into consideration when proposing replacement units or systems. Any replacement unit shall be reviewed and approved by the requesting entity.

Change Orders:

Any change orders to the project scope will require an additional Task Order with backup materials and labor costs and shall be substantiated that there was no way of knowing the additional services were needed when the original quote was provided. Change orders shall be managed closely by the Division. Preventative measures shall be taken by both the contractor and the Division prior to issuing the Notice to Proceed. Such measures may include soil tests (soil boring); clarification of ambiguity in the project plan, the scope of work, the Task Order, the drawings, etc.; the project scope should be completely defined and agreed upon before any work begins.

Other Construction Related Terms and Conditions:

Mediation:

Any controversy or claim arising between the parties shall be settled by mediation if the parties cannot reach a mutually agreeable solution. The parties shall endeavor to resolve their disagreement by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the procedures of the New Mexico Public Works Mediation Act (NMSA §13-4C-1 et seq.) except that before any party may select a mediator it must confer in good faith with the other party concerning the selection of a mutually acceptable mediator. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of notice of mediation session, unless stayed for a longer period by agreement of the parties or court order.

Inspection of Work:

If a Purchase Order is issued for the purchase of services, the following terms shall apply when applicable:

A. Services include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the Division covering the services under the Purchase Order. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Division during the term of performance of the Work and for as long thereafter as required.

C. The Division has the right to inspect and test all services contemplated to the extent practicable at all times and places during the term of the Project. The Division shall perform inspections and tests in a manner that will not unduly delay or interfere with the Contractor's performance.

D. If the Division performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Purchase Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services does not conform with the requirements, the Division may require the Contractor to re-perform the services in conformity with the requirements at no increase in Purchase Order amount. When the defects in services cannot be corrected by re-performance, the Division may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements; and
(2) reduce the Purchase Order price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements, the Division may:

(1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the Division that is directly related to the performance of such service; or
(2) cancel the Purchase Order for default.

THE PROVISIONS OF THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE REQUESTING ENTITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THE PURCHASE ORDER/PRICE AGREEMENT.

Suspension, Delay or Interruption of Work:

The Division may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period as the Division may determine. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized.

If at any time there is a delay in the critical path of the Work due to postponement, due to the Contractor's efforts to justify an extension of the time or an increase in the Agreement Price beyond the deadlines or due to the Contractor's refusal to proceed with any of the approved Work, such delay and any Contractor costs resulting from it shall not serve as the basis for the extension of the Time for Completion or Agreement Completion Date or for an increase in the Contract Price.

Permits and Fees:

A. IF APPLICABLE- The Contractor shall secure and pay for the Building Permit and other permits and governmental fees, licenses and inspections and Certificate of Occupancy necessary for proper execution and completion of the Work. Changes or modifications to the Work shall include all requirements of this paragraph.

B. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

C. IF APPLICABLE- Certificates of Inspection, use and occupancy will be delivered to the Division upon completion of the Work in sufficient time for occupation of the facility in accordance with the approved schedule for the Work. Contractor shall deliver a photocopy of the Building Permit to the Design Professional and requesting entity as soon as it is obtained.

Schedule, Progress Meetings and Reports:

A. The Contractor, promptly after being awarded a Project and before the first payment application, shall prepare and submit for the Division's information a Critical Path Construction Schedule for the Work that indicates the intended start and completion of the various construction activities, which shall be implemented and adhered to by the Contractor, Subcontractors, material suppliers and equipment suppliers. At a minimum, the schedule shall be a GANTT type schedule and shall not exceed time limits allowed by the Task Order or Notice to Proceed with no fewer work breakdown events than line items of the Schedule of Values.

B. The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Division.

C. Progress meetings shall be scheduled on a regular basis. The purpose will be to review the upcoming activities, any open issues and current progress. The Contractor shall keep any meeting minutes as needed. Progress schedules shall be updated regularly. A three-week look-ahead schedule should be presented at every project meeting. A new schedule shall be presented with any change orders.

D. The Contractor shall prepare a daily report each day the Contractor, subcontractors or any other entity are on the project. The daily reports shall be maintained at the site and be well organized. The Division may request copies at any time. The reports may include:

1. report date and who prepared the report;
2. weather conditions - low temp, visibility, humidity, wind, wind direction, cloud conditions, precipitation amount, other notes;
3. companies present by name and their number of workers, work location, total man hours that day for each company;
4. equipment-type, source, units of work done, location of work, hour meter reading;
5. material brought to site-description, units, quantity, quality, location, time;
6. visitors to site -name, company, time;
7. safety concerns-company, contact, noticed by, work activity, safety issue, requirement, outcome: and
8. quality assurance and control -company, description of issue, specification section, issued by.

Close-out Requirements:

The Contractor shall submit to the Division a separate and detailed Closeout Schedule indicating the date of Final Completion and all work to be completed before Final Completion including Close-Out requirements. The punch list of incomplete or inadequate work shall also be submitted when the work is substantially complete. Failure to include any item on the punch list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents.

Before final completion can be achieved, all Work must be complete and accepted including the following as applicable:

a. Work associated with Punch List(s);
b. testing, balance or performance operations complete and in agreement that associated work is in compliance with the Contract Documents;
c. one hard copy and one electronic copy in .pdf format of final approved test, balance or performance report(s) complete with directory of contents submitted to the Division;

d. as-Built drawings delivered in AutoCAD or electronic format;
e. written certification signed by the Division of delivery and stocking of extra material, equipment or components required by the Purchase Order at a location established by the Division;
f. delivery of all warranties required by the Work;
g. all keys, passes, codes, software or other methods or components of control or security which have been correctly and adequately accounted for and closed-out;
i. Start-up of any new equipment and training of staff on all new equipment;
l. Operations and Maintenance Manuals;
m. a certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety.

Warranty:

The Contractor shall warrant its work (non-roofing and equipment), for materials and for workmanship furnished and performed under this Price Agreement for a period of one (1) year minimum from the date of acceptance or Substantial Completion. The Contractor shall warrant its work for repairs or restoration of existing systems and work for ninety (90) days from the date of acceptance or Substantial Completion. It is understood that some equipment is far beyond its normal life and a warranty cannot be extended/supplied. Contractor must pass on to the Division warranties of replaced roofs and equipment offered by the manufacturer.

Bid information:

Hourly rates are requested for the three (3) levels of personnel.

Superintendent: a person with supervisory experience who maintains control of the work and work site. This person may or may not actually perform work on the project.

Journeyman or Experienced Worker: a person licensed by the State for work required and being performed or a person with many years of experience with a high rate of pay.

Laborer: a person with minimal experience, performing minor forms of labor.

Materials and Parts:

Contractor shall submit billings, based on actual Contractor costs for materials, less any applicable percentage for discounts. If there is no discount to be offered, enter zero. Contractor shall provide verification that materials purchased were used for the project. Any unused, billed for materials shall be turned over to the Division for which the work was provided.

The City of Santa Fe requires that all materials shall be new and of the highest quality and at the best attainable price available for the type of work being performed.

No used materials shall be used on the project. Recycled materials specifically prepared for reuse to meet "LEED" certification may be permitted with the requesting entity's approval.

The City of Santa Fe reserves the right to award this Price Agreement to multiple vendors. Bidders must include pricing for all items starting from item 001 through item 016 in order to allow for accurate comparisons. If a Bidder fails to include one or more of those items his Bid may be rejected.

P. Fred Heerbrandt, P.E.

Engineer Supervisor Wastewater

City of Santa Fe

505-955-4623

pfheerbrandt@santafenm.gov



Log # *{Finance use only}*:	
Journal # *{Finance use only}*:	

City of Santa Fe, New Mexico
BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME	DATE
Public Utilities/Wastewater	8/5/2025

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WW Capital Projects/WIP Construction	5000375	572970	n/a	$ 1,081,875	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
				$ 1,081,875	$ -

JUSTIFICATION: *(use additional page if needed)*
--Attach supporting documentation/memo

To increase account 572970 for SKE. Plese see memo for detail and please add **SKE COLLECTION** for posting of BAR

ON-CALL NO PL#

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
500	(1,081,875)
TOTAL:	**(1,081,875)**

Linda MacAllister 8/5/2025
Prepared By *{print name}* Date

Division Director Signature *{optional}* Date

Department Director Signature Date

{Use this form for Finance Committee/ City Council agenda items ONLY}

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins 08/19/2025
Budget Officer Date

Finance Director *{≤ $5,000}* Date

City Manager *{≤ $60,000}* Date

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 7/3/2025

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 Higginbotham Insurance Agency, Inc. 1400 FM 528, Suite F Webster TX 77598	**CONTACT NAME:** Sarah Sowinski **PHONE (A/C, No, Ext):** 281-990-6051 **FAX (A/C, No):** 281-990-6052 **E-MAIL ADDRESS:** ssowinski@Higginbotham.com
	INSURER(S) AFFORDING COVERAGE / **NAIC #**
	INSURER A : The Charter Oak Fire Insurance — 25615
INSURED SKECO SKE Contractors, LLC P.O. Box 1111 Cypress TX 77410	**INSURER B :** The Travelers Indemnity Co of America — 25666
	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES **CERTIFICATE NUMBER:** 300813630 **REVISION NUMBER:**

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	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:			CO-B0617015	5/1/2025	5/1/2026	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 300,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
B	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY / SCHEDULED AUTOS X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY			BA-B061821A	5/1/2025	5/1/2026	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
	UMBRELLA LIAB OCCUR **EXCESS LIAB** CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					PER STATUTE / OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $
A	Inland Marine Ded. $2,500			CO-B0617015	5/1/2025	5/1/2026	Scheduled Equip. Rented/Leased Equip. Install Floater/Ded.	On File $250,000 $250,000/$1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The General Liability and Automobile Liability policies include a blanket automatic additional insured endorsement that provides additional insured status and General Liability and Automobile Liability policies include a blanket waiver of subrogation endorsement to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

The General Liability and Automobile Liability policies have a blanket Primary & Non Contributory endorsement that affords that coverage to certificate holders only where there is a written contract between the Named Insured and the certificate holder that requires such status.

CERTIFICATE HOLDER

City of Santa Fe
200 Lincoln Avenue
Santa Fe NM 87501

CANCELLATION

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



© 1988-2015 ACORD CORPORATION. All rights reserved.

CITY OF SANTA FE

The Purchasing Memo

Date: August 11, 2025

To: Governing Body, Finance Committee, and Public Works & Utilities Committee

From: Scott Overlie, Parks & Open Space Division Project Manager III SAO

Via: Regina Wheeler, Public Works Department Director RW

Melissa McDonald, Parks & Open Space Division Director MMc

Subject: Contract Amendment #1 for Munis Contract #3203892

Vendor Name: Proscape Landscape Management, LLC.

Munis Vendor Number: 6227

ITEM AND ISSUE:

Request for Approval of Amendment No. 1 to On-Call General Services Contract #3203892 with Proscape Landscape Management, LLC. to Increase Pricing Due to Market Conditions.

CONTRACT NUMBER:

The FY24 Munis contract number is 3203892.

BACKGROUND AND SUMMARY:

This on-call contract is essential to efficiently maintain landscapes on parks, medians, trails and open space across the City. The Contractor assists with landscape and irrigation design, construction, repairs; encampment clean-up; snow removal and ice control.

The Contractor has experienced an increase in labor costs due to market demand and their commitment to deliver quality services with consistency. Article 8 of the contract allows for amendment to terms of the contract with agreement by both parties.

On-call contracts are not a guarantee of work and task orders are issued as needs arise and funding is available. Staff requests quotes from multiple contractors for each project and Contractors may quote pricing that is lower than the contract price list.

ATTACHMENTS:

Amendment #1
Price Increase Justification Letter
Original Contract Packet
COI

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: Varies

Munis Org Name/Number: Varies

Munis Object Name/Number: Varies

Budget Officer / Designee: Andy Hopkins **Date:** 08/19/2025

Budget Officer Comment/Exceptions: _____

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-102, ITB

Chief Procurement Officer (CPO)/Designee: _____ **Date:** 08/22/2025

CPO Comment/Exceptions: _____

ASSOCIATED APPROVALS:

IT Components included? ☐ **Yes |** ☒ **No**

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Treasury/Point of Sale 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: _____

Item#_____
Munis Contract#3203892
Original Contract Item#23-0104
SWPA/GSA/Coop/RFP/ITB #: _____

CITY OF SANTA FE
AMENDMENT No. 1 TO
ON-CALL GENERAL SERVICES Contract
ITEM#23-0104

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE ON-CALL GENERAL SERVICES CONTRACT, dated March 12th, 2023 (the "Contract"), between the City of Santa Fe (the "City") and Proscape Landscape Management, LLC. (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 Contract, Contractor has agreed to provide the City of Santa Fe On-call General Services.

B. Pursuant to Article 8 of the Contract, 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. SCOPE OF SERVICES

Exhibit B, attached hereto, is incorporated as an exhibit to this Agreement. Article 1 of the Contract is amended such that for items with an increased hourly rate on Exhibit B, including Bid Tab Items 1, 2, 3, 4, 5, 6, 35, 54, 56, 61, 62, 63, and 68, the hourly rate paid shall be the increased rate shown in Exhibit B.

.

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:_____

CONTRACTOR:
PROSCAPE LANDSCAPE MANAGEMENT, LLC.

Sean Gabriel
Sean Gabriel (Jul 11, 2025 13:11 MDT)
SEAN GABRIEL, PROJECT MANAGER

DATE: 07/11/2025
CRS#_____
Registration # _____

ATTEST:

_____
ANDREA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault
Kevin L. Nault (Jul 11, 2025 13:18 MDT)
ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
EMILY OSTER, FINANCE DIRECTOR

EXHIBIT A

STEAMER Inc
dba PROSCAPE LANDSCAPE MANAGEMENT™
1850 Old Pecos Trail, Suite J
SANTA FE, NM 87505
TEL: 505-455-9348
FAX: 505-982-0432
office@proscapenm.com
www.proscapenm.com

July 2, 2025

Notification of Labor Cost Adjustments

We are writing to inform you of upcoming adjustments to our labor rates. Please see Page 2.

This change is driven by several key factors:

- Rising labor market rates: Competitive wages are necessary to retain skilled workers in the current market
- Increased operational costs: To ensure fair compensation and maintain quality standards, we must align our rates with broader economic trends.
- Investment in workforce quality: We are committed to ongoing training, safety compliance, and maintaining high service standards, which require investment in our labor force

We value our partnership and remain committed to delivering the same level of quality, reliability, and responsiveness you have come to expect. This rate adjustment will help us meet those expectations without compromise.

Thank you for your support and understanding

Sincerely,

Samantha Gorgy
Office Manager
Proscape Landscape Management

Reference Guide
Item # are aligned with City On-Call Pricing

Proscapes- On Call Vegetation Price Sheet Increase request Fiscal Year 2026 7/1/2025 - 6/30/2026			
		existing	increase
Item #	**Bid Items**	**Unit Price**	**Unit Price**
1	Brush Removal	$40.00	$48.00
2	Clear and Grubbing	$40.00	$48.00
3	Pruning Herbaceous Plants	$40.00	$48.00
4	Pruning Woody Plants	$40.00	$48.00
5	Mowing w/ String Line	$40.00	$48.00
6	Weed Eating	$40.00	$48.00
35	Jouneyman or Experienced Worker	$55.00	$65.00
54	Jouneyman or Experienced Worker	$55.00	$65.00
56	Laborer	$40.00	$48.00
61	Jouneyman or Experienced Worker	$55.00	$65.00
62	Jouneyman or Experienced Worker - Overtime Rate	$75.00	$90.00
63	Laborer	$40.00	$48.00
68	Snow Plow (On Truck)	$160.00	$180.00

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 12/27/2024

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
Brown & Brown Insurance Services, Inc.
1660 Old Pecos Trail Suite D
Santa Fe NM 87505

CONTACT NAME: Venessa Vigil-Kim
PHONE (A/C, No, Ext): (505) 455-7355 **FAX (A/C, No):**
E-MAIL ADDRESS: Venessa.Vigil@bbrown.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Westfield Superior Insurance Company	16449
INSURER B : New York Marine And General Insurance Company	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Steamer Inc
1850 Old Pecos Trl Ste J
Santa Fe NM 87505-4760

COVERAGES **CERTIFICATE NUMBER:** 25/26 Master **REVISION NUMBER:**

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	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:	Y		279861N	01/01/2025	01/01/2026	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY			279861N	01/01/2025	01/01/2026	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ 1,000,000 $ $
A	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $			279861N	01/01/2025	01/01/2026	EACH OCCURRENCE AGGREGATE	$ 1,000,000 $ 1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N: Y If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC100-0006124-2025A	01/01/2025	01/01/2026	[X] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 2,000,000 $ 2,000,000 $ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER
City of Santa Fe Parks Division
1142 Siler Road Building C
Santa Fe NM 87505

CANCELLATION
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


© 1988-2015 ACORD CORPORATION. All rights reserved.

Item# 23-0104
Munis Contract# 3203892

CITY OF SANTA FE
ON-CALL GENERAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and **Proscape Landscape Management, LLC.** herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "You" and "your" refers to **Proscape Landscape Management, LLC.** "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. **Scope of Work**

A. The Contractor shall perform On-call service work for the City of Santa Fe including, but not limited to the following work:

1) On-Call Contract for Vegetation Management, Landscape and Irrigation Design, Landscape Construction, Irrigation Installation and Repair, Encampment Clean-up, and Snow Plowing/Shoveling and Ice Control Services for the City of Santa Fe Parks, Open Spaces, Trails, Right of Ways and Medians, Rivers, Arroyos, Drainages and Floodplains in Santa Fe, New Mexico. This work will Include - but is not limited to, mowing, weedeating, brush removal, clearing and grubbing, tree removal, stump grinding, chipping, planting, seeding, re-vegetation, watering, herbaceous and woody pruning, fertilization, spraying (with approval from the City's Integrated Pest Manager), excavation, erosion control, stormwater BMPs, fine grading, cleanup and green waste / waste disposal, snow plowing and sidewalk shoveling, ice control, landscape and irrigation design.

2) The Contractor shall be required to provide on-call Vegetation Management,

Landscape and Irrigation Design, Landscape Construction, Irrigation Installation and Repair, Encampment Clean-up, and Snow Plowing/Shoveling and Ice Control Services for any number of the activities listed under Scope of Work upon the request of the City. Once a need is identified, the City will issue a Written Task Order to the Contractor detailing the services required. Upon receiving the City's request for services, the Contractor shall promptly provide the City with an estimate (based upon the rates submitted in the Bid Form) cost summary, and project schedule required to complete the assignment or task. Project schedules, negotiated price, and completion dates shall be determined on a project by project basis and dependent upon the urgency of that task. The Contractor may be required to do some of the work in phases. The Contractor shall be required to provide the requested labor and all equipment and materials within one week of a request issuance of a Notice to Proceed. The Contractor shall agree to provide required labor within 24 hours for emergency situations.

3) Contractor is responsible for all required permits and licenses required to perform this work. This may include, but is not limited to the Contractor being a licensed GB-98 General Building Contractor, a Registered Landscape Architect, Licensed Urban Forester or Licensed Arborist.

4) Contractor shall be responsible for adherence to the Contract Documents, Construction Documents, Specifications and approved directives. This responsibility shall include, but is not limited to, adherence to ANSI 300 standards for all tree work, and NMDOT standards for all revegetation seeding work and the City of Santa Fe Integrated Pest Management Program for all projects.

5) Contractor shall be responsible for any applicable Local, County, State and Federal requirements and permits including, but not limited to, the City of Santa Fe's Stormwater Pollution Prevention Program and Stormwater BMPs.

6) Contractor shall be responsible for verifications of all existing conditions, measurements and dimensions for bidding. Contractor shall be responsible for all permits, fees, and State and/or City inspections associated with their work.

See attached bid log and the bid sheet from Contractor marked Exhibit "A" attached hereto and made a part thereof.

3. **Compensation**

The City shall pay to the Contractor based upon fixed prices for each Deliverable item as listed here.

Deliverable item:	U/I (unit of issue)	Price
On-Call Vegetation Management, Landscape and Irrigation Design, Landscape Construction, Irrigation Installation and Repair, Encampment Clean-up, and Snow Plowing/Shoveling and Ice Control Services		
01		$1,000,000.00 per year

The total compensation under this Agreement shall not exceed $4,000,000.00 - including New Mexico gross receipts tax.

4. **Payment Provisions**

All payments under this Agreement are subject to the following provisions.

A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the City shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the City, the City shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the City shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

B. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The City agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

5 **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on date approved by the City, and end four (4) years from that date.. The City reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of four years in accordance with NMSA 1978, §§ 13-1-150 through 152.

6. **Default and Force Majeure**

The City reserves the right to cancel all or any part of any orders placed under this contract without cost to the City, if the Contractor fails to meet the provisions of this contract 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 sub-contractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the sub-contractor 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 paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. **Termination**

A. Grounds. 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.

B. Notice; City Opportunity to Cure.

1) Except as otherwise provided in Paragraphs 7.A and 17, 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 17, "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.*

8. **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 Paragraph 7 herein, or to agree to the reduced funding.

9. **Status of Contractor**

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's 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 personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. **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.

11. **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.

12. **Non-Collusion**

In signing this Agreement, the Contractor/Contractor certifies the Contractor/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.

13. **Inspection of Plant**

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that 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 or merchantability.

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. 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.

17. **Appropriations**

The terms of this Agreement, and any orders placed under it, 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 legislature, this Agreement, and any orders placed under it, shall terminate 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.

18. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. 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.

19. **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 prior written approval by the City.

20. **Conflict of Interest**

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. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

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 Paragraph 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 Paragraph 20 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 Paragraph 20 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.

21. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

22. **Scope of Agreement; 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 agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

23. **Notice**

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.

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure 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.

25. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

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. **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 NMSA 1978, § 38-3-2.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.

28. **Limitation of Liability**

The Contractor's liability to the City, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the City's, claim. The foregoing limitation does not apply to paragraph 25 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

29. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

30. **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.

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

A. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

(1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or

(2) terminate the contract for default.

33. **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 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 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.

34. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

35. **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.

36. **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.

37. **Patent, Copyright and Trade Secret Indemnification**

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

1) give the Contractor prompt written notice within 48 hours of any claim;
2) allow the Contractor to control the defense of settlement of the claim; and
3) cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

1) provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;

2) replace or modify the product or service so that it becomes non-infringing; or,

3) accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to

any product or service modified by the City to the extent such modification is the cause of the claim.

38. **Survival**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

39. **Disclosure Regarding Responsibility**

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars ($60,000.00) with any City for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or
a person having primary management or supervisory responsibilities within a business entity or related entities.

C. The Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City. If it is later determined that the Contractor

knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City may terminate the involved contract for cause. Still further the City may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City.

40. **Suspension, Delay or Interruption of Work**

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

41. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the City: Melissa A. McDonald, Parks and Open Space Division Director
PO Box 909
Santa Fe, NM 87504-0909

To the Contractor: Proscape Landscape Management, LLC.
1850 Old Pecos Trail, Ste. I
Santa Fe, NM 87505

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

42. **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.

43. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

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:

ALAN WEBBER, MAYOR

DATE: Mar 12, 2023

CONTRACTOR:
Proscape Landscape Management, LLC

SEAN GABRIEL
NAME

PM
TITLE

DATE: 2/8/23
CRS# 03-199079-00-7

Registration # L098390197

ATTEST:

KRISTINE BUSTOS MIHELCIC, CITY CLERK XIV

GB MTG 03/08/2023

CITY ATTORNEY'S OFFICE:

Marcos Martinez

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
Emily K. Oster (Mar 11, 2023 22:49 MST)

EMILY OSTER, FINANCE DIRECTOR

Org.Name/Org.#

EXHIBIT 'A'

CITY OF SANTA FE

BIDS RECEIVED

200 Lincoln Ave., Room 122, or P.O. Box 909, Santa Fe, New Mexico 87504-0909

JoAnn Lovato, Interim CPO

ITB # 23/27/B Vegetation Management, Irrigation Installation and Repair....

DATE	ELECTRONICALLY SUBMITTED TIME	COMPANY NAME	BID RESPONSE
1/5/2023	12:48pm	Proscape Landscape Management	1
1/5/2023	01:53pm	High Desert Landscaping	1
1/5/2023	01:57pm	Southwest Urban Hydrology, LLC	1
1/11/2023	06:31pm	Seeds of Wisdom	1
1/12/2023	05:15am	Daniel's Landscaping and Construction	1
1/12/2023	10:13am	Franco's Tree's and Landscaping	1
1/12/2023	1:19pm	Cassidy's Landscaping Inc.	1
TOTAL			7

Witness: _____ Time: 2:00PM Date: 1/12/23

Witness: _____ Time: 2:00 pm Date: 1/12/23

CITY OF SANTA FE
PURCHASING OFFICE
200 Lincoln Ave Room 122 Santa Fe, NM 87505
JoAnn Lovato, Interim CPO

ITEM #	DATE: 1/12/2023 2:00PM	(AA)	(AB)	(AC)	(AD)	(AE)	(AF)	(AG)
	ITB # 23/27/B Vegetation Management, Irrigation Installation and Repair, Landscaping Construction and Installation, Ladscape and Irrigation design, Snow Plow/Shoveling and Ice Control, and Encampment Clean-Up On-Call Services							
	BID NUMBER: 23/27/B PREPARED BY: R. Scott Gunter	High Desert Landscaping	Proscape	Southwest Urban Hydrology	Seeds of Wisdom	Daniel's Landscaping and Construction	Franco's Trees and Landscaping	Cassidy's Landscaping
	ITEM & DESCRIPTION	BID AMOUNT	BID AMOUNT	BID AMOUNT	BID AMOUNT	BID AMOUNT	BID AMOUNT	BID AMOUNT
	Vegetation Management							
1	BRUSH REMOVAL- PER HOURLY RATE ITEM #1	$49.25	$40.00	N/A	$45.00	$120.00	$45.00	$45.00
2	CLEAR AND GRUBBING- HOURLY RATE ITEM #2	$49.25	$40.00	N/A	$45.00	$160.00	$35.00	$90.00
3	PRUNING HERBACEOUS PLANTS - PER HOURLY RATE ITEM #3	$49.25	$40.00	N/A	$45.00	$90.00	$45.00	$35.00
4	PRUNING WOODY PLANTS - PER HOURLY RATE ITEM #4	$49.25	$40.00	N/A	$45.00	$120.00	$45.00	$40.00
5	MOWING W/ STRING LINE EDGING - PER HOURLY RATE ITEM #5	$49.25	$40.00	N/A	$35.00	$90.00	$35.00	$35.00
6	WEED EATING – PER HOURLY RATE ITEM #6	$49.25	$40.00	N/A	$55.00	$90.00	$35.00	$35.00
7	MECHANICAL STUMP GRINDING - HOURLY RATE ITEM #7	N/A	$120.00	N/A	$390.00	N/A	$95.00	$90.00
8	CHIPPING - PER HOURLY RATE ITEM #8	N/A	$150.00	N/A	$450.00	N/A	$90.00	$90.00
9	FERTILIZATION - PER HOURLY RATE ITEM #9	$49.25	$155.00	N/A	$45.00	N/A	$45.00	$40.00
10	TURF AERATION- PER HOURLY RATE ITEM# 10	$65.00	$90.00	N/A	$35.00	N/A	$45.00	$90.00
11	SPRAYING (INTEGRATED PEST MANAGER APPROVED) - PER HOURLY RATE * License/Certification Needed ITEM #11	N/A	N/A	N/A	N/A	N/A	$120.00	$45.00
12	DIAGNOSIS, PROJECT ESTIMATES AND TROUBLESHOOTING- PER HOURLY RATE ITEM #12	$65.00	$65.00	N/A	$75.00	$120.00	$85.00	$85.00
13	BASEBALL/SOFTBALL FIELD STANDARD INFIELD DRAG/RAKE OUT - PER HOURLY RATE ITEM #13	N/A	$75.00	N/A	N/A	N/A	$85.00	$90.00
	Items 14-23 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.) (CAL) Caliper							
14	TREE REMOVAL- 0-3" CAL EACH ITEM #14	$50.00	$175.00	$3.75	$45.00	$250.00	$120.00	$180.00 (Ground Level Only)

15	TREE REMOVAL- 4-7" CAL EACH ITEM #15	$70.00	$375.00	N/A	$90.00	$450.00	$280.00	$360.00 (Ground Level Only)
16	TREE REMOVAL- 8-9" CAL EACH ITEM #16	N/A	$500.00	N/A	$140.00	$650.00	$500.00	$720.00 (Ground Level Only)
17	TREE REMOVAL- 10-12" CAL EACH ITEM #17	N/A	$800.00	N/A	$280.00	$850.00	$1,800.00	1,240.00 (Includes Bucket Truck)
18	TREE REMOVAL- 13-14" CAL EACH ITEM #18	N/A	$950.00	N/A	$340.00	$1,050.00	$2,300.00	1,550.00 (Includes Bucket Truck)
19	TREE REMOVAL- 17-24" CAL EACH ITEM #19	N/A	$1,200.00	N/A	$650.00	$1,200.00	$2,800.00	1,860.00 (Includes Bucket Truck)
20	TREE REMOVAL- 25-30" CAL EACH ITEM #20	N/A	$2,000.00	N/A	$1,000.00	$1,400.00	TBD (Depends on Tree Height)	$2170.00 (Includes Bucket Truck)
21	TREE REMOVAL- 31-36" CAL EACH ITEM #21	N/A	$2,500.00	N/A	$1,560.00	$1,600.00	TBD (Depends on Tree Height)	$2480.00 (Includes Bucket Truck)
22	TREE REMOVAL- 37-42" CAL EACH ITEM #22	N/A	$4,000.00	N/A	$2,100.00	N/A	TBD (Depends on Tree Height)	$3100.00 (Includes Bucket Truck)
23	TREE REMOVAL- 43-48" CAL EACH ITEM #23	N/A	$5,000.00	N/A	$3,360.00	N/A	TBD (Depends on Tree Height)	$3720.00 (Includes Bucket Truck)
	Items 24-26 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.							
24	RE-VEGETATION SEEDING- BY HAND PER SF ITEM #24	N/A	$0.30	$0.25	$6.00	N/A	$0.30	$0.24
25	RE-VEGETATION SEEDING- HYDROSEED PER SF ITEM #25	N/A	$0.25	N/A	N/A	N/A	$0.15	$0.27
26	ESTABLISHMENT WATERING-FOR NEW SEEDING PER 1000 SF ITEM #26	N/A	$150.00	N/A	$135.00	N/A	$200 with Truck	$900.00
27	GREEN WASTE TIPPING FEE PER TON ITEM #27	$60.00	$225.00	$195.00	$330.00	$75.00	$125.00	$100.00
28	GENERAL WASTE TIPPING FEE PER TON ITEM #28	$60.00	$225.00	$185.00	$370.00	$95.00	$135.00	$120.00
29	PORT-A-POTTY RENTAL PER WEEK ITEM #29	N/A	$250.00	N/A	$125.00	N/A	$150.00	$150.00
30	% Discount off for Items (1-29) all parts and materials. Invoice will include copies of all purchases for parts and materials, including contractor and date purchased. Enter zero if no discount is offered. ITEM#30	0.00%	0.00%	0.00%	0.00%	0.00%	N/A	0.00%
	Wage Rates for Landscape and Irrigation Design Projects							
	Items 31-32 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.)							
31	LANDSCAPE DESIGN - PER HOURLY RATE ITEM #31	N/A	$125.00	$95.00	$75.00	$350.00	N/A	$95.00
32	IRRIGATION DESIGN - PER HOURLY RATE ITEM #32	N/A	$125.00	N/A	$75.00	$350.00	N/A	$125.00
	Wage Rates for Landscape Construction Projects							
	Under $60,000							
	Items 33-38 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.)							
33	SUPERINTENDENT- REGULAR PER HOURLY RATE ITEM #33	$80.00	$75.00	$90.00	$75.00	$75.00	$55.00	$65.00
34	SUPERINTENDENT- OVERTIME PER HOURLY RATE ITEM#34	$120.00	$120.00	N/A	$112.50	$112.50	$82.50	$97.50
35	JOURNEYMAN OR EXPERIENCED WORKER- PER REGULAR HOURLY RATE ITEM#35	$65.00	$55.00	$65.00	$85.00	$60.00	$45.00	$45.00

26	JOURNEYMAN OR EXPERIENCED WORKER- OVERTIME PER HOURLY RATE ITEM #36	$97.50	$75.00	N/A	$127.50	$90.00	$67.50	$67.50
37	LABORER- REGULAR PER HOURLY RATE ITEM#37	$49.25	$40.00	$50.00	$45.00	$45.00	$35.00	$40.00
38	LABORER- OVERTIME PER HOURLY RATE ITEM#38	$66.00	$75.00	N/A	$67.50	$67.50	$52.50	$60.00
	Over $60,000							
	Items 39-44 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.)							
39	SUPERINTENDENT- REGULAR PER HOURLY RATE ITEM#39	N/A	$75.00	N/A	$75.00	$75.00	$55.00	$67.00
40	SUPERINTENDENT- OVERTIME PER HOURLY RATE ITEM#40	N/A	$120.00	N/A	$112.50	$112.50	$82.50	$100.50
41	JOURNEYMAN OR EXPERIENCED WORKER- REGULAR PER HOURLY RATE ITEM# 41	N/A	$55.00	N/A	$85.00	$60.00	$45.00	$47.00
42	JOURNEYMAN OR EXPERIENCED WORKER- OVERTIME PER HOURLY RATE ITEM#42	N/A	$75.00	N/A	$127.50	$90.00	$67.50	$70.50
43	LABORER- REGULAR PER HOURLY RATE ITEM#43	N/A	$40.00	N/A	$45.00	$45.00	$35.00	$42.00
44	LABORER- OVERTIME PER HOURLY RATE ITEM#44	N/A	$75.00	N/A	$67.50	$67.50	$52.50	$63.00
	Irrigation Install/Repair							
	Under $60,000							
	Items 45-50 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.)							
45	SUPERINTENDENT- REGULAR PER HOURLY RATE ITEM#45	$80.00	$75.00	N/A	$75.00	$75.00	$55.00	$85.00
46	SUPERINTENDENT- OVERTIME PER HOURLY RATE ITEM#46	$120.00	$120.00	N/A	$112.50	$112.50	$82.50	$127.50
47	JOURNEYMAN OR EXPERIENCED WORKER- REGULAR PER HOURLY RATE ITEM#47	$65.00	$55.00	N/A	$210.00	$60.00	$45.00	$65.00
48	JOURNEYMAN OR EXPERIENCED WORKER- OVERTIME PER HOURLY RATE ITEM#48	$97.50	$75.00	N/A	$315.00	$90.00	$67.50	$97.50
49	LABORER- REGULAR PER HOURLY RATE ITEM#49	$49.25	$40.00	N/A	$50.00	$45.00	$35.00	$45.00
50	LABORER- OVERTIME PER HOURLY RATE ITEM#50	$66.00	$75.00	N/A	$75.00	$67.50	$52.50	$67.50
51	% Discount off for Items (45-50) of all parts and materials. Invoice will include copies of all purchases for parts and materials, including contractor and date purchased. Enter zero if no discount is offered. ITEM#51	0.00%	0.00%	N/A	0.00%	0.00%	0.00%	0.00%
	OVER $60,000							
	Items 52-57 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.)							
52	SUPERINTENDENT- REGULAR PER HOURLY RATE ITEM#52	N/A	$75.00	N/A	$75.00	$75.00	$55.00	$87.50
53	SUPERINTENDENT- OVERTIME PER HOURLY RATE ITEM#53	N/A	$120.00	N/A	$112.50	$112.50	$82.50	$131.25
54	JOURNEYMAN OR EXPERIENCED WORKER- REGULAR PER HOURLY RATE ITEM#54	N/A	$55.00	N/A	$180.00	$60.00	$45.00	$67.00
55	JOURNEYMAN OR EXPERIENCED WORKER- OVERTIME PER HOURLY RATE ITEM#55	N/A	$75.00	N/A	$270.00	$90.00	$67.50	$100.50

56	LABORER- REGULAR PER HOURLY RATE ITEM#56	N/A	$40.00	N/A	$50.00	$45.00	$35.00	$47.00
57	LABORER- OVERTIME HOURLY PER HOURLY RATE ITEM#57	N/A	$75.00	N/A	$75.00	$67.50	$52.50	$70.50
58	% Discount off for Items (52-57) and materials. Invoice will include copies of all purchases for parts and materials, including contractor and date purchased. Enter zero if no discount is offered. ITEM#58	0.00%	0.00%	N/A	0.00%	0.00%	0.00%	0.00%
	Encampment Clean Up							
	Items 59-65 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.)							
59	SUPERINTENDENT- REGULAR PER HOURLY RATE ITEM #59	$80.00	$75.00	$95.00	$115.00	$80.00	$55.00	$45.00
60	SUPERINTENDENT- OVERTIME HOURLY RATE PER HOURLY RATE ITEM #60	$120.00	$120.00	N/A	$172.50	$120.00	$82.50	$67.50
61	JOURNEYMAN OR EXPERIENCED WORKER- REGULAR PER HOURLY RATE ITEM #61	$85.00	$55.00	$70.00	$120.00	$70.00	$45.00	$40.00
62	JOURNEYMAN OR EXPERIENCED WORKER- OVERTIME PER HOURLY RATE ITEM #62	$97.50	$75.00	N/A	$180.00	$105.00	$67.50	$60.00
63	LABORER- REGULAR PER HOURLY RATE ITEM #63	$49.25	$40.00	$55.00	$80.00	$50.00	$35.00	$35.00
64	LABORER- OVERTIME PER HOURLY RATE ITEM #64	$68.00	$75.00	N/A	$120.00	$75.00	$52.50	$52.50
65	CONFINED SPACES LABORER PER HOURLY RATE ITEM #65 HOURLY RATE (NOTE: MUST HAVE OSHA LICENSE/CERTIFICATION)	N/A	$55.00	N/A	N/A	$65.00		N/A
66	GENERAL WASTE TIPPING FEE PER TON ITEM#66	$60.00	$225.00	$185.00	$370.00	$95.00	$125.00	$100.00
67	HAZARDOUS WASTE TIPPING FEE PER TON ITEM#67	$80.00	$400.00	N/A	$490.00	$120.00	TBD	$150.00
	Snow Plow, Sidewalk Service and Ice Control							
68	SNOW PLOW (ON TRUCK)- PER HOURLY RATE ITEM#68	$135.00	$160.00	N/A	N/A	$250.00	$150.00	$160.00
69	SIDEWALK SERVICE- ATV PER HOURLY RATE ITEM#69	$50.00	$140.00	N/A	N/A	$180.00	$75.00	N/A
70	SIDEWALK SERVICE- LABORER SHOVEL SERVICE HOURLY PER HOURLY RATE ITEM#70	$50.00	$55.00	N/A	N/A	$60.00	$45.00	$45.00
71	ICE CONTROL- AGGREGATE SPREAD TON RATE PER 2000LB ITEM#71	$185.00	$125.00	N/A	N/A	N/A	$105.00	$145.00
72	ICE CONTROL- ICE MELT (plant, animal, concrete safe- magnesium chloride/calcium chloride blend) PER LB ITEM#72	$0.85	$50.00	N/A	N/A	N/A	$3.00	$0.60

Witness: R. Scott Gritz Time: 2:00 Pm Date: 1/12/23

Witness: [signature] Time: 2:00 pm Date: 1/12/23

City of Santa Fe

Invitation to Bid

Vegetation Management, Irrigation Installation and Repair, Landscaping Construction and Installation, Landscape and Irrigation design, Snow Plowing/Shoveling and Ice Control, and Encampment Clean-up On-call Services

ITB # 23/27/B

NIGP Commodity Code: 90654, 90656, 91227,96872, 96888,98808, 98856, 98863, 98836, 98887, 98888, 98889

Bid Due Date and Time: January 5, 2023 @ 2:00pm MST

Bidder MUST complete as applicable and sign the following in order for the Invitation to Bid (Bid)to be valid (type or print clearly):

Company Name: PROSCAPE LANDSCAPE MANAGEMENT
dba (if applicable): SEANMADE INC
Co. Email: OFFICE@PROSCAPENM.COM
Co. Phone No.: 505.455.9348
Address: 1850 OLD PECOS TRAIL SUITE 5 SANTA FE, NM 87505
NM Gross Receipts Tax # (CRS) 03-199071007 Federal Tax ID # 27-1270822

Payment terms: NET 30 (e.g., Net 30. Discount will not be considered in computing the low bid. see "Terms and Conditions"

F.O.B. Point must be Destination, unless otherwise indicated in the Invitation to Bid.

Contractor's Delivery: 1142 SILVA ROAD, SUITE C SANTA FE, NM 87507 (May be considered in the award)

Authorized Signature: _____ Print or type name: SEAN GABAEL
Signatory Email: OFFICE@PROSCAPENM.COM Phone No: 505 455 9248

* It is your responsibility as a bidder to ensure your bid is correct and accurate.

No amendment will be issued later than three (3) days prior to the date for receipt of bids, except an amendment withdrawing the bids or one which includes postponement of the date for receipt of bids.

If applicable, Bidder acknowledges receipt of the following amendment(s):
Amendment No. 1 Dated: 12/22/22 Amendment No. ___ Dated: _____

Bids are subject to the "Terms and Conditions" shown on the attached pages of this document, and any additional bidding instructions or requirements. NOTE: if you decide not to bid, do not return this document.

Terms and Conditions
(Unless otherwise specified)

1. **General:** When the City of Santa Fe's Chief Procurement Officer (CPO) or his/her designee approves a purchase document in response to the bid, a binding contract is created.

2. **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.

3. **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.

4. **Discounts:** Prompt payment discounts will not be considered in computing the low bid.

5. **Inspection:** Final inspection and acceptance will be made at the destination. Tangible Personal Property (goods) rejected at the destination for nonconformance with specifications shall be removed at the Contractor's risk and expense, promptly after notice of rejection.

6. **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.**

7. **Taxes:** Price shall not include State gross receipts tax or local option tax. Such tax or taxes shall be added at time of invoicing at current rate and shown as a separate item to be paid by the Requesting Department.

8. **Packing, Shipping, and Invoicing:**

   a. The City's purchasing document number and the Contractor's name, Requesting Department's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The Requesting Departments' 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 Requesting Department and NOT to the City Chief Procurement Officer.

10. **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 CPO or his/her designee.

11. **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).

12. **Penalties:** 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.

13. **Payment Provisions:** All payments under this Agreement are subject to the following provisions.

A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the City shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the City, the City shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the City shall issue a

written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

B. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The City agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

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

15. **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 City.

16. **Contractor Personnel:** Personnel proposed in the Contractor's written bid to the Requesting Department are considered material to any work performed under this 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.

17. **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 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 Requesting Department and the City. The Requesting Department shall have the right to audit billings, both before and after payment. Payment for services under this Agreement shall not foreclose the right of the Requesting Department to recover excessive or illegal payments.

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

Important Bidding Information

Submission of Bid: Due Date – January 5, 2023 at 2:00 P.M. (MST/MDT) at which time the sealed Bids will be recorded as received and opened.

Join Zoom Meeting
https://santafenm-gov.zoom.us/j/89509516666?pwd=MWNxTk1EVWJGNTNackt0PSk2TDs9ZJUT09

Meeting ID: 895 0951 6666
Passcode: 771228
One tap mobile
+13462487799,,89509516666#,,,,*771228# US (Houston)
+16694449171,,89509516666#,,,,*771228# US

Dial by your location
+1 346 248 7799 US (Houston)
+1 669 444 9171 US
+1 669 900 6833 US (San Jose)
+1 719 359 4580 US
+1 253 205 0468 US
+1 253 215 8782 US (Tacoma)
+1 309 205 3325 US
+1 312 626 6799 US (Chicago)
+1 360 209 5623 US
+1 386 347 5053 US
+1 507 473 4847 US
+1 564 217 2000 US
+1 646 931 3860 US
+1 689 278 1000 US
+1 929 205 6099 US (New York)
+1 301 715 8592 US (Washington DC)
+1 305 224 1968 US
Meeting ID: 895 0951 6666
Passcode: 771228
Find your local number: https://santafenm-gov.zoom.us/u/kddc0OIkXS

The Bid is to be delivered to:

[redacted]

All Bids received after the due date and time will be rejected and returned unopened.

Chief Procurement Officer (CPO): If you are an individual with a disability and you require accommodations such as a hearing interpreter to attend our bid openings, please contact the CPO or his/her designee at least five (5) working days prior to the scheduled bid opening.

Any inquiries or requests regarding clarification of this solicitation shall be submitted to the CPO or his/her designee in writing.

CPO Designee contact information is:
R. Scott Gunter
Email: rgunter@cabq.gov
505-449-8949

Bidders may contact ONLY the CPO or his/her designee regarding the terminology stated in the solicitation. Other City employees do not have the authority to respond on behalf of the City.

Bidders shall promptly notify the CPO or his/her designee of any ambiguity, inconsistency, or error which they may discover upon examination of the bid. Any response made by the City will be provided in writing to all contractors by addendum, no verbal responses shall be authoritative.

All Bidders must notify the CPO or his/her designee if any employee(s) of the requesting Department or the office of CPO have a financial interest in the Bidder:

X No financial interest ____ Yes financial interest

If yes specify by name: _____

Rejection of Bids: The CPO or his/her designee shall have the right to reject any or all bids, and in particular to reject a bid not accompanied by the data required by this bidding document, or a bid which is in any way incomplete or irregular.

Brand Name or Equal: Where a brand name or equal is indicated, it is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to restrict competition. "No substitute" specifications may be authorized ONLY if required to match existing equipment.

If bidding "equivalent" bidders must be prepared to furnish "complete data" upon request, preferably with bid, to avoid delay in award.

Prohibit Bidding: If any Bidder is of the opinion that the specifications as written preclude him from submitting a bid on this ITB, it is requested that his opinion be made known to the CPO or his/her designee, in writing, at least seven (7) days prior to the bid opening date.

Responsible Bidder: Bidders must, upon request of the CPO or his/her designee, provide information and data to prove that the financial resources, production of service facilities, service reputation and experience are adequate to make satisfactory delivery of the materials and/or services. the CPO or his/her designee reserves the right to require a Bidder to furnish a Performance Bond prior to award, where the Bidder is unable to furnish the required information or data, or for other reasons which would insure proper performance by the Bidder.

Samples: Unless otherwise indicated in the bid specifications, samples of the items, when required, shall be free of expense to the City. Samples not destroyed or mutilated in testing will be returned upon request, at Bidders expense. Each sample must be labeled to clearly show the bid number and item number that it pertains to. Unsolicited bid samples or descriptive literature, which is submitted at the Bidder's risk, will not be returned.

Awards

Determination of Lowest Bidder – Following determination of product acceptability, if any is required, bids will be evaluated to determine which Bidder offers the lowest cost to the City in accordance with the specifications and terms & conditions set forth in the Bid. The City reserves the right to award this Bid in total; by groups of items; on the basis of individual items; any combination of these which could result in a multiple award; or as otherwise specified in bid specifications; whichever, in his/her judgment, best serves the interest of the City.

The CPO or his/her designee shall have the right to waive technical irregularities, and to award to the Bidder whose bid is deemed to be in the best interest of the City.

Special Notice – To preclude any possible errors and/or misinterpretations, bid prices must be affixed legibly in ink or typewritten. Corrections or changes must be signed or initialed by Bidder prior to the scheduled bid opening; failure to do so will be just cause for rejection of bid.

Bids may be withdrawn upon receipt of written request, prior to scheduled bid opening for the purpose of making any corrections and/or changes; such corrections must be properly identified and signed or initialed by Bidder. Resubmittal must be prior to scheduled bid opening for consideration.

After bid opening, no modifications on bid prices or other provisions of bid shall be permitted. A low Bidder alleging a material mistake of fact after bids have been opened may be permitted to withdraw the bid upon written request prior to award at the discretion of the CPO or his/her designee.

F.O.B. Destination – Means goods are to be delivered to the destination designated by the Requesting Department which is the point at which the Requesting Department accepts ownership or title of the goods. Laws of New Mexico specifically prohibit acceptance of ownership of goods in transit. Any exception to F.O.B. Destination may cause bid to be declared nonresponsive.

Specifications:

The City of Santa Fe (The City) is seeking bids for On-Call Services to include, Vegetation Management, Landscape and Irrigation Design, Landscape Construction, Irrigation Installation and Repair, Encampment Clean-up, and Snow Plowing/Shoveling and Ice Control.

This will be awarded for (4) years.

Multiple awards will be issued as a result of this ITB.

The ***use of subcontractors is allowed*** with their company information to be included with bid submittals. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from issuing the issuing Department before any subcontractor is used during the term of this agreement. Any contractual agreement that may result from this ITD shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with the Department which may derive from this ITB. The Department entering into a contractual agreement with a vendor will make payments to only the prime contractor.

Orders:

Under the terms and conditions of this Agreement the City may issue orders for items described herein. The terms and conditions shall form a part of each order issued hereunder.

The items to be ordered shall be as listed in the Price Schedule. All orders issued hereunder will bear both an order number and the Purchase Order Number.

Only written signed orders are valid.

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

The prices quoted herein represent the total compensation to be paid by the City for the goods provided including any and all labor, equipment, tools, materials, taxes, permits, licenses, or other costs necessary to complete the services or goods provided.

Shipping and Billing Instructions

Contractor shall ship in accordance with the following instructions: Shipment shall be made only against specific orders which the Requesting Department may place with the Contractor during the term; The Contractor shall enclose a packing list with each shipment listing the order number, Agreement number and the commercial parts number (if any) for each item; delivery shall be made as indicated by the Requesting Department. If contractor is unable to meet stated delivery the CPO or his/her designee must be notified.

Insurance:
The Contractor shall provide all insurance necessary for its employees on the project, including, but not limited to, Workman's Compensation Insurance. The Contractor agrees to comply with City and state laws and rules pertaining to Worker's Compensation Insurance coverage for its employees. If the Contractor fails to comply with the Worker's Compensation Act and applicable rules, when required to do so, this Price Agreement will be cancelled immediately.

It is specifically agreed between the parties executing this Price Agreement that it is not intended by any of the provisions of any part of the Price Agreement to create the public or any member hereof a third party beneficiary or to authorize anyone not a party to the Price Agreement to maintain a suit for wrongful death, bodily and/or personal injury to persons, damage to properties and/or other claims whatsoever pursuant to the provisions of this Price Agreement.

Wage Rates:
All work covered by this Invitation to Bid shall be in accordance with applicable City and state laws and is subject to the minimum wage rate determination issued by the Department of Workforce Solutions (DWS), if applicable.

A wage rate decision is required by the Public Works minimum Wage Act for construction, demolition or renovation purposes on projects costing sixty thousand dollars ($60,000) or more. The Contractor agrees to comply with the current prevailing wage rate schedule when applicable. For current wage rates or for additional information, visit: http://www.dws.state.nm.us The requesting Department will request a wage rate determination from the DWS for each project that is $60,000 or more.

When submitting a quote for a specific project valued at more than sixty thousand dollars ($60,000) for any portion of a public works project that is subject to the New Mexico Public Works Act, the Contractor is required to be registered with the Labor and Industrial Division of the Department of Workforce Solutions prior to submitting its quote. The requesting Department may reject any quote that fails to provide a Public Works registration number for the prime Contractor and all other listed Contractors or subcontractors.

Contractor:
No person shall act as a Contractor without a license issued by the Construction Industries Division (CID), classified to cover the type of work to be performed. No bid on a contract shall be submitted unless the Contractor has a valid Contractor's license issued by the CID to bid and to perform the type of work to be undertaken, as set forth in §60-13-12, NMSA 1978.

Safety shall be of main concern and enforced by the Contractor on site and will be periodically inspected by the City's qualified safety personnel. The Contractor shall comply with all local, state and federal laws governing safety, health and sanitation. The on-site superintendent shall always have a minimum OSHA 10 and preferably OSHA 30 card with them when on the jobsite. The requesting Department shall not in any way be responsible for any fines set forth for such violations of codes, OSHA standards or any other governing agency having jurisdiction at the work site. The Contractor shall provide all needed safeguards, safety devices, protective equipment and take any actions necessary to protect the life and health of employees on the job; the safety of the public and to protect the property of the requesting Department in connection with the performance of the work covered by this price Agreement.

All personnel working on the project and providing these services shall be experienced and certified in all areas related to this work and required by this Price Agreement. Journeymen level personnel shall have the ability and necessary skills to diagnosis problems and to make the appropriate decisions needed to provide these services.

Change Orders:
Any change orders to the project scope will require an additional Task Order with backup materials and labor costs and shall be substantiated without a doubt there was no way of knowing the additional services were needed when the original quote was provided. Change orders shall be managed closely by the requesting Department. Preventative measure shall be taken by both the contractor and the requesting Department prior to issuing the Notice to Proceed, Such measures may include soil tests (soil boring); clarification of ambiguity in the project plan, the scope of work, the Task Order, the drawings, etc.; the project scope should be completely defined and agreed upon before any work begins.

Warranty:
The Contractor shall warrant its work for materials and for workmanship furnished and performed under this Price Agreement for a period of one (1) year minimum from the date of acceptance or Substantial Completion.

Materials and Parts:
Contractor shall submit billings, based on actual Contractor costs for materials, less any applicable percentage for discounts. If there is no discount to be offered, enter zero. Contractor shall provide verification that materials purchased were used for the project. Any unused, billed for materials shall be turned over to the requesting Department for which the work was provided.

The City of Santa Fe requires that all materials shall be new and of the highest quality and at the best attainable price available for the type of work being performed.

No used materials shall be used on the project. Recycled materials specifically prepared for reuse to meet "LEED" certification may be permitted with the requesting Department's approval.

Bonding:
A one hundred percent (100%) performance bond and a one hundred percent (100%) payment and material bond executed by a surety company authorized to do business in the State of New Mexico will be required of the Contractor prior to each project over twenty-five thousand dollars ($25,000). Said bonds must be provided to the requesting Department. Failure to comply shall result in the order being issued to another vendor and the difference in the cost being charged back to the awarded Contractor.

The Contractor shall agree to provide required labor within 24 hours for emergency situations.

Contractor's price shall include, labor costs, permits, overhead, profit, insurance, equipment, tools and any other fees required to successfully complete the work requested. The Contractor shall be capable of providing a work force with supervision, adequate to perform work for a forty (40) hour work week during normal working hours with the option of working non normal or overtime hours if required. The Contractor shall be responsible for all permits, fees, and State and/or City inspections associated with their work.

Hourly rates are requested for the three (3) levels of personnel.

Superintendent: a person with supervisory experience who maintains control of the work and work site. This person may or may not actually perform work on the project.

Journeyman or Experienced Worker: a person licensed by the State for work required and being performed or a person with many years of experience with a high rate of pay.

Laborer: a person with minimal experience, performing minor forms of labor.

Bidder must enter unit pricing per for the line items in the tables below. If needed, any and all licenses or certifications must accompany the line items that is being bid, per City of Santa Fe, State of New Mexico and or Federal requirements. At any time, The City may request to see any and all required licenses needed for any scope of work (SOW). If the work listed under the Article and Description cannot be performed or is not desirable by a company, please mark as N/A. If bidder responds with a N/A they will not be eligible to perform the corresponding line item. Bidder does not need to respond to all items in order to be considered. Awarded contractors may be required to submit a quote for the SOW based on the bid unit price. This quote for the stated SOW must be approved by the City before any work commences. Hourly rates charges will not begin until Contractor is on site.

City of Santa Fe, New Mexico
Memorandum

DATE: February 20, 2023

TO: Governing Body

VIA:
Regina Wheeler, Public Works Department Director
Melissa McDonald, PLA, Parks and Open Space Division Director MAM

FROM: Scott A. Overlie, Parks and Open Space Division Project Administrator

---

ACTIONS:

- Request for Approval for an On-Call Contract to Cassidy's Landscaping, Inc. for city-wide services in an amount not to exceed $1,000,000 per year, including NMGRT and shall not exceed $4,000,000 for four years. (Melissa McDonald, Parks and Open Space Division Director: mamcdonald@santafenm.gov, 505-955-6840 and Scott Overlie, Project Administrator: saoverlie@santafenm.gov, 505-231-6194)

- Request for Approval for an On-Call Contract to Seeds of Wisdom, LLC. for city-wide services in an amount not to exceed $1,000,000 per year, including NMGRT and shall not exceed $4,000,000 for four years. (Melissa McDonald, Parks and Open Space Division Director: mamcdonald@santafenm.gov, 505-955-6840 and Scott Overlie, Project Administrator: saoverlie@santafenm.gov, 505-231-6194)

- Request for Approval for an On-Call Contract to Franco's Trees and Landscaping for city-wide services in an amount not to exceed $1,000,000 per year, including NMGRT and shall not exceed $4,000,000 for four years. (Melissa McDonald, Parks and Open Space Division Director: mamcdonald@santafenm.gov, 505-955-6840 and Scott Overlie, Project Administrator: saoverlie@santafenm.gov, 505-231-6194)

- Request for Approval for an On-Call Contract to Daniel's Landscaping and Construction for city-wide services in an amount not to exceed $1,000,000 per year, including NMGRT and shall not exceed $4,000,000 for four years. (Melissa McDonald, Parks and Open Space Division Director: mamcdonald@santafenm.gov, 505-955-6840 and Scott Overlie, Project Administrator: saoverlie@santafenm.gov, 505-231-6194)

- Request for Approval for an On-Call Contract to Proscape Landscape Management, LLC, for city-wide services in an amount not to exceed $1,000,000 per year, including NMGRT and shall not exceed $4,000,000 for four years. (Melissa McDonald, Parks and Open Space Division Director: mamcdonald@santafenm.gov, 505-955-6840 and Scott Overlie, Project Administrator: saoverlie@santafenm.gov, 505-231-6194)

- Request for Approval for an On-Call Contract to High Desert Landscape Maintenance, Inc. for city-wide services in an amount not to exceed $1,000,000 per year, including NMGRT and shall not exceed $4,000,000 for four years. (Melissa McDonald, Parks and Open Space Division Director: mamcdonald@santafenm.gov, 505-955-6840 and Scott Overlie, Project Administrator: saoverlie@santafenm.gov, 505-231-6194

BACKGROUND AND SUMMARY:
On-call services are utilized in parks, open spaces, trails, rights of way, medians, waterways and floodplains throughout Santa Fe, New Mexico. These on-call services help streamline processes to efficiently address routine maintenance, operations, illegal dumping and emergency maintenance on an as needed basis. Services provided through these contracts include, but are not limited to: vegetation management, landscape design and implementation, irrigation systems design, installation and repair, hazardous waste removal, snow plowing and ice control.

The Invitation to Bid (ITB #23/27/B) for general services was issued on December 8th, 2022, seven (7) responsive bids were received. After review, the evaluation committee selected six out of the seven companies applying the following criteria to all applicants; completeness of bid proposal, cost, experience, and past work with the City.

An On-call contract is not a guarantee of payment to the awarded vendor and is used on a per task order basis assuming funding is available. The requesting department/division shall provide, at a minimum, a detailed scope of work and/or drawings. The vendor then provides a quote, which is vetted and negotiated by staff as needed. Once an agreed upon cost is negotiated, a purchase order is produced for the scope of work.

All City of Santa Fe Departments will be authorized to utilize this on-call contract, they must submit a detailed scope of work and receive written approval from the Parks and Open Space Division Director, before commencing work.

PROCUREMENT METHOD:
Invitation to Bid (ITB#23/27/B), dated December 8, 2022

PROJECT SCHEDULE:
These contracts will expire 4 years from date of signature.

CONTRACT NUMBER:
- Cassidy's Landscaping, Inc. #3203888
- Daniel's Landscaping and Construction. #3203889
- High Desert Landscape Maintenance, Inc. #3203890
- Franco's Trees and Landscaping #3203891
- Proscape Landscape Management, LLC. #3203892
- Seeds of Wisdom, LLC. #3203893

FUNDING SOURCE: Various
Munis Org Name/Number: Various
Munis Object Name/Number: Various

ATTACHMENTS:
Proscape Landscape Management, LLC. Contract
Cassidy's Landscaping, Inc. Contract
Seeds of Wisdom, LLC. Contract
Franco's Trees and Landscaping Contract
High Desert Landscape Maintenance, Inc. Contract
Daniel's Landscaping and Construction. Contract

Proscape Landscape Management, LLC. ITB Bid Proposal
Cassidy's Landscaping, Inc. ITB Bid Proposal
Seeds of Wisdom, LLC. ITB Bid Proposal
Franco's Trees and Landscaping ITB Bid Proposal
High Desert Landscape Maintenance, Inc. ITB Bid Proposal
Daniel's Landscaping and Construction. ITB Bid Proposal

Proscape Landscape Management, LLC. Certificate of Insurance
Cassidy's Landscaping, Inc. Certificate of Insurance
Seeds of Wisdom, LLC. Certificate of Insurance
Franco's Trees and Landscaping Certificate of Insurance
High Desert Landscape Maintenance, Inc. Certificate of Insurance
Daniel's Landscaping and Construction. Certificate of Insurance

Proscape Landscape Management, LLC. Business License
Cassidy's Landscaping, Inc. Business License
Seeds of Wisdom, LLC. Business License
Franco's Trees and Landscaping Business License
High Desert Landscape Maintenance, Inc. Business License
Daniel's Landscaping and Construction. Business License

Proscape Landscape Management, LLC. Summary of Contracts
Cassidy's Landscaping, Inc. Summary of Contracts
Seeds of Wisdom, LLC. Summary of Contracts
Franco's Trees and Landscaping Summary of Contracts
High Desert Landscape Maintenance, Inc. Summary of Contracts
Daniel's Landscaping and Construction. Summary of Contracts

Proscape Landscape Management, LLC. Procurement Checklist
Cassidy's Landscaping, Inc. Procurement Checklist
Seeds of Wisdom, LLC. Procurement Checklist
Franco's Trees and Landscaping Contract Procurement Checklist
High Desert Landscape Maintenance, Inc. Procurement Checklist
Daniel's Landscaping and Construction. Procurement Checklist

Reviewed By:
Halona Crowe
Halona Crowe
Business Operations Manager

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 01/30/2023

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 Brown & Brown of New Mexico, Inc. 1660 Old Pecos Trail Suite D Santa Fe NM 87505	CONTACT NAME: Amy Perez PHONE (A/C, No, Ext): (505) 455-7355 FAX (A/C, No): E-MAIL ADDRESS: Amy.Perez@bbrown.com
INSURED Steamer Inc. DBA: Proscape Landscape Management, Preciscion Pest Management, Pure Clean and Santa Fe Ecowood 1850 Old Pecos Trl Ste J Santa Fe NM 87505-4760	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Westfield Insurance Company — 24112 INSURER B : New York Marine And General Insurance Company INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** 23/24 MASTER **REVISION NUMBER:**

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	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:	Y		279861N	01/01/2023	01/01/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY			279861N	01/01/2023	01/01/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
A	[X] UMBRELLA LIAB [ ] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 10,000			279861N	01/01/2023	01/01/2024	EACH OCCURRENCE AGGREGATE	$ 1,000,000 $ 1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: Y If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC100-0006124-2023A	01/01/2023	01/01/2024	[X] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 2,000,000 $ 2,000,000 $ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

City of Santa Fe Parks Division
1142 Siler Road Building C
Santa Fe NM 87505

CANCELLATION

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



© 1988-2015 ACORD CORPORATION. All rights reserved.

AGENCY CUSTOMER ID: 00273105

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Brown & Brown of New Mexico, Inc.	Steamer Inc
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance: Notes

General Liability Additional Insured as per policy form CG 20 10 12 19, attached.

ACORD 101 (2008/01) © 2008 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
All persons or organizations when you have agreed in writing in a contract or agreement that such persons or organizations be added as an additional insured.	All Locations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. 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.

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

This insurance does not apply to "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.

C. 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:

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

© Insurance Services Office, Inc., 2012

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

© Insurance Services Office, Inc., 2012

City of Santa Fe

Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: STEAMER, INC
DBA: PROSCAPE LANDSCAPE MANAGEMENT

Business Location: 1850 OLD PECOS TRL SUITE J
SANTA FE, MS 87505

CRS Number: 03199079007

Owner: STAEMER, INC

License Number: 230070

License Type: Business License - Renewable

Issued Date: April 19, 2022

Classification: Business Registration - Standard

Expiration Date: April 19, 2023

Fees Paid: $35.00

STEAMER, INC
1850 OLD PECOS TRL STE. J
SANTA FE, MP 87505

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT. APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION OR THE INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERRABLE TO OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE

Ver 16 2/7/2020

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **3203892**

Contractor: **Proscape Landscape Management, LLC**

Description: **On-call Contract for city wide services**

Contract [◉] Agreement [○] Lease / Rent [○] Amendment [○]

Term Start Date: _____ Term End Date: _____

[☐] Approved by Council Date: _____

Contract / Lease:

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount $ _____

Extend Termination Date to: _____

[☐] Approved by Council Date: _____

Amendment is for:

2. **HISTORY** of Contract, Amendments & Lease / Rent - **Please Elaborate** (option: attach spreadsheet if multiple amendments)

3. **Procurement History:** _____

_____ Feb 22, 2023

Purchasing Officer Review: Date:

Comment & Exceptions: Procured via ITB

4. **Funding Source:** **various** **Org / Object:** **various**

Andy Hopkins
Andy Hopkins (Feb 16, 2023 10:27 MST)

Feb 16, 2023

Budget Officer Approval: Date:

Comment & Exceptions: _____

Staff Contact who completed this form: **Scott A. Overlie** Phone # **505-231-6194**

Email: **saoverlie@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Proscape Landscape Management, LLC

Procurement Title: On-call Contract for city wide services

Procurement Method: State Price Agreement ☐ Cooperative ☐ Sole Source ☐ Other ☑

Exempt ☐ Request For Proposal (RFP) ☐ Invitation To Bid (ITB) ☑ Contract under 60K ☐ Contract over 60K ☐

Department Requesting Parks Division Staff Name _____

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES	N/A	
☑	☐	Approved Procurement Checklist (by Purchasing)
☑	☐	Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
☐	☑	State Price Agreement
☐	☑	RFP
☐	☑	Evaluation Committee Report
☑	☐	ITB
☑	☐	Bib Tab
☐	☑	Quotes (3 valid current quotes)
☐	☑	Cooperative Agreement
☐	☑	Sole Source Request and Determination Form
☐	☑	Contractors Exempt Letter
☐	☑	Purchasing Officers approval for exempt procurement
☐	☑	BAR
☐	☑	FIR
☑	☐	Executed Contract, Agreement or Amendment
☑	☐	Current Business Registration and CRS numbers on contract or agreement
☑	☐	Summary of Contracts and Agreements form
☑	☐	Certificate of Insurance
☐	☑	All documentation presented to Committees
☐	☑	Other:

Scott A. Overlie	Project Administrator	2/10/2023
Department Rep Printed Name (attesting that all information included)	Title	Date
[signature]	Contracts Supervisor	Feb 22, 2023
Purchasing Officer (attesting that all information is reviewed)	Title	Date

Include all other substantive documents and records of communication that pertain to the procurement and contract.

Signature: Scott Overlie
Scott Overlie (Aug 11, 2025 15:12:17 MDT)

Email: saoverlie@santafenm.gov

Signature: Melissa McDonald

Email: mamcdonald@santafenm.gov

Signature: Regina Wheeler
Regina Wheeler (Aug 11, 2025 16:45:45 MDT)

Email: rawheeler@santafenm.gov

CITY OF SANTA FE

The Purchasing Memo

Date: August 29, 2025

To: Governing Body, Finance Committee, and Public Works & Utilities Committee

From: Jesse Roach, Interim Public Utilities Director JR

Subject: Amendment No.1 to Legal Contract- City Reservoir Infrastructure Improvements Projects

Vendor Name: Spencer Fane, LLP

Munis Vendor Number: 10717

ITEM AND ISSUE:

Public Utilities respectfully requests your review and approval of Amendment No.1 to Contract Number 3250308 with Spencer Fane, LLP (Contractor') for Legal Services. Amendment No.1 increases the amount of compensation and extends the term for mediation or litigation by $570,000 excluding tax for a total compensation of $616,668.75 not to exceed for a term of 4 years.

CONTRACT NUMBER:

Munis contract number is 3250308

BACKGROUND AND SUMMARY:

The Contractor will represent the City in mediation or litigation against contractors involved in City reservoir infrastructure improvement projects relating to the City's McClure Dam and Reservoir and Nichols Dam and Reservoir.

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: WTRMGMNT / 505

Munis Org Name/Number: Wtr Rsrcs / 5050387

Munis Object Name/Number: Legal Cntr / 510200

Budget Officer / Designee: Andy Hopkins **Date:** 08/29/2025

Budget Officer Comment/Exceptions: _____

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-98, Exempt

Chief Procurement Officer (CPO)/Designee: _____ **Date:** 08/29/2025

CPO Comment/Exceptions: Legal advice, consultation, and representation-exempt per SFCC 1987, SECTION 11-13 (B)(3).

ASSOCIATED APPROVALS:

IT Components included? ☐ **Yes** | ☒ **No**

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Treasury/Point of Sale 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:

Legal Services Contract
Original contract packet (with previous contract amendments)
Certificate of Liability Insurance (COI)

Item #: _____
Munis Contract #: 3250308
Original Contract Item #: 24-0674
SWPA/GSA/Coop/RFP/ITB #: _____

CITY OF SANTA FE,
AMENDMENT No. 1 TO
Contract # 3250308

LEGAL SERVICE CONTRACT

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE CONTRACT, dated November 27, 2024 (the "Contract"), between the City of Santa Fe (the "City") and Spencer Fane, LLP. (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. Pursuant to Article 3 of the Contract, 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 3, paragraph A of the Contract is amended to increase the amount of compensation by a total of four hundred and fifty thousand dollars ($450,000) so that Article 3, paragraph A reads in its entirety as follows:

A. The City shall pay the Contractor the following hourly rates:

$350/hour for Randy Bartell, $250/hour for associate attorney time and $90/hour for paralegal time. In addition, the City shall pay the Contractor for expenses incurred in the performance of services in the Contract such as copying, telephone and computer research charges at the normal rate for such expenses charged by the Contractor to its other clients. Per Diem and mileage expenses shall not

exceed the amounts provided in the Per Diem and Mileage Act. Said services shall not exceed five hundred seventy thousand dollars ($570,000), plus gross receipts tax, currently forty-six thousand six hundred and sixty-eight and seventy-five cents ($46,668.75) for a total of six hundred and sixteen thousand six hundred sixty-eight and seventy-five cents ($616,668.75) for the term of this Contract.

2. TERM

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Contract shall terminate on September 1, 2028, unless terminated pursuant to paragraph 5 (Termination), or paragraph 6 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional service contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

CONTRACT 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:_____

CONTRACTOR:
Spencer Fane, LLP
Randy Bartell
Randy Bartell (Aug 28, 2025 15:08:41 MDT)
Randy Bartell, Partner

DATE: Aug 28, 2025
NMBTIN: 0356929500

ATTEST:

_____
CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Aug 28, 2025 15:17:29 MDT)
_____
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Ostar
_____
FINANCE DIRECTOR

CITY OF SANTA FE

Date: October 4, 2024

To: Randy Randall, City Manager RR

Via: Erin McSherry, City Attorney EM

From: Marcos Martinez, Senior Assistant City Attorney MM
Amy Cawthon, Administrative Manager AC

Subject: Legal Contract – City Reservoir Infrastructure Improvement Projects

Vendor Name: Spencer Fane, LLC

Vendor Number: 10717

ITEM AND ISSUE:

The City Attorney's Office respectfully requests your review and approval of the Legal Contract in the Not to Exceed Amount of $129,825.00 Including NMGRT for City Reservoir Infrastructure Improvement Projects with Spencer Fane, LLC. (Marcos Martinez, Senior Assistant City Attorney, mdmartinez@santafenm.gov, 505-531-7895)

Action Requested: Approval of Legal Contract

BACKGROUND AND SUMMARY:
The Contractor will represent the City in mediation or litigation against contractors involved in City reservoir infrastructure improvement projects relating to the City's McClure Dam and Reservoir and Nichols Dam and Reservoir. The Water Department is funding this contract through Water Conservation 5050382.510200.

PROCUREMENT METHOD:
The procurement is Exempt 3-1-98 SFCC 1987 Section 11-3, subpart (B)(3)

Chief Procurement Officer Approval: _____ **Date:** Nov 22, 2024
Comment/Exceptions: Legal advice, consultation, and representation -exempt per SFCC 1987, Section 11-13(B)(3).

Supporting Information:

CONTRACT NUMBER:
The FY25 Munis contract number is 3250308

$$$$$ SOURCE/REVENUE: ☒Expense ☐Revenue

The funding source is: **FY24 GRT Revenue in Excess of Budget**
Fund Name/Number: Water 505
Munis Org Name/Number: Water Conservation 5050382
Munis Object Name/Number: Legal Contracts/510200

If the project is grant funded? List grant award number: *NO*

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

Project Ledger #: NO

Budget Officer Approval: *Andy Hopkins* **Date:** Nov 20, 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: _____

Capital Project:
(New and improvement projects that are going to cost $10,000 or more)
☐ Yes | ☒ No

Project Ledger #: _____

Anticipated length of project: _____

Asset Manager Approval: _____ **Date:** _____
Comment/Exceptions: _____

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: Amy Cawthon, Administrative Manager, amcawthon@santafenm.gov, 505-955-6512

ATTACHMENTS:
Current COI

Signature: Amy Cawthon

Email: amcawthon@santafenm.gov

Signature: Marcos Martinez
Marcos Martinez (Nov 18, 2024 15:28 MST)

Email: mdmartinez@santafenm.gov

Signature:

Email: ekmcsherry@santafenm.gov

Signature: Randy Randall
Randy Randall (Nov 18, 2024 18:05 MST)

Email: rrandall@santafenm.gov

Memo_Spencer Fane

Final Audit Report 2024-11-19

Created:	2024-11-18
By:	Gina Wolff (vawolff@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAcMEcOstJZdaxxzXhJdiOeYTpvN4-IZn6

"Memo_Spencer Fane" History

Document created by Gina Wolff (vawolff@santafenm.gov)
2024-11-18 - 10:10:03 PM GMT- IP address: 63.232.20.2

Document emailed to Amy Cawthon (amcawthon@santafenm.gov) for signature
2024-11-18 - 10:11:32 PM GMT

Email viewed by Amy Cawthon (amcawthon@santafenm.gov)
2024-11-18 - 10:21:31 PM GMT- IP address: 63.232.20.2

Document e-signed by Amy Cawthon (amcawthon@santafenm.gov)
Signature Date: 2024-11-18 - 10:21:50 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Marcos Martinez (mdmartinez@santafenm.gov) for signature
2024-11-18 - 10:21:51 PM GMT

Email viewed by Marcos Martinez (mdmartinez@santafenm.gov)
2024-11-18 - 10:22:23 PM GMT- IP address: 63.232.20.2

Document e-signed by Marcos Martinez (mdmartinez@santafenm.gov)
Signature Date: 2024-11-18 - 10:28:58 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Erin McSherry (ekmcsherry@santafenm.gov) for signature
2024-11-18 - 10:28:59 PM GMT

Email viewed by Erin McSherry (ekmcsherry@santafenm.gov)
2024-11-18 - 11:36:04 PM GMT- IP address: 104.47.65.254

Document e-signed by Erin McSherry (ekmcsherry@santafenm.gov)
Signature Date: 2024-11-18 - 11:44:08 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Randy Randall (rrandall@santafenm.gov) for signature
2024-11-18 - 11:44:17 PM GMT

Powered by Adobe Acrobat Sign

Email viewed by Randy Randall (rrandall@santafenm.gov)
2024-11-19 - 1:05:05 AM GMT- IP address: 104.47.65.254

Document e-signed by Randy Randall (rrandall@santafenm.gov)
Signature Date: 2024-11-19 - 1:05:45 AM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.
2024-11-19 - 1:05:45 AM GMT

Powered by
Adobe
Acrobat Sign

Client#: 92568 SPENFAN1

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 9/21/2023

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
CBIZ Ins. Svcs Inc. (PE)
700 West 47th Street, Suite 1100
Kansas City, MO 64112
816 945-5500

CONTACT NAME: Anna Rivas
PHONE (A/C, No, Ext): 816 841-2273 FAX (A/C, No):
E-MAIL ADDRESS: anna.rivas@cbiz.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : National Fire Insurance Co. of Hartford	20478
INSURER B : The Continental Insurance Company	35289
INSURER C : Crum & Forster Specialty Insurance Co.	44520
INSURER D : Travelers Casualty & Surety Co of Am.	31194
INSURER E : American Casualty Company of Reading	20427
INSURER F : Homeland Insurance Co of New York	34452

INSURED
Spencer Fane LLP
1000 Walnut Street, Suite 1400
Kansas City, MO 64106

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			7A34442631	09/19/2023	09/19/2024	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$100,000
							MED EXP (Any one person)	$15,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	X POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:							$
E	AUTOMOBILE LIABILITY			BUA7034442659	09/19/2023	09/19/2024	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
B	X UMBRELLA LIAB X OCCUR			7034442662	09/19/2023	09/19/2024	EACH OCCURRENCE	$10,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$10,000,000
	DED X RETENTION $10,000							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N		N/A	WC734442645	09/19/2023	09/19/2024	X PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N						E.L. EACH ACCIDENT	$1,000,000
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$1,000,000
C	Cyber Security			CYB106463	09/19/2023	09/19/2024	$4,000,000	
D	Crime			107319591	09/19/2023	09/19/2026	$3,000,000 Limit	
F	EPLI			MML2630322	09/19/2022	10/19/2023	$2,000,000 Limit	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

Insured Copy

CANCELLATION

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

Mark A. Stolte

© 1988-2015 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD

0RSG

Item# 24-0674
Munis
Contract #
3250308

LEGAL SERVICE CONTRACT BETWEEN

THE CITY OF SANTA FE AND SPENCER FANE, LLP

THIS CONTRACT is made and entered into by and between the City of Santa Fe (the "City") and Spencer Fane, LLP. ("Spencer Fane" or the "Contractor"). The date of this Contract shall be the date when it is executed by the City.

1. **Scope of Services**

Spencer Fane, LLP agrees to represent the City in the following matters as requested by the City Attorney's Office:

Represent the City in mediation or litigation against contractors involved in City reservoir infrastructure improvement projects relating to the City's McClure Dam and Reservoir and Nichols Dam and Reservoir. The scope of representation includes but is not limited to: 1) evaluating the strengths and weaknesses of the case, 2) recommending courses of action and legal options to the City, 3) representing the City in coordination with the City Attorney's Office in mediation and litigation, 4) communicating the issues to the City Attorney's office, the Water Division, the City Manager, and the elected representatives of the City.

2. **Standard of Performance; Licenses**

A. 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 Contractor the following hourly rates:
$350/hour for Randy Bartell, $250/hour for associate attorney time and $ 90/hour for paralegal time. In addition, the City shall pay the Contractor for expenses incurred in the performance of services in the Contract such as copying, telephone and computer research charges at the normal rate for such expenses charged by the Contractor to its other clients. Per diem and mileage expenses shall not exceed the amounts provided in the Per Diem and Mileage Act. Said services shall not exceed one-hundred and twenty thousand dollars ($120,000), plus gross receipts tax, currently $9,825.00, for $129,825.00 in total for the term of this Contract.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums payable under this Contract.

C. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services performed.

4. **Term**

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Contract shall terminate on September 1, 2026, unless terminated pursuant to paragraph 5 (Termination), or paragraph 6 (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.

5. **Termination**

A. Termination. This Contract 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 Contract, 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 Contract. 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 Contract 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 Contract, 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 CONTRACT.*

B Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Contract, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Contract 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 Contract; 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 Contract. 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.

6. **Appropriations**

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Contract. If sufficient appropriations and authorization are not made by the City Council, 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 13 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 13 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 13 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 Contract 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. **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. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

16. **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.

17. **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.

18. **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 Section 38-3-1 (G) NMSA 1978. 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.

19. **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.

20. **Insurance**

A. The Contractor shall maintain adequate legal malpractice insurance. It is the sole responsibility of the Contractor to be in compliance with the law. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Contract. B. Contractor shall obtain and maintain Workers' Compensation insurance required by law to provide coverage for Contractor's employees throughout the term of this Contract. Upon request, Contractor shall provide the City with evidence of its compliance with such requirement.

21. **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.

22. **Indemnification**

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Contract as well as the performance of Contractor's employees, agents, representatives and subcontractors, including payments of all attorneys' fees and costs.

23. **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.

24. **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.

25. **Notices**

Any notices required to be given under this Contract shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

CITY OF SANTA FE:
CITY ATTORNEY'S OFFICE
P.O. BOX 909
SANTA FE, NM
87501

CONTRACTOR:
SPENCE FANE, LLP
RANDY BARTELL
325 PASEO DE PERALTA, SANTA FE, NM 87501
SANTA FE, NM

IN WITNESS WHEREOF, the parties have executed this Contract on the dates set forth below.

CITY OF SANTA FE:

Randy Randall (Nov 27, 2024 16:44 CST)

JOHN BLAIR, CITY MANAGER

Date: Nov 27, 2024

CONTRACTOR:

Spencer Fane, LLP

Randy Bartell, Partner

Date: 9/4/2024

N.M. Taxation & Revenue
NMBTIN# 0356929500-GRT
City of Santa Fe Business
Registration #
ATTEST:

Andrea Salazar
Andrea Salazar (Dec 4, 2024 09:36 MST)

CITY CLERK XIV

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Sep 13, 2024 16:32 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

EMILY OSTER, FINANCE DIRECTOR

0832_240904162904_001-c

Final Audit Report 2024-09-13

Created:	2024-09-13
By:	Amy Cawthon (amcawthon@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAjZ6hw2LzV7JzMt_I-5_J4Hhn18EtwYIT

"0832_240904162904_001-c" History

Document created by Amy Cawthon (amcawthon@santafenm.gov)
2024-09-13 - 10:19:01 PM GMT- IP address: 63.232.20.2

Document emailed to Marcos Martinez (mdmartinez@santafenm.gov) for signature
2024-09-13 - 10:30:22 PM GMT

Email viewed by Marcos Martinez (mdmartinez@santafenm.gov)
2024-09-13 - 10:31:54 PM GMT- IP address: 63.232.20.2

Document e-signed by Marcos Martinez (mdmartinez@santafenm.gov)
Signature Date: 2024-09-13 - 10:32:08 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.
2024-09-13 - 10:32:08 PM GMT

Powered by Adobe Acrobat Sign

CM - 505 - Spencer Fane - Exempt MEMO & COI

Final Audit Report 2024-11-26

Created:	2024-11-20
By:	JAMES EDWARDS (jwedwards@santafenm.gov)
Status:	Canceled / Declined
Transaction ID:	CBJCHBCAABAALaRANG42E0a9RLsw9f7K61b3lfuaYIEs

"CM - 505 - Spencer Fane - Exempt MEMO & COI" History

Document created by JAMES EDWARDS (jwedwards@santafenm.gov)
2024-11-20 - 4:11:16 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
2024-11-20 - 4:14:57 PM GMT

Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2024-11-20 - 6:57:27 PM GMT- IP address: 104.47.65.254

Document e-signed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
Signature Date: 2024-11-20 - 6:58:36 PM GMT - Time Source: server- IP address: 63.232.20.2

Document sent to JoAnn Lovato (jdlovato@santafenm.gov) and Travis Dutton-Leyda (tkduttonleyda@santafenm.gov) for signature. One of them to sign
2024-11-20 - 6:58:39 PM GMT

Email viewed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
2024-11-22 - 5:46:04 AM GMT- IP address: 104.28.50.162

Document e-signed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
Signature Date: 2024-11-22 - 5:07:51 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature
2024-11-22 - 5:07:55 PM GMT

Email viewed by EMILY OSTER (ekoster@santafenm.gov)
2024-11-26 - 8:55:56 PM GMT- IP address: 104.47.64.254

Document declined by EMILY OSTER (ekoster@santafenm.gov)
Decline reason: I'm sorry, I can't sign this one with the current packet. The Certificate of Insurance in the packet is expired and it does not list the City as the Certificate Holder. Please update the packet with a new Certificate of Insurance and resubmit. Thank you, Emily

Powered by Adobe Acrobat Sign

2024-11-26 - 9:11:52 PM GMT- IP address: 63.232.20.2

Powered by
Adobe
Acrobat Sign

Signature: 

Email: jdroach@santafenm.gov

Client#: 92568 SPENFAN1

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 9/18/2024

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Anna Rivas	
CBIZ Ins. Svcs Inc. (PE) 700 West 47th Street, Suite 1100 Kansas City, MO 64112 816 945-5500	PHONE (A/C, No, Ext): 816 841-2273	FAX (A/C, No):
	E-MAIL ADDRESS: anna.rivas@CBIZ.com	

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Federal Insurance Company	20281
INSURER B : Chubb National Insurance Company	10052
INSURER C : Crum & Forster Specialty Insurance Co.	44520
INSURER D : Travelers Casualty & Surety Co of Am.	31194
INSURER E :	
INSURER F :	

INSURED
Spencer Fane, LLP
1000 Walnut Street, Suite 1400
Kansas City, MO 64106

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			36086975	09/19/2024	09/19/2025	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$1,000,000
							MED EXP (Any one person)	$15,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	X POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY			73645062	09/19/2024	09/19/2025	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB X OCCUR			5672380	09/19/2024	09/19/2025	EACH OCCURRENCE	$10,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$10,000,000
	DED RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N	N / A		71841263	09/19/2024	09/19/2025	X PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N						E.L. EACH ACCIDENT	$1,000,000
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$1,000,000
C	Cyber Security			CYB107898	09/19/2024	09/19/2025	$5,000,000 Limit	
D	CRM/EE Dishonesty			107319591	09/19/2023	09/19/2026	$3,000,000 Limit	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

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

CANCELLATION

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

Mark A. Stelte

© 1988-2015 ACORD CORPORATION. All rights reserved.

CITY OF SANTA FE

Memorandum

Date: 08/25/2025

To: Governing Body

From: Scott Overlie, Public Works Project Manager III SAO

Via: Melissa McDonald, Parks and Open Spaces Division Director MMc
Regina Wheeler, Public Work Department Director RW

Reviewed By: Carol Swenson

ACTION:
Request for Approval of Capital Outlay Grant Agreement for Capital Appropriation Project 25-J3160 with the Department of Finance & Administration in the Total Amount of $250,000 for Shelby Street Pedestrian Bridge Replacement with a Reversion Date of June 30, 2029. (Scott Overlie, Project Manager III; saoverlie@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) to Allocate Legislative Grant Proceeds of $250,000 to Parks and Open Space FY26 Revenue and Expenses for the Shelby Street Pedestrian Bridge Replacement Project.

BACKGROUND:
The design of the replacement Shelby Street pedestrian bridge is at 60% for a prefabricated bridge with actual rock façade to replace like with like. Historic Review Board has provided preliminary approval for this design. The City's Floodplain Manager, however, is requiring additional analysis due to potential restriction of the channel which may require relocation and re-design of the bridge. Construction was targeted to begin in the Fall of 2025, but the additional floodplain analysis will delay that start date.

The design is funded with a 2024 legislative appropriation for $240,000. This $250,000 grant is expected to be used toward construction that is roughly estimated at $1,250,000.

ATTACHMENTS:
Grant Agreement
BAR
PLID Form

GRANT MANAGER: ERIKA LUJAN Sep 3, 2025
ERIKA LUJAN (Sep 3, 2025 09:23:39 MDT)

NEW MEXICO CAPITAL OUTLAY GRANT AGREEMENT
CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Department of Finance & Administration, 407 Galisteo Street, Santa Fe, NM 87501, ("**Department**") and the City of Santa Fe, ("**Grantee**") (individually "**Party**" and collectively "**Parties**"). This Agreement shall be effective as of the date the Department executes it ("**Effective Date**").

WITNESSETH

WHEREAS, in the Laws of 2025, Chapter 159, Section 505, Paragarph 33, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of funds from this appropriation, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

AGREEMENT

I. PROJECT DESCRIPTION, GRANT AMOUNT, AND REVERSION

A. **25-J3160** ("**Project**") 6/30/2029 ("**Reversion Date**"). Laws of 2025, Chapter 159, Section 50533, Two Hundred Fifty Thousand Dollars and No Cents, $250,000.00, to demolish and remove an existing structure and to plan, design and construct a pedestrian bridge across the Santa Fe river at Shelby street in Santa Fe in Santa Fe county;.

B. Grantee's total reimbursements shall not exceed $250,000.00 Two Hundred Fifty Thousand Dollars and No Cents, ("**Appropriation Amount**") minus the allocation for Art in Public Places ("**AIPP amount**"), if applicable, $0.00 No Dollars and No Cents, which equals $250,000.00 Two Hundred Fifty Thousand Dollars and No Cents ("**Adjusted Appropriation Amount**").

C. In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I, the language of the laws cited herein shall control.

The information contained in Article I is referred to collectively as the "**Project Description**."

II. DISBURSEMENT LIMITATION

A. Upon the Effective Date, the Grantee shall submit to the Department a comprehensive procurement plan and expenditure plan, detailing a Project timeline with milestones, required procurements, and identifying expected expenditures per milestone (collectively, "**Project Budget**"). The Department shall review and approve the Project Budget by approving a Notice of Department's Obligation ("**Notice of Obligation**"), in accordance with the Project Description, a

sample of which is attached hereto as **Exhibit B** and incorporated herein by reference. After receipt of approved Notice of Obligation, the Grantee may be reimbursed for allowable costs up to the Adjusted Appropriation Amount. This Agreement and any reimbursements up to the Adjusted Appropriation Amount are expressly conditioned upon the following:

a. Irrespective of any Notice of Obligation, Grantee's expenditures shall be made in accordance with the Project Budget, on or before the Reversion Date and/or, if applicable, any Early Termination Date; and
b. The total amount received by Grantee shall not exceed the lesser of:
    i. the Adjusted Appropriation Amount identified in Article I (B) herein; or
    ii. the total of all amounts stated in the Notice(s) of Obligation evidencing the Department has received and accepted Grantee's Third Party Obligation(s); and
c. Grantee's expenditures are made and accounted for pursuant to the State Procurement Code, State's Model Accounting Practices, and execution of binding written obligations or purchase orders with third-party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project ("**Third Party Obligations**"); and
d. Grantee's submittal of timely Requests for Payment and supporting documentation in accordance with the procedures set forth in this Agreement; and
e. In the event capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
    i. must be approved by the applicable oversight entity (if any) in accordance with §§ 13-6-2, 13-6-2.1, and 13-6-3; or
    ii. If no oversight entity is required to approve the transaction, the Department of Finance and Administration's Infrastructure Planning Development Division (IPDD) must approve it as complying with the law.

B. Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(e)(i) or (ii) herein, the Department may, in its sole and absolute discretion, unless inconsistent with State Board of Finance imposed conditions, reimburse Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, limited to planning and design expenditures; and

C. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation, and request the Third Party to begin work after issuance of a Notice of Obligation by the Department.
b. Grantee acknowledges and agrees that any Third Party Obligations agreed to prior to receiving a Notice of Obligation are its sole responsibility.
c. Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
d. Department may, in its sole and absolute discretion, issue a Notice of Obligation for the particular amount of a Third Party Obligation that only obligates the Department to

reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is incorporated herein and attached hereto as **Exhibit B**.

D. Grantee shall provide all necessary qualified personnel, materials, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

E. Prior to entering into this Agreement, the Department conducted a risk assessment on the Grantee and a project readiness review for the Project. In accordance with State Model Accounting Practices, FIN 9.2, if the Department determines that the expenditure of Project funds by the Grantee requires special conditions, those conditions are identified and listed in **Exhibit C**, which is attached and incorporated by reference. The Parties agree that, to the extent the Department, in its sole and absolute discretion, determines additional special conditions are necessary or that existing special conditions are no longer required, it may update **Exhibit C** from time to time without the need for a formal amendment of this Agreement.

F. Project funds shall not be used for purposes other than those authorized by the Department in accordance with the Project Description.

G. Project funds cannot be used to reimburse the Grantee for indirect Project costs unless specifically allowed by law.

III. NOTICES

The following provisions shall apply whenever written notices, including written decisions, are to be given or received related to this Agreement.

A. The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Santa Fe
Name: Alan Webber
Title: Mayor
Address: PO Box 909, Santa Fe, NM 87504
Email: mayor@santafenm.gov
Telephone: 505-955-6590

B. The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: City of Santa Fe
Name: Emily Oster
Title: Finance Director
Address: PO Box 909, Santa Fe, NM 87504
Email: ekoster@santafenm.gov
Telephone: 505-629-3411

C. The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Grant Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Parties agree that all notices, including written decisions, related to this Agreement shall be sent to the persons named above by email or regular mail. For mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five (5) calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of the email.

IV. TERM & DEADLINE TO EXPEND FUNDS

A. The term of this Agreement shall begin on the Effective Date and terminate on the 30th day of June during the calendar year of the Reversion Date unless Terminated Before Reversion Date ("**Early Termination**") pursuant to Article V herein (collectively "**Term**").

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, the Early Termination Date of this Agreement.

a. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Reversion Date or Early Termination Date.
b. For purposes of this Agreement, an expenditure of funds has occurred on the date the particular quantity of goods is delivered to and received by the Grantee, title to the goods is transferred to the Grantee, and/or as of the date particular services are rendered to and accepted by the Grantee.
c. For purposes of this Agreement, an encumbrance of funds pursuant to a contract or purchase order with a third party does not qualify as an expenditure.

V. EARLY TERMINATION

A. General Provision. The Department may terminate this Agreement before the Reversion Date based on the Completion of the Project, Complete Expenditure of the Adjusted Appropriation, and/or Violation of this Agreement. Early Termination hereunder includes:

a. Termination due to completion of the Project before the Reversion Date;
b. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date;
c. Termination for violation of the terms of this Agreement; or
d. Termination for suspected mishandling of public funds, including but not limited to fraud, waste, abuse, and conflicts of interest.

B. Non-appropriation. This Agreement is expressly contingent upon the New Mexico State Legislature making sufficient appropriations and authorizations for the Project Description.

   a. If the Legislature does not appropriate the Appropriation Amount, this Agreement shall terminate upon the Department giving the Grantee written notice of such termination. Such termination shall be effective as of the effective date of the law making the non-appropriation.
      i. The Department's decision as to whether sufficient appropriations or authorizations are available shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the State of New Mexico in the event of Early Termination of this Agreement.
   b. As used herein, "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature:
      i. Deauthorization, reauthorization, or revocation of a prior authorization.

C. Grant Disbursements in the Event of Early Termination. In the event of Early Termination, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II above.

D. Notice. Either Party may terminate this Agreement prior to the Reversion Date by providing the other Party with a minimum of fifteen (15) days advance written notice of the Early Termination. Grantee hereby waives any rights to assert an impairment of contract claim against the State of New Mexico in the event of Early Termination of this Agreement by the Department.

VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. Department, in its sole and absolute discretion, may provide written notice to Grantee to suspend entering into further obligations. Upon the receipt of such written notice by the Grantee:

   a. Grantee shall immediately suspend entering into new or further written obligations with third parties;
   b. Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
   c. Department may direct the Grantee to implement a corrective action plan in accordance with Article VI (D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for a Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension. Where the Department, in its sole and absolute discretion, directs Grantee to suspend entering into new or further written obligations

with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension.

a. Such a corrective action plan must be approved by the Department and be signed by the Grantee.
b. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(c).
c. A corrective action plan shall be in addition to, and not in lieu of, any other equitable or legal remedy authorized hereunder or at law, including but not limited to Early Termination.

VII. AMENDMENTS

Unless expressly stated otherwise herein, this Agreement shall not be altered, changed, or amended except by an instrument in writing duly executed by both parties hereto with the same formalities as this agreement.

VIII. REPORTING

A. Database Reporting

a. Grantee shall provide the Department with quarterly reports of Project activity, entering the required Project information directly into a database required by the Department.
b. Additionally, Grantee shall certify on each Request for Payment form, attached hereto as **Exhibit A** and incorporated herein, that all information provided in the database is true and accurate, updates to the database have been maintained, and all Project activity complies with applicable law and the terms of this Agreement.
c. Grantee hereby acknowledges that failure to perform and/or certify updates to the database will jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of fourteen (14) days' advance written notice of any changes to the information the Grantee is required to report.
d. At the Department's discretion, all reports required hereunder may be directed to and facilitated through an electronic database.
e. Quarterly reports shall be due on the last day of the month, that is, 30 days prior to the end of the quarter following the execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

B. Requests for Additional Information/Project Inspection

a. During the term of this Agreement and the Record Retention Period, the Department may:
    i. Request additional information regarding the Project as it deems necessary and
    ii. Conduct on-site inspections of the Project at reasonable times and upon reasonable notice.
b. Grantee shall respond to such requests for additional information within the time established by the Department.

IX. REQUEST FOR PAYMENT PROCEDURES

A. Grantee shall request payment by submitting the form attached hereto as **Exhibit A**. Payment requests are subject to the following procedures:

a. Each Request for Payment must be in accordance with the Project Budget and contain proof of payment by the Grantee or liabilities incurred by the Grantee.
    i. Proof of payment must demonstrate the validity of an expenditure or liabilities incurred by Grantee.
    ii. However, Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
    iii. The Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or in a shorter period than the Department may prescribe in writing.
    iv. The Department reserves the right to make such payments directly to the contractors or vendors as a special condition under this Agreement.
    v. The Grantee is required to certify to the Department proof of payment to the third-party contractor or vendor within five (5) business days from the date the Department reimburses the Grantee.

B. Until the Project is fully planned, designed, and all necessary procurements identified in the Project Budget are completed, Grantee's reimbursements will be limited to the planning, design, and procurement costs outlined in the Project Budget. Once the planning, designing, and procuring stages are complete, the Grantee must obligate at least ten percent (10%) of the Adjusted Appropriation Amount within one (1) year and must have utilized at least eighty-five percent (85%) of the Adjusted Appropriation Amount six (6) months before the reversion date.

C. Deadlines. Grantee shall submit requests for Payments to the Department on the earlier of:

a. Immediately as Grantee receives them, but at a maximum of thirty (30) days from when Grantee incurred the expenditure or liability; or
b. Twenty (20) days from the date of Early Termination or Reversion Date for expenditures or liabilities incurred before the Early Termination date or Reversion Date.

D. Grantee's failure to abide by the requirements set forth in Article II and Article IX herein may result in the denial of its Request for Payment. Department reserves the right to reject a payment request for the Project unless and until it is satisfied that the expenditures or liabilities are for permissible purposes within the meaning of the Project Description, identified within the Project Budget, and that the Grantee is otherwise in compliance with this Agreement.

a. Department's authority to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department under this Agreement, at law, or in equity.

X. PROJECT CONDITIONS AND RESTRICTIONS

A. The following general conditions and restrictions shall apply to the Project:

a. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code.
b. The Project's expenditures and liabilities must be accounted for in accordance with the State's Model Accounting Practices, as amended from time to time.
c. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable.
d. The Project must provide a public benefit above and beyond any incidental benefit to private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico.
e. Without prior written approval from the Department and State Board of Finance, for the useful life of any asset purchased under this Agreement, Grantee shall not convert any property acquired, built, renovated, repaired, designed, or developed with Project funds to uses other than those specified in the Project Description.
    i. In addition to other remedies available at law or in equity, any disposal or conversion of property acquired, built, renovated, repaired, designed, or developed with Project funds without the Department's and the Board of Finance's express written approval will trigger the Department's right to reimbursement from Grantee of the Appropriated Amount, transfer proceeds from any disposition of property to the State, or otherwise provide consideration to the State for the Appropriated Amounts.
f. Grantee shall comply with all applicable federal and state laws, rules, and regulations pertaining to civil rights and equal employment opportunity.
    i. In accordance with all such laws, rules, and regulations, the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age, or handicap, be excluded from participation in the Project, use of the Project, employment with Grantee, or otherwise be denied benefits/subject to discrimination for any activity performed under this Agreement.
g. Where the Department, in its sole and absolute discretion, determines Grantee has failed to comply with the above conditions and restriction, Grantee agrees to take appropriate steps to correct any deficiencies immediately. The Grantee's failure to implement such appropriate steps within a reasonable time, but no longer than thirty (30) days after

notice from the Department, constitutes a breach of this Agreement and grounds for Early Termination.

XI. REPRESENTATIONS AND WARRANTIES

A. Reliance by Department.
   a. Grantee expressly acknowledges that the Department relies on the representations and warranties made by Grantee in this Agreement. Grantee acknowledges that such representations and warranties are a material inducement for the Department to enter into this Agreement and provide the Appropriated Amount.
   b. Grantee shall ensure all representations and warranties provided herein are true, accurate, and complete as of the date of the Effective Date and shall remain so throughout the Term of this Agreement. Grantee is responsible for promptly notifying the Department in writing of any changes or inaccuracies in the representations and warranties contained herein.

B. Grantee hereby represents and warrants the following:

   a. Grantee has taken all necessary steps to attain the legal authority to receive and expend the Project's funds.
   b. Grantee has duly authorized this Agreement, and the person executing it has authority to do so. Once executed by Grantee, this Agreement shall constitute a binding obligation of Grantee, enforceable according to its terms.
   c. Grantee's obligations hereunder do not conflict with any law, ordinance, or resolution applicable to Grantee, Grantee's charter (if applicable), or any judgment or decree to which Grantee is subject.
   d. Grantee has independently confirmed that the Project Description, including, but not limited to, the Appropriated Amount and Reversion Date, is consistent with the underlying appropriation in law.
   e. Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign and submit Requests for Payment on behalf of Grantee.
   f. Grantee will abide by New Mexico laws regarding conflicts of interest, governmental conduct, and whistleblower protection.
      i. Grantee agrees explicitly none of its officers or employees or its designees or agents, no member of the governing body, and no other public official of Grantee who exercises any function or responsibility with respect to this Agreement, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for the Project.
      ii. Further, Grantee will require all of its contractors to incorporate the language set forth in this paragraph prohibiting conflicts of interest in all subcontracts.
   g. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of the State, any agency, or body in connection with the awarding of any Third Party Obligation.
      i. Grantee will require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans, and cooperative agreements.

C. Consequences of False or Misleading Representations. If any representation or warranty made by Grantee is found to be false or misleading, the Department shall have the right to exercise any or all of the following remedies:

a. **Termination of Agreement:** Department may terminate this Agreement immediately upon written notice to the Grantee.
b. **Repayment of Grant Funds:** Grantee shall repay all Appropriated Amounts disbursed under this Agreement, upon demand by the Department.
c. **Other Remedies:** Department may pursue any other remedies available at law or in equity.

D. Survival of Representations and Warranties. The representations and warranties made by the Grantee shall survive the Early Termination or expiration of this Agreement.

XII. PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles and the State's Model Accounting Practices and, if feasible, maintain a separate bank account or fund with a separate organizational code to ensure separate budgeting and accounting of the funds.

B. For six (6) years following the Project's completion ("**Record Retention Period**"), Grantee shall maintain all Project-related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the Appropriated Amount from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department may prescribe.

C. Grantee shall make all Project records available to the Department, the Department's Independent Public Accountant, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department finds any funds were improperly expended, Grantee shall be required to reimburse the State all amounts found to be improperly expended.

XIII. IMPROPERLY REIMBURSED FUNDS

If the Department determines part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, after ten (10) days' notice to Grantee and the opportunity to return such funds to the Department, the Department may offset any funds due to Grantee from the State, until the Appropriation Amount is fully repaid.

XIV. LIABILITY

Neither Party shall be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to

immunities and limitations of the New Mexico Tort Claims Act.

XV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Parties concerning the subject matter hereof. The Agreement supersedes all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

XVI. REQUIRED NON-APPROPRIATIONS CLAUSE

A. Grantee acknowledges and agrees to include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

   a. "The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of the State of New Mexico ("**Legislature**") for the performance of this Agreement.
   b. If the Legislature does not make sufficient appropriations and authorization, City of Santa Fe may immediately terminate this Agreement by giving Contractor written notice of such termination.
   c. The City of Santa Fe's decision as to whether sufficient appropriations are available shall be final and accepted by the Contractor. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Santa Fe or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Santa Fe or the State Department of Finance and Administration."

XVII. REQUIRED TERMINATION CLAUSE

A. Grantee acknowledges and agrees to include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

   a. "This contract is funded in whole or in part by funds made available by the State of New Mexico ("**State**"). Should the State terminate its Agreement with the City of Santa Fe, the City of Santa Fe may terminate this contract immediately by providing Contractor written notice of such termination.
   b. In the event of termination pursuant to this paragraph, the City of Santa Fe's only liability to Contractor shall be for goods and services delivered and accepted prior to the termination date."

XVIII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA

A. Throughout the term of this Agreement, Grantee shall:

   a. Submit all reports of annual audits and agreed-upon procedures required by § 12-6-3(A)-(B), NMSA 1978 by the due dates established in § 2.2.2 NMAC, reports of which must be a

public record pursuant to § 12-6-5(A), NMSA 1978 within forty-five (45) days of delivery to the State Auditor;

b. Have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
c. Timely submit all required financial reports to its budgetary oversight agency (if any); and
d. Use accounting methods and procedures consistent with Generally Accepted Accounting Principles and the State's Model Accounting Principals to expend the Appropriated Amount in accordance with applicable law and account for and safeguard Project funds and assets acquired with Project funds.

B. In the event Grantee fails to comply with the requirements of subparagraph A of this Article XVIII, Department may take one or more of the following actions:

a. Suspend new or further obligations pursuant to Article VI(A) of this Agreement;
b. Require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
c. Impose special conditions to address the non-compliance by giving Grantee notice of such special conditions in accordance with Article III of this Agreement;
    i. The Parties agree that any special conditions imposed to address non-compliance shall be incorporated into this Agreement, through **Exhibit C**, upon notice to Grantee, without need for formal amendment of this Agreement;
    ii. Special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III or
d. Terminate this Agreement pursuant to Article V(A) of this Agreement.

XIX. SEVERANCE TAX AND GENERAL OBLIGATION BONDS

A. Grantee acknowledges and agrees that the underlying appropriation for the Project may originate from the issuance of tax-exempt severance tax bonds or general obligation bonds by the State. Proceeds from such bonds are administered by the New Mexico State Board of Finance ("**SBOF**"), an entity separate and distinct from the Department.

a. Grantee acknowledges and agrees:
    i. It is Grantee's responsibility to determine through SBOF what (if any) conditions are currently imposed on the Project;
    ii. Department's failure to inform Grantee of an SBOF-imposed condition does not affect the validity or enforceability of the condition;
    iii. The SBOF may in the future impose further or different conditions upon the Project;
    iv. All SBOF conditions are attached to the Project and Appropriation Amount without the need for formal amendment of this Agreement;
    v. All applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s) and
    vi. The Department's obligation to reimburse Grantee from the Project is expressly contingent upon the satisfaction of the then-current SBOF conditions.

B. Grantee acknowledges and agrees SBOF may, at its sole and absolute discretion, require reimbursement or remove eligibility for bond proceeds for the Project if the Project doesn't

proceed sufficiently.

a. Grantee must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by Grantee in the Bond Questionnaire and Certification documents submitted to the SBOF.
b. Failure to comply may result in the reassignment of the bond proceeds. Upon reassignment of bond proceeds, this Agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, § 2.61.6, NMAC, as may be amended from time to time or re-codified.

XX. GENERAL PROVISIONS

A. Assignment: Grantee's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Subcontractors: Grantee shall not enter any subgrant or subcontract in connection with its obligations under this Agreement without the prior written approval of the State. Upon request, Grantee shall submit to the Department a copy of each such subgrant or subcontract.

C. Binding Effect: Except as otherwise provided, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority: Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References: The captions and headings in this Agreement are for the convenience of reference only and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits, or other attachments are references to sections, subsections, exhibits, or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts: This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute the same agreement.

G. Digital Signatures: If any signatory signs this agreement using a digital signature in accordance with the State Policies regarding the use of digital signatures, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

H. Modification: Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment, properly executed and approved in accordance with applicable New Mexico law and State fiscal policies and rules.

Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the State.

I. Statutes, Regulations, Fiscal Rules, and Other Authority: Any reference in this Agreement to a statute, regulation, policy, or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended after the Effective Date of this Agreement.

J. External Terms and Conditions: Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Grantee's or a subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

K. Severability: The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

L. Survival of Certain Agreement Terms: Any provision of this Agreement that imposes an obligation on a Party after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

M. Third Party Beneficiaries: Except for the Parties' respective successors and assigns described in this Agreement, it does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits that third parties receive as a result of this Agreement are incidental to this Agreement and do not create any rights for such third parties.

N. Waiver: A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

O. Standard and Manner of Performance: Grantee shall perform its obligations under this Agreement in accordance with the highest standards of care, skill, and diligence in Grantee's industry, trade, or profession.

P. Licenses, Permits, and Other Authorizations: Grantee shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement and shall ensure that all employees, agents, and subcontractors secure and maintain at all times during the term of their employment, agency or subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

Q. Publicity: Any Publicity regarding the subject matter of this Agreement may not be released without prior written approval from the Department. For purposes of this agreement, "**Publicity**"

means notices, informational pamphlets, press releases, email responses, research, reports, signs, and similar public notices prepared by or for the Grantee or jointly with others.

a. Grantee shall obtain written approval prior to issuing any press release or making any public announcement regarding this agreement. Grantee agrees to obtain approval of the Department in advance with respect to all Public Relations, all communications with media, or all communications with any other member of the public with respect to this agreement, except to acknowledge that an agreement does exist.
b. For purposes of this agreement, "Public Relations" includes community relations and means those activities dedicated to maintaining the Department's image or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.
c. Violations of either Article XX (Q)(a) or (b) shall constitute a material Breach of Agreement.

R. Data Sharing: The State intends to secure and collate specific data generated by Grantee under this Agreement to use in support of the State's organizational, policy-making, and management of public resource functions. State, in accordance with **Exhibit E**, attached hereto and incorporated herein by reference, reserves the right to require Grantee and/or its subcontractors to provide specific data relevant to the above-listed functions. Data provided by Grantee may be incorporated into existing or future developed State integrated analysis tools or databases, including but not limited to geographic information system (GIS) networks and databases accessible by the public. Dissemination of data collected may include historical data and projections based on such historical data.

a. To the extent any data transferred as part of this Agreement is legally determined to be the property of Subrecipient or its subcontractors, Subrecipient and/or its subcontractors grants State a nonexclusive, fully paid-up right and license to reproduce, use, distribute, do derivative works based on, and archive data transferred as part of this Agreement.

S. Venue and Choice of Law: This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, without regard to any conflict of law provisions. Any legal suit, action, or proceeding arising out of or related to this Agreement shall be instituted exclusively in the district courts located in Santa Fe, New Mexico. The Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such suit, action, or proceeding. The Parties waive any objection to the laying of the venue of any such suit, action, or proceeding in the district courts of Santa Fe, New Mexico, and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

[SIGNATURE PAGE AND EXHIBITS FOLLOW]
[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Department's date of execution.

APPROVED BY DEPARTMENT:

Cabinet Secretary, Wayne Propst:

_____ _____

Signature Date

Chief Financial Officer, Mackie Romero:

_____ _____

Signature Date

Local Government Division Director, Cecilia Mavrommatis:

_____ _____

Signature Date

AS TO LEGAL FORM AND SUFFICIENCY

General Counsel's Office:

_____

Signature

_____ _____

(Print Name) (Title)

APPROVED BY GRANTEE:

Entity Name

Official with Authority to Bind Grantee:

Signature

(Title)

(Print Name)

Date

ATTEST:

ANDRÉA SALAZAR, CITY CLERK

Date

Fiscal Officer or Chief Financial Officer:

Emily K. Oster

EMILY OSTER, FINANCE DIRECTOR

Sep 10, 2025

Date

As To Legal Form And Sufficiency

Kevin L. Nault

Kevin L. Nault (Aug 20, 2025 11:40:41 MDT)

KEVIN NAULT, ASSISTANT CITY ATTORNEY

Aug 20, 2025

Date

EXHIBIT A

Request for Payment Form and Certification

STATE OF NEW MEXICO
GRANT APPROPRIATION
Request for Payment Form
Exhibit A

I. Grantee Information (Must match your DFA Substitute W-9 Form)

A. Grantee: _____
B. Address: _____
(Complete Mailing, including Suite, if applicable)
_____
City, State, Zip
C. Contact Name/Phone #: _____
D. Grant No: _____
E. Project Title: _____
F. Grant Expiration Date: _____

II. Payment Computation

A.	Payment Request No.	
B.	Grant Amount:	$ 0.00
C.	AIPP Amount *(If Applicable)*:	$ 0.00
D.	Funds Requested to Date:	$ 0.00
E.	Amount Requested this Payment:	
F.	Reversion Amount *(if applicable)*:	$ 0.00
G.	Grant Balance:	$ 0.00

H. ☐ Final Request for Payment *(if applicable)*

III. Fiscal Year : 2026 (July 1, 2025-June 30, 2026)

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. Certifications

☐ I hereby certify that all conditions and requirements for Payments outlined in the Agreement have been met, including but not limited to:
a. Submission and approval of a Project Budget as per Article IV, Section A of the Agreement.
b. Compliance with the Project Budget and expenditure of funds in accordance with the State Procurement Code and the State's Model Accounting Practices.
c. Submission of supporting documentation as required by the Agreement.
d. Maintenance of all necessary records and documentation as stipulated in the Agreement.

☐ I attest that the information provided is correct; expenditures are properly documented and valid or actual receipts, and that the activity fully complies with Article IX, Sec. 14 of the New Mexico Constitution, known as the "anti-donation" clause.

☐ I hereby certify that all representations and warranties made in the Agreement remain true, accurate, and complete as of the date of this request, and will continue to be so throughout the term of the Agreement. I acknowledge that these representations and warranties are a material inducement for the Department to approve this pay request.

_____
Grantee Fiscal Officer or **Fiscal Agent** *(if applicable)*

_____
Printed Name

Date: _____

_____
Grantee Representative

_____
Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ Fund No.: _____ PO # _____ Loc No.: _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

_____ _____
ASD Officer Date

_____ _____
Division Grant Manager Date

Revised 7/2025

[THIS SPACE LEFT BLANK INTENTIONALLY]

EXHIBIT B

Notice of Department's Obligation Form

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT B

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, Grant Manager

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: $ 0.00

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: Grant Manager

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Revised 7/2025

[THIS SPACE LEFT BLANK INTENTIONALLY]

OPTIONAL EXHIBIT C
SPECIAL CONDITIONS

The capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired with such appropriations.

This Capital Outlay Special Grant Condition(s) **Exhibit C** is necessary pursuant to § 6-3b-1 et seq., NMSA 1978 (Public Finance Accountability Act) and MAPS Fin 9.2, due to the Grantees' material weaknesses, significant deficiencies, or findings that raised concerns as to the ability to expend grant funds in accordance with applicable law in the organization's FY[20XX] audit. The Special Conditions identified below apply to the authorized agent, [insert the Grantee or Fiscal Agent name].

Procurement - All purchases or contracts the Grantee enters that shall use funding from the Department capital appropriations grant must be approved by the Department prior to the initiation of implementing purchasing documents. The Grantee shall receive such prior approval via official correspondence from the Department, which may be through letter or email. The Grantee shall submit the following to the Department in pursuit of prior approval: purchasing policies and procedures, CFO certification, documentation of management and program approval, policies and procedures governing purchasing and contracting, a copy of the current procurement and contracting policies, and documentation regarding informing staff responsible for purchasing and contracting on such policies and procedures.

Budget - Provide documentation of approval of your current budget from DFA Local Government or other authoritative agency. Provide policies and procedures on who is responsible for and how annual budgets (expenditures and revenue) are established, monitored and adjusted. Provide a corrective action plan on how budget issues identified in your audit will be/have been addressed. Also include documentation on how staff responsible for budgeting is informed on budget policies and procedures.

Capital Assets - Provide a complete list of inventory including inventory control numbers and current location. Provide policies and procedures on capital assets and inventory and specify how the proposed purchased items will be included, tagged, and tracked in capital asset inventory. Also include documentation on how staff responsible for capital assets is informed on capital asset policies and procedures.

Travel and Per Diem - Provide policies and procedures on travel and per diem. Also include how staff who travel and those responsible for travel reimbursement are informed on travel and per diem policies and procedures.

Timely Audits – Provide policies and procedures on annual audits. Provide documentation on how and who is responsible for insuring that annual audits are completed timely. Also include documentation on how staff responsible for the annual audit is informed on audit policies and procedures.

Cash Management – policies and procedures on cash management of federal funds. Provide procedures used to draw and disburse federal funds. Provide procedures to reconcile draw amounts, deposits and disbursements; and to prepare federal cash reporting documents to ensure compliance with federal regulations.

The <Grantee> was required to, and has provided sufficient documentation regarding [insert specific names of the Special Condition(s)], as referenced in the <Grantee>'s [20XX] Audit file. Therefore, the criteria to enter into this agreement have been met.

[THIS SPACE LEFT BLANK INTENTIONALLY]

EXHIBIT D

Project Budget Worksheet *

*(Provided separately when grant agreement issued to Grantee)

[THIS SPACE LEFT BLANK INTENTIONALLY]

Exhibit E

Data Sharing Provisions for New Mexico Capital Outlay Agreements

I. Introduction:

This Data Sharing Provisions Exhibit ("Exhibit") is incorporated into the New Mexico Capital Outlay Agreements ("Agreements") between the State of New Mexico ("State") and [Insert Partner Name] ("Partner"). This Exhibit outlines the terms and conditions under which data will be shared between the Parties to ensure compliance with New Mexico state laws and regulations, focusing on data privacy, security, and compliance.

II. Definitions:

a. Authorized User: An employee, agent, assign, representative, independent contractor, or other person or entity authorized by Partner or State to access, use, or disclose information through this exhibit.

b. Confidential Information: All data or information shared in confidence, with the expectation that it will not be disclosed in an identifiable form. This includes data that is exempt from public disclosure under the New Mexico Inspection of Public Records Act (§ 14-2-1 et seq. NMSA 1978) or other relevant laws.

c. Data Storage: Electronic media that hold recorded information.

d. Data Transmission: The process of moving information over a network from its source to one or more destinations.

e. Direct Identifier: Records or data containing personal identifiers such as names, addresses, and social security numbers.

f. Disclosure: Permission to access, release, transfer, or otherwise communicate confidential information by any means to any third party, except as authorized by the Party that controls the record.

g. Encryption involves using algorithms to encode data, rendering it unreadable without a specific key. It may be necessary during data transmission and/or storage.

h. Information: Any data, figures, statistics, or other facts provided or learned about someone or something, including Confidential Information, that may be legally transmitted under this Exhibit.

i. Limited Dataset: A data file that omits Direct Identifiers.

j. Protected Personally Identifiable Information: Sensitive personal details such as social security numbers and financial account numbers, with specific exclusions as outlined in the Agreements.

III. Purpose:

The purpose of this exhibit is to promote transparency, facilitate information sharing between the parties, support better policy and decision-making, and enhance public services through collaborative

[THIS SPACE LEFT BLANK INTENTIONALLY]

data analysis from various sources.

IV. Use of Information:

a. Use of Information obtained or created under this exhibit shall be strictly limited to the purposes stated herein and in the agreements. The parties agree not to sell Information to third parties or use it for commercial, solicitation, or political purposes.

b. Each Party shall serve as the custodian of the Information and comply with all conditions for its use, including security measures to prevent unauthorized access.

c. The Parties shall follow all relevant federal and state laws and regulations governing the use of such Information.

V. Safeguarding Information:

a. Confidentiality: Access to Confidential Information shall be limited to the minimum necessary to accomplish the purposes of this Exhibit. Authorized Users must adhere to the confidentiality requirements.

b. Security: Security practices shall comply with the requirements of the New Mexico Department of Information Technology Act and related regulations. The Parties agree to notify each other within three business days of any suspected or actual security breach.

c. Information Storage and Transmission: Data Storage and Transmission shall take place on an encrypted server with appropriate security controls.

VI. Re-Disclosure of Information:

The Parties agree not to disclose Information except as required by law or with prior written approval of the other Party. If there is a public records request, the Party receiving it shall notify the other Party within three business days.

VII. Ownership of Information:

Legal title to Information shall remain with the provider. The Partner grants the State a royalty-free, non-exclusive, non-transferable license to use the Information in furtherance of the purposes outlined in this Exhibit.

Log # *{Finance use only}*:	
Journal # *{Finance use only}*:	

City of Santa Fe, New Mexico
BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME	DATE
Public Works / Parks & Open Space - Capital Outlay	7/31/2025

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WIP Construction - PrksTrls Cap / Shelby Bridge Pedestrian	3559980	572970	PWD2535518	250,000	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
NM DFA 25-J3160 Shelby Bridge	3559980	490210	PWD2535518	(250,000)	
				$ -	$ -

JUSTIFICATION: *(use additional page if needed)*
--Attach supporting documentation/memo

Agreement with DFA for Shelby Street Bridge in the total amount of $250,000. (25-J3160)

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	**0**

Phillip Lujan — 7/15/2025
Prepared By *{print name}* — Date

Carol Svennson — Aug 28, 2025
Business Operations Manager — Date

Regina Wheeler — Aug 28, 2025
Regina Wheeler (Aug 28, 2025 11:56:27 MDT)
Department Director Signature — Date

{Use this form for Finance Committee/ City Council agenda items ONLY}

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins — Sep 3, 2025
Budget Officer — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

City of Santa Fe New Mexico

Finance Department

Project Ledger Request Form

Date of Request: 08/25/2025

Project Title: Shelby Bridge at SF River & Shelby St.

Project Type: ☐ CIP ☑ Grant ☐ Internal Tracking

Project ID: PWD2535518

Grant ID: S2521

Approved By: ERIKA LUJAN (Sep 3, 2025 09:23:39 MDT)

CMT (Finance Use Only)

Department: Public Works / Parks Project Manager: Scott Overlie Ext: 231-6194

Project Date Range: 08/15/2024 to 06/30/2029 ☐ Create Fixed Asset

---

☐ Multi-Funding (complete all funding sources, should equal 100%)

Funding Source: NM DFA 25-J3130 25-J3160 % of Funding: 100

MUNIS ORG: 3559980 MUNIS OBJ: 490210 Awarded Amount: 250,000

Funding Source: _____ % of Funding: _____

MUNIS ORG: _____ MUNIS OBJ: _____ Awarded Amount: _____

Expense String Phase:

A project must have at least one phase identified, this can be used as an additional level of tracking, for example, CIP - Design, Construction, etc. For Grants can be used as reimbursable types, such as transportation, salaries.

(You can create more than one phase and you can default MUNIS ORGs and OBJs, optional)

Phase: Construction MUNIS ORG: 3559980 MUNIS OBJ: 572970

Grants Only (list all grants if applicable): PL UPDATED WITH REAUTHRZ DFA CAP# 9/3/25

Grantor Name: CAP 24-13147 REAUTHORIZED # 25-J3160 Awarded Amount: 250,000.00

AR Charge Code: 3559980.490210 ☐ Grant funds multiple projects (Complete a form for each project)

Grantor Id: 700007 Federal CFDA (if applicable): N/A

Grantor Name: _____ Awarded Amount: _____

AR Charge Code: _____ ☐ Grant funds multiple projects (Complete a form for each project)

Grantor Id: _____ Federal CFDA (if applicable): _____

(If grants please provide all grant award documents with form) ☑ Attached Grant Documentation

Signature: SCOTT OVERLIE
SCOTT OVERLIE (Aug 28, 2025 11:10:31 MDT)

Email: saoverlie@santafenm.gov

Signature: Melissa McDonald

Email: mamcdonald@santafenm.gov

Packet - Legislative Grant Shelby Bridge 25-J3160 250K PWD2535518 REVISED 20250903

Final Audit Report 2025-09-10

Created:	2025-09-03
By:	Cathy Thompson (cmthompson@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAADm1Fp3S0F3SPLi9c8Pz0xeKAMrvjUS48

"Packet - Legislative Grant Shelby Bridge 25-J3160 250K PWD2535518 REVISED 20250903" History

Document created by Cathy Thompson (cmthompson@santafenm.gov)
2025-09-03 - 2:35:00 PM GMT- IP address: 63.232.20.2

Document emailed to ERIKA LUJAN (evlujan@santafenm.gov) for signature
2025-09-03 - 2:41:37 PM GMT

Email viewed by ERIKA LUJAN (evlujan@santafenm.gov)
2025-09-03 - 3:22:26 PM GMT- IP address: 104.47.64.254

Document e-signed by ERIKA LUJAN (evlujan@santafenm.gov)
Signature Date: 2025-09-03 - 3:23:39 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov) for signature
2025-09-03 - 3:23:41 PM GMT

Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2025-09-03 - 5:03:46 PM GMT- IP address: 104.47.64.254

Document e-signed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
Signature Date: 2025-09-03 - 5:04:11 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature
2025-09-03 - 5:04:13 PM GMT

Email viewed by EMILY OSTER (ekoster@santafenm.gov)
2025-09-10 - 2:36:28 PM GMT- IP address: 104.47.65.254

Powered by Adobe Acrobat Sign

Document e-signed by EMILY OSTER (ekoster@santafenm.gov)

Signature Date: 2025-09-10 - 2:38:44 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.

2025-09-10 - 2:38:44 PM GMT

CITY OF SANTA FE

The Purchasing Memo

Date: September 2, 2025

To: Governing Body, Finance Committee, and Public Works & Utilities Committee

From: Joshua Chandler, Contract Administrator

Via: Eric Candeleria, ITT Department Director EC

Subject: Kronos ERP

Vendor Name: UKG Kronos Systems, LLC

Munis Vendor Number: 10540

ITEM AND ISSUE:

Request for Approval of Citywide Timekeeping and Workforce Management with UKG Kronos Systems LLC in the Total Amount of $211,153.10 Including NMGRT for the First Year of the Four-Year Term through July 13th, 2029. (Eric Candeleria, ITT Department Director; edcandelaria@santafenm.gov)

CONTRACT NUMBER:

The FY26 Munis contract number is 3260163.

BACKGROUND AND SUMMARY:

The City of Santa Fe has historically procured UKG Kronos Systems LLC services indirectly through their partner company, Immix Group. The City now seeks to establish a direct Sole Source procurement relationship with UKG Kronos Systems LLC. As an industry leader in human resources, payroll, and workforce management solutions, UKG will provide comprehensive services to all City departments, streamlining operations and enhancing administrative efficiency across municipal functions.

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: ITT ERP/325

Munis Org Name/Number: ITT ERP/3253950

Munis Object Name/Number: Other Consulting/510340

Budget Officer / Designee: Andy Hopkins **Date:** 09/04/2025

Budget Officer Comment/Exceptions: _____

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-135, Coop

Chief Procurement Officer (CPO) / Designee: _____ **Date:** 09/05/2025

CPO Comment/Exceptions: OMNIA MA 24-6833

ASSOCIATED APPROVALS:

Approval: Eric Candelaria **Title: ITT Department Director** **Date:** 09/04/2025

Components included? ☒ **Yes** | ☐ **No**

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:

Linking Agreement to Omnia No. 24-6833

Omnia No. 24-6833 Executive Summary

Quote #322898

COI

W9

LINKING AGREEMENT
THE OMNIA MASTER AGREEMENT No. 24-6833
BETWEEN
CITY OF SANTA FE, NEW MEXICO
AND
UKG KRONOS SYSTEMS, LLC

This Linking Agreement (hereafter the "Linking Agreement"), effective as of the date last signed below ("Effective Date"), to the terms and conditions of the Omnia Master Agreement No. 24-6833 dated July 14, 2025, as amended (the "Omnia Master Agreement"), is entered into by and between UKG Kronos Systems, LLC (hereafter referred to as "UKG") and the City of Santa Fe, New Mexico (hereafter referred to as "Customer"). In consideration of those mutual undertakings and covenants, the parties agree as follows:

SECTION I - INTERPRETATION AND INTENT
All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Omnia Master Agreement.

The Customer, as an eligible Participating Public Agency, assumes the rights and obligations of the Customer and is subject to the terms and conditions of the Omnia Master Agreement. The terms and conditions of the Omnia Master Agreement, as amended by this Linking Agreement, shall govern when Customer makes purchases of Services under the Omnia Master Agreement. In the event of a conflict between this Linking Agreement and the Omnia Master Agreement, this Linking Agreement shall govern.

The Customer is purchasing and UKG agrees to provide the Services at the price set forth in an applicable Order which is subject to the terms and conditions of the Omnia Master Agreement, as modified by this Linking Agreement.

SECTION II – COMPENSATION

The Customer shall pay to UKG in full payment for Services delivered as set forth in this Order and in accordance with the terms of the OMNIA Master Agreement. The total amount payable to UKG under this Order for the first year, including gross receipts tax and expenses, not to exceed two hundred eleven thousand, one hundred fifty-three dollars and ten cents. ($211,153.10). This amount is a maximum for the first year and not a guarantee that the work assigned to be performed by UKG under this Agreement shall equal the amount stated herein. The Customer shall remit payment in full to UKG on an annual basis in accordance with this Order

SECTION II - TERM

The term of this Linking Agreement commences on the Effective Date and shall run co-terminus with the Omnia Master Agreement, unless otherwise terminated in accordance with the Omnia Master Agreement.

SECTION III – INSURANCE

1. UKG shall procure and maintain, at all times and at its own expense, during the term of the Order entered into between the Customer and UKG, the types of insurance(s) specified below:

A. Commercial General Liability
UKG shall provide coverage on a Commercial General Liability Occurrence Coverage Form limits of $1,000,000.00 each occurrence and $2,000,000.00 annual aggregate. Limits may be achieved via a combination of primary and umbrella/excess insurance. Customer shall be included as an additional insured via blanket endorsement for General Liability and ongoing operations. Such protection shall be primary and non-contributory with respect to Customer's insurance, but only with respect to UKG's sole negligence. Upon written request, such blanket endorsement shall be provided to Customer.

B. Workers' Compensation
UKG shall provide Workers' Compensation Insurance as required by statute.

C. Umbrella/Excess Liability
Limits of liability of $5,000,000 per occurrence.

D. Automobile Liability
Limits of liability of at least $1,000,000 combined single limit, including but not limited to, all owned, hired and non-owned motor vehicles.

E. Professional Liability/Errors & Omissions/Cyber Risk Liability
UKG shall maintain coverage on a Professional Liability Form (or equivalent) in the amount of $5,000,000 per claim with a $5,000,000 annual aggregate.

F. All Risk Property Insurance
UKG shall provide All Risk Property Insurance in an amount not less than the full replacement cost of UKG' property.

G. Miscellaneous
UKG shall supply Customer with the above proof of insurance, as required upon the signing of this Agreement. All insurance companies for each of the coverages set forth above must be rated A- or better with a financial rating of VII or better in the most recent A.M. Best's Rating Guide.

SECTION IV - ADDITIONAL TERMS AND CONDITIONS OF THE CUSTOMER

1. Records and Audit. UKG shall maintain, and Customer and its representatives shall have the right to review all invoices associated with any Order incurred for the services under the Agreement, and similar materials relating to work performed for the Customer under this Agreement on file for at least three (3) years following the date of final payment to UKG by Customer. UKG shall maintain all invoices or applicable records for at least three (3) years following the date of final payment to UKG by Customer. Any duly authorized representative(s) of Customer shall have access to such invoices or applicable records upon a 30 day prior request at reasonable times, during usual and customary business hours.

2. Equal Opportunity Compliance. UKG maintains its commitment to non-discrimination, providing equal opportunity employment and complying with all such requirements and obligations relating to its employees under Applicable Law. Similarly, UKG adheres to its Code of Conduct, which includes non-discrimination requirements and available on our public website at https://www.ukg.com/about-us/esg. If UKG is found not to be in compliance with these requirements during the life of this Agreement, UKG agrees to take appropriate steps to correct these deficiencies.

3. New Mexico Tort Claims Act. Any liability incurred by Customer in connection with this Agreement is, to the extent applicable, subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended.

4. Governing Law and Venue. This Agreement is governed by and is to be interpreted solely in accordance with the laws of the State of New Mexico, without regard to any conflict of law provision that would result in the application of a different body of law, and each Party agrees to submit to exclusive venue in a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Linking Agreement on the dates subscribed below.

CITY OF SANTA FE, NEW MEXICO	**UKG KRONOS SYSTEMS, LLC**
Dated:	Dated: 8/28/2025 | 10:09 AM EDT
By:	By: Signed by: Fabrice Pajot 7E4599F8AC5945F...
Name: ALAN WEBBER	Name: Fabrice Pajot
Title: MAYOR	Title: Sr Mgr. Order Processing

ATTEST:

_____

ANDREA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

_____

ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

_____

EMILY OSTER, FINANCE DIRECTOR

Human Resource Information Systems and Related Products and Services
Executive Summary

Lead Agency: Cobb County

Solicitation: 24-6833

RFP Issued: June 28th, 2024

Pre-Proposal Date: July 10th ,2024

Response Due Date: August 8th, 2024

Proposals Received: #

Awarded to: UKG Kronos Solutions, LLC

Cobb County, GA, Department of Procurement issued RFP #24-6833 on June 28th, 2024, to establish a national cooperative contract for Human Resources Information Systems and Related Products and Solutions.

The solicitation included cooperative purchasing language Page 3 and Exhibit A: Section 1.1:

Page 3:
NATIONAL CONTRACT
Cobb County, GA, as the Principal Procurement Agency, defined in Attachment A, has partnered with OMNIA Partners, Public Sector, Inc., a Delaware corporation ("**OMNIA Partners**") to make the resultant contract (also known as the "**Master Agreement**" in materials distributed by OMNIA Partners) from this solicitation available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit ("**Public Agencies**"), through OMNIA Partners' cooperative purchasing program. Cobb County, GA, is acting as the contracting agency for any other Public Agency that elects to utilize the resulting Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners (a "**Participating Public Agency**") and by using the Master Agreement, any such Participating Public Agency agrees that it is registered with OMNIA Partners, whether pursuant to the terms of a Master Intergovernmental Cooperative Purchasing Agreement, a form of which is attached hereto on Attachment A, or as otherwise agreed to. Attachment A contains additional information about OMNIA Partners and the cooperative purchasing program.

Exhibit A: Section 1.1
1.1 Requirement
Cobb County, GA (hereinafter defined and referred to as "**Principal Procurement Agency**"), on behalf of itself and OMNIA Partners, Public Sector, Inc., a Delaware corporation ("**OMNIA Partners**"), is requesting proposals for Human Resource Information Systems and Related Products and Services. The intent of this Request for Proposal is any contract between Principal Procurement Agency and Supplier resulting from this Request for Proposal ("**Master Agreement**") be made available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit ("**Public Agencies**"), through OMNIA Partners' cooperative purchasing

program. The Principal Procurement Agency has executed a Principal Procurement Agency Certificate with OMNIA Partners, an example of which is included as Exhibit D, and has agreed to pursue the Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners as a Participating Public Agency in OMNIA Partners' cooperative purchasing program. Registration with OMNIA Partners as a Participating Public Agency is accomplished by Public Agencies entering into a Master Intergovernmental Cooperative Purchasing Agreement, an example of which is attached as Exhibit C, and by using the Master Agreement, any such Participating Public Agency agrees that it is registered with OMNIA Partners, whether pursuant to the terms of the Master Intergovernmental Purchasing Cooperative Agreement or as otherwise agreed to. The terms and pricing established in the resulting Master Agreement between the Supplier and the Principal Procurement Agency will be the same as that available to Participating Public Agencies through OMNIA Partners.

Notice of the solicitation was sent to potential offerors, as well as advertised in the following:

- Cobb County, GA website
- OMNIA Partners website
- USA Today, nationwide
- Arizona Business Gazette, AZ
- San Bernardino County Sun, CA
- Honolulu Star-Advertiser, HI
- The Herald-News – Will County (IL)
- The Advocate – New Orleans, LA
- The New Jersey Herald, NJ
- Albany Times Union, NY
- Daily Journal of Commerce, OR
- The State, SC
- Deseret News, UT
- Richmond Times-Dispatch, VA
- Seattle Daily Journal of Commerce, WA
- Helena Independent Record, MT
- Las Vegas Review-Journal
- Kennebec Journal, ME

On August 8th ,2024 proposals were received from the following offerors:

- Dayforce
- DLT Solutions
- Inovium
- NEOGOV
- UKG Kronos Systems, LLC

The proposals were evaluated by an evaluation committee. Using the evaluation criteria established in the RFP, the committee elected to enter into negotiations with UKG Kronos Systems, LLC and proceed with contract award(s) upon successful completion of negotiations.

Cobb County, GA, OMNIA Partners and UKG Kronos Systems, LLC successfully negotiated a contract, and the Cobb County, GA executed the agreement with a contract effective date of July 14, 2025.

Contract includes: The suppliers provided federal funds certifications which are available on the OMNIA Partners website for review.

Term:

Initial four-year agreement from July 14, 2025, through July 13, 2029, with the option to renew for three (3) additional one-year periods through July 13, 2032.

Pricing/Discount: Available upon request.

RENEWAL ORDER FORM

Quote#: Q-322898

Date:31 Jul, 2025

Customer Legal Name:
CITY OF SANTA FE

Customer Legal Address:
2651 SIRINGO RD, BUILDING F, SANTA FE, NM 87504 USA

Ship To: City of Santa Fe
1600 SAINT MICHAELS DR
SANTA FE, NM 87505-7615 USA

Bill To: City of Santa Fe
1600 SAINT MICHAELS DR
SANTA FE, NM 87505-7615 USA

Bill To Contact:

Payment Terms: Net 30 Days
Customer PO Number:
Renewal Term: 12 months
Billing Frequency: Annual
Billing Type: Advance

Currency:USD
Solution ID: 6140062

Order Notes:

“This Order is subject to the Master Agreement No 24-6833 entered into between Cobb County Board of Commissioner ("Lead Agency") and UKG Kronos Systems, LLC ("UKG") effective as of July 14th, 2025 (the " Omnia Master Agreement No. 24-6833 ") and used by Customer as an Omnia Participating Public Agency.”

Contract Summary

Contract Period Start Date: 7/1/2025 12:00:00 AM

Contract Period End Date: 6/30/2026 12:00:00 AM

Total Price: USD 175,222.54

The Total Price is the total billable amount (pre-tax) for the contract period listed above.

Annualized Contract Value: USD 175,032.00

The Annualized Contract Value is the value of the contract if all services are priced for 365 days. The Annualized Contract Value does not include estimated tax. Please note that this quote may include services priced for prorated periods.

SaaS Application

Product Name	Duration	Quantity	Monthly Total	Total Price
UKG PRO TIMEKEEPING HOURLY	12	1,700	USD 10,120.97	USD 121,451.64
UKG PRO LEAVE	12	1,700	USD 2,024.19	USD 24,290.33
UKG PRO WORKFORCE MANAGEMENT NON-PROD	12	1,700	USD 397.92	USD 4,775.02

ADDITIONAL TENANT				
UKG PRO WFM INTEGRATION TO UKG TELESTAFF	12	415	USD 0.00	USD 0.00
UKG PRO WORKFORCE MANAGEMENT ANALYTICS	12	1,700	USD 2,058.80	USD 24,705.55
Total Price				**USD 175,222.54**

City of Santa Fe		UKG Kronos Systems LLC	
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

The monthly price on this Order has been rounded to two decimal places for display purposes. As many as eight decimal places may be present in the actual price. Due to the rounding calculations, the actual price may not display as expected when displayed on your Order. Nonetheless, the actual price on your invoice is the true and binding total for this Order for purposes of amounts owed for the term. If you are tax exempt, please email a copy of your "Tax Exempt Certificate" to TaxExemption@ukg.com along with the quote number otherwise this order is subject to applicable taxes. The actual tax amount to be paid by Customer will be shown on Customer's invoice.

UKG is aligning our product brand and announcing that the UKG Dimensions® and UKG Pro® solutions will be one product suite under the name UKG Pro. Click here to learn more and view examples of current to future names

https://www.ukg.com/one-suite#WhatproductnamesarechangingunderUKGDimensions

		Quote Type:	Renewal
		Customer:	CITY OF SANTA FE
		Solution ID:	6140062
Payment Terms:	Net 30 Days	**Contract #:**	1202589 R21-NOV-24
Currency:	USD	**Date:**	04-AUG-2025
Customer PO Number:		**Prepared by:**	Jeana Spivak / US PublicSector4

Bill To: CITY OF SANTA FE
2651 SIRINGO RD, BUILDING F
SANTA FE NM 87504
UNITED STATES

Ship To: CITY OF SANTA FE
301 MONTEZUMA
SANTA FE NM 87504
UNITED STATES

Contact: RENEE MARTINEZ 12029 COMMUNICATIONS (ITT)
Email:

CONTRACT SUMMARY

Contract Period: 22-MAR-2025 - 21-MAR-2026

Description	Support Services	Estimated Tax	Subtotal
Equipment Support Services	25,130.08	1,225.12	26,355.20
Total	**25,130.08**	**1,225.12**	**26,355.20**

Annualized Contract Value: 25,130.08
The Annualized Contract Value is the value of the contract if all services are priced for 365 days. The Annualized Contract Value does not include estimated tax. Please note that this quote may include services priced for prorated periods.

IMPORTANT NOTES

This Order is subject to the Master Agreement No 24-6833 entered into between Cobb County Board of Commissioner ("Lead Agency") and UKG Kronos Systems, LLC ("UKG") effective as of July 14th, 2025 (the " Omnia Master Agreement No. 24-6833 ") and used by Customer as an Omnia Participating Public Agency.

Support Services are subject to applicable taxes. The tax amount shown on this quote is only an estimate. The actual tax due will be reflected on the invoice.

CITY OF SANTA FE	**UKG KRONOS SYSTEMS LLC**
Signature:_____	Signature:_____
Name:_____	Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

Payment Terms: Net 30 Days
Currency: USD
Customer PO Number:

Quote Type: Renewal
Customer: CITY OF SANTA FE
Solution ID: 6140062
Contract #: 1202589 R21-NOV-24
Date:
Prepared by: Jeana Spivak / US PublicSector4

Bill To: CITY OF SANTA FE
2651 SIRINGO RD, BUILDING F
SANTA FE NM 87504
UNITED STATES

Ship To: CITY OF SANTA FE
301 MONTEZUMA
SANTA FE NM 87504
UNITED STATES

Contact: PATRICK BOWKER
Email: prbowker@santafenm.gov

EQUIPMENT SUPPORT SERVICES

Line	Support Service Level	Covered Product	Quantity	Start Date	End Date	Duration (days)
1	Depot Exchange	Data Collection: InTouch	76	22-MAR-2025	21-MAR-2026	365
2	Depot Exchange	Options: InTouch	88	22-MAR-2025	21-MAR-2026	365

	Support Services	Estimated Tax	Subtotal
Equipment Support Services	25,130.08	1,225.12	26,355.20

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 12/04/2024

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 MARSH USA, LLC. 99 HIGH STREET BOSTON, MA 02110 Attn: Boston.Certrequest@marsh.com CN101980216-US-MA-GAWUP-24-	**CONTACT NAME:** ? **PHONE (A/C, No, Ext):** **FAX (A/C, No):** **E-MAIL ADDRESS:**
INSURED UKG Inc. 900 Chelmsford Street Lowell, MA 01851	**INSURER(S) AFFORDING COVERAGE** — **NAIC #** **INSURER A :** Federal Insurance Company — 20281 **INSURER B :** Great Northern Insurance Company — 20303 **INSURER C :** ACE American Insurance Company — 22667 **INSURER D :** Arch Insurance Company — 11150 **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** NYC-011966145-02 **REVISION NUMBER:** 1

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	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:			3606-40-33	12/01/2024	12/01/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $ $ $ $ $	1,000,000 1,000,000 10,000 1,000,000 2,000,000 2,000,000
B	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY			7361-70-85	12/01/2024	12/01/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $	1,000,000
A	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** CLAIMS-MADE DED X RETENTION $ 10,000			7819-27-57	12/01/2024	12/01/2025	EACH OCCURRENCE AGGREGATE	$ $	10,000,000 10,000,000
C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N: N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		7183-44-74	12/01/2024	12/01/2025	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $	1,000,000 1,000,000 1,000,000
D	PROF LIAB / TECH E&O / CYBER			NPL0067548-03	12/01/2024	12/01/2025	Limit:		10,000,000
A	COMMERCIAL PROPERTY			3606-40-33	12/01/2024	12/01/2025	ALL RISK		

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

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

CANCELLATION

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

Marsh USA LLC

© 1988-2016 ACORD CORPORATION. All rights reserved.

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

▶ Go to *www.irs.gov/FormW9* for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

Print or type. See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
UKG Kronos Systems LLC

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☑ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.
900 Chelmsford Street

Requester's name and address (optional)

6 City, state, and ZIP code
Lowell, MA 01851

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number
[ ][ ][ ] - [ ][ ] - [ ][ ][ ][ ]

or

Employer identification number
0 4 - 2 6 4 0 9 4 2

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person ▶ Mia Mar Date ▶ 2/12/2024

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9*.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*

City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909
www.santafenm.gov

Alan Webber, Mayor

Councilors:
Signe I. Lindell, Mayor Pro Tem, District 1
Alma G. Castro, District 1
Michael J. Garcia, District 2
Carol Romero-Wirth, District 2
Lee Garcia, District 3
Pilar F.H. Faulkner, District 3
Jamie Cassutt, District 4
Amanda Chavez, District 4

DATE: September 4, 2025

TO: Mayor Alan M. Webber and Committees:
Quality of Life, Finance, and Governing Body

FROM: Terry Lease, Asset Development Manager TL

VIA: Johanna Nelson, Office of Economic Development, Director

ISSUE: Disposition of Property Known as Las Estrellas Tract 6A

ITEM AND ISSUE:
The Office of Economic Development, Asset Development, respectfully requests your review and approval of a Donation Agreement between the City of Santa Fe and Homewise, a private, not-for-profit, New Mexico Corporation, to donate Las Estrellas Tract 6A for development as affordable housing. (Terry Lease, Asset Development Manager, tjlease@santafenm.gov).

BACKGROUND AND SUMMARY:
On January 25, 2023 the Governing Body approved Resolution 2023-4 that, among other things, adopted a strategy for donating or selling a property identified as Las Estrellas Tract 6A for an affordable housing project. The resolution provided for the removal of Tract 6A from the Las Estrellas Residential Covenants ("Residential Covenants"), or to limit assessments for Tract 6A to support greater affordability. On January 31, 2025 City entered into a Professional Services Agreement with Attorney Garrison to act as declarant for the City.

As provided for in the resolution, a request for qualifications was drafted and issued in December of 2023 by the Office of Affordable Housing. RFQ submissions were received and scored by a panel of City staff. In March 2024 the Homewise submission was identified and selected as the finalist based on the evaluation criteria in the RFQ, and negotiations of a donation agreement began shortly thereafter. Negotiations for the terms of the donation agreement concluded in March of 2025.

This Donation Agreement, if approved, requires Homewise to: obtain approval of a development plan from the Planning Commission or other required City entities, secure all land use entitlement approvals required to develop the site, adhere to the Las Estrellas Master Plan, and include deed restrictions that assures an affordability period of no less than 45-years. Homewise will also be required to comply with the City of Santa Fe Land Use Code, and other applicable local, state and federal regulations. The Donation Agreement incorporates the RFQ and the Homewise RFQ submission.

ACTION: Approval of a Donation Agreement between the City and Homewise for the donation of Las Estrellas Tract 6A for development as an affordable housing project.

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: None - Donation

Munis Org Name/Number:

Munis Object Name/Number:

Budget Officer / Designee: Andy Hopkins **Date:** 09/08/2025

Budget Officer Comment/Exceptions: _____

ATTACHMENTS:

1. Donation Agreement
2. Resolution

ITEM # _____

REAL ESTATE DONATION AGREEMENT

This REAL ESTATE DONATION AGREEMENT **("Agreement")** is made and entered into as of the date of the last signature ("Effective Date"), by and between the CITY OF SANTA FE, a municipality chartered under the laws of New Mexico, **("City"** or **"Donor")** and HOMEWISE, a private, not-for-profit, New Mexico Corporation **("Donee")**, collectively the **"Parties"**.

WHEREAS, a City may donate land or money for the construction, renovation, or purchase of affordable housing pursuant to NM Const. Art. IX, Section 14 and NMSA 1978, Section 6-27-1, et seq.; and

WHEREAS, it is the policy of the City to provide incentives and encourage proposals that support the production, acquisition and redevelopment of affordably priced homes in mixed income developments; and

WHEREAS, Donor is the fee simple owner of Tract 6A in the Las Estrellas Subdivision, Santa Fe, NM **("Site")**, and on January 25, 2023, the City's Governing Body approved Resolution 2023-4, as amended **("Resolution 2023-4")**, that provides for, among other things, donating or selling the Site to a developer certified as a "Qualifying Grantee" under the New Mexico Affordable Housing Act. The resolution also provided for the sale of 7-tracts of undeveloped land in the same subdivision **("7-tracts")**; and

WHEREAS, the Site and 7-tracts are all subject to: 1) Residential Declaration of Covenants, Conditions, and Restrictions ("Residential Covenants"); 2) Non-Residential Covenants, Conditions, and Restrictions ("Non-Residential Covenants" and, collectively, **("Covenants")**; and 3) the Las Estrellas Master Plan **("Master Plan")**, which governs the area's zoning, density, minimum requirements for affordable housing, and the location of open spaces; and

WHEREAS, the City as "Declarant" under the Covenants affecting the Site and 7-Tracts has the right to release and remove Site from the Residential Covenants, but not the Non-Residential Covenants; and

WHEREAS, the Site is the subject of the Request for Qualifications **("RFQ")**, identified as "RFQ # Tract 6A 23-02", which was released on December 11, 2023; and

WHEREAS, Donee submitted a submission to the RFQ, and the Evaluation Committee subsequently selected the Donee based on the cumulative score on the evaluation criteria in the RFQ as a development partner, and eventual owner of the Site, which decision will be presented to the Governing Body for consideration and potential approval; and

WHEREAS, the sale or donation of the Site conforms to the City's Five-Year Strategic Housing Plan "Affordable Housing Element," which was adopted in conformance to the Affordable Housing Act by Ordinance No. 2007-23 pursuant to the express statutory authority conferred upon municipalities to enact a housing code in NMSA 1978, Section 3-17-6(A)(7); and

WHEREAS, the City of Santa Fe acknowledges the Donee as a "Qualified Grantee" for purposes of local affordable housing ordinances and compliance with the New Mexico Affordable Housing Act; and

WHEREAS, Resolution 2023-4 requires that the City to retain its rights and duties as Declarant under both the Covenants and Master Plan until such time that Donee notifies Donor to either remove the Site from the Covenants prior to selling the 7-tracts, or the City shall request the Las Estrellas Residential Association Board and master Association Board limit assessments of the Site, which may affect or delay the closing of the sale of the 7-tracts; and

WHEREAS, Donee submitted written notice to the Donor to the RFQ manager on March 11, 2024, requesting the City remove Tract 6A from the Residential Covenants in order to meet the 40% affordability commitment in the Donee's RFQ submission.

WHEREAS, this is an "arm's length" transaction, and no identity of interest exists between the Donor and the Donee, their staff, board of directors, or elected officials; and

WHEREAS, Donee acknowledges that the City has no obligations or responsibilities with regard to development of the Site other than the transfer of the Site for those purposes.

Now therefore, it is agreed as follows:

1. SITE

The Site is identified as Tract 6A of the Las Estrellas Subdivision in Santa Fe, New Mexico, containing approximately 19.736 acres of undeveloped land, and is depicted in the attached Exhibit A and further described in the attached **Exhibit A1 ("Site")**. The Site is located immediately south of Veteran's Memorial Highway (NM 599) on Ridgetop Road. It is part of the Las Estrellas community, which is zoned as a Planned Residential Community (PRC).

2. DONOR'S OWNERSHIP

Donor represents that it is the sole fee simple owner of the Site and has all necessary authority to sell or donate the Site. There are no other contracts for sale or options involving the Site and no other party has any right, title, or interest in the Site and there are no leases affecting or relating to the Site. Between the date Donor executes this Agreement and the Settlement, Donor shall not subject the Site to or consent to any leases, liens, encumbrances, covenants, conditions, restrictions, easements, rights of way, or agreements, or take any other action affecting or modifying the status of title or otherwise affecting the Site without the written consent of the Donee.

3. EFFECTIVE DATE

The date upon which this Agreement shall be finally executed by the authorized representative of Donee and Donor shall be the effective date ("Effective Date") hereof.

4. REQUIREMENTS OF DONEE

A. Donor hereby agrees to convey to Donee and Donee hereby agrees to accept the donation from Donor, and Donee agrees to complete the following conditions within five (5) years of the execution of this agreement:

i Donee shall successfully obtain approval of its development plan from the Planning Commission or other required City entity;

ii Donee shall secure all land use entitlement approvals required to develop the Site;

iii Subject to approval by Donor, Donee shall submit a Proof of Funds letter issued by an FDIC insured bank, investment bank, or other financial institution as proof of having obtained all financing needed to accomplish the project, or that Donee has the monetary resources to cover all costs;

B. Donee has executed a Quitclaim Deed from Donee to Donor, included in this document as **Exhibit B** (the "Donee Deed"), conveying back to Donor all interest in the donated real estate and any improvements thereon if Donee does not complete the requirements in Section 4A of this Agreement within five (5) years of the execution of this Agreement. Said deed shall be escrowed by the Donor in case of default of any of said requirements, which will trigger formal notice of default, which shall be delivered by Donor to Donee (the "Default Notice"). Donee shall have thirty (30) days after delivery of the Default Notice to cure the default; or, if the cure requires more than thirty (30) days, Donee shall not be in default if Donee immediately initiates steps to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical, but in no event later than ninety (90) days after delivery to Donee of the Default Notice. In the event Donee fails to cure the default within the applicable time period set forth in the immediately preceding sentence, at which time the Donee Deed shall be filed by Donor into the real estate record of the Santa Fe County Clerk, effectively terminating this Real Estate Donation Agreement and vesting title to Site back to Donor.

Donee, as the Donor's agent under Section 26-1.18 ("Affordability controls on SFHP homes; rental prohibition"), shall at all times comply with the City of Santa Fe Homes Program requirements and processes for imposing and administering affordability liens, including dedicating any funds ever received for repayment of an affordability lien entered into pursuant to this Agreement to the purposes approved for the City's Affordable Housing Trust Fund. At the time of this Agreement, those purposes are (i) donating, provide or pay all, or a portion, of the costs of land for the construction on the land of affordable housing; (ii) donating, provide or pay all or a portion of the costs of conversion or renovation of existing buildings into affordable housing; (iii) providing or pay the costs of financing or infrastructure necessary to support affordable housing projects; or (iv) providing or pay all or a portion of the costs of acquisition, development, construction, financing, operating or owning affordable housing.

5. REQUIREMENTS OF DONOR

As the Donee provided written notice to Donor to remove the Site from the Residential Covenants to meet the affordability criteria in the RFQ, Donor as Declarant under the Covenants, or Donor's representative shall;

A. Release and remove the Site from the Residential Covenants within 90 days of the effective date of this agreement.

B. If Donor, or Donor's representative, has not successfully completed A, above, within 90-days of the Effective Date, Donee may either:

i. Terminate this Agreement by providing written notice to Donor.

ii. Extend Donor's time period to perform 5.A. above, by written agreement, with successive automatic 90-day renewals. Such automatic renewals shall continue until

written notice from Donee to Donor is received terminating said automatic renewals.

iii. Donee, with written notice to Donor, may withdraw Donee's request to remove the Site from the Residential Covenants.

6. ACTIONS OR SUITS

Unless set forth by Donor in an attachment to this Agreement, Donor warrants and represents that there are no actions or suits in law or equity or proceedings by any governmental agency now pending or, to the knowledge of the Donor, threatened against Donor in connection with the Site, and there is no outstanding order, writ, injunction, or decree of any court or governmental agency affecting the Site.

7. PROFFERS AND COMMITMENTS.

Donor represents there has not been made and will not be made, without Donee's prior written consent, any proffers or other commitments relating to the Site, which would impose any obligation on Donee or its successors and assigns, after Settlement as described in Paragraph 9, below, to make any contribution of money or dedications of land or to construct, install, or maintain any improvements of a public or private nature on or off the Site.

8. OTHER AGREEMENTS.

Donor warrants and represents that the execution and delivery of this Agreement, the completion of the transaction(s) contemplated hereby, and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, or conflict with, any agreement, indenture, or other instrument to which Donor is a party or by which it or the Site is bound, or any judgment, decree, order, or award of any court, governmental body, or arbitrator, or any law, rule, or regulation applicable to Donor.

9. SETTLEMENT.

a. Settlement and delivery of possession shall be within forty-five (45) business days of execution of this Agreement, allowing a reasonable time for preparation of documents ("Settlement"). Settlement shall be held at the offices of Stewart Title Company, as the "Settlement Agent", or at such other place as the parties may agree. Donor shall deliver to Donee, at Settlement, a fully executed Deed, conveying the Site in fee simple to Donee ("Deed"). Donee will pay for all costs associated with the closing.

b. Donor shall deliver to Donee at Settlement an affidavit, on a form acceptable to Donee or Donee's title insurance company, signed by Donor, that no labor or materials have been furnished to the Site within the statutory period for the filing of mechanics' or materialmen's liens against the Site, or if labor or materials have been furnished during the statutory period, an affidavit that the costs thereof have been paid in full.

c. Donor agrees to deliver to Donee or Settlement Agent the following at or prior to Settlement:
   (i) The fully executed Special Warranty Deed, see example as **Exhibit C**;
   (ii) The signed closing or settlement statement prepared or approved by Settlement Agent; and
   (iii) Any other documents reasonably required by Settlement Agent or Donee.

d. Donee agrees that 40% of all units built on the Site will be sold at an affordable price to low-and-moderate income households ("affordable homes"). Donee agrees to record a Land Use Restriction Agreement on the property substantially in the form of **Exhibit D** that will ensure an affordability period of no less than forty-five years for the affordable homes. The LURA shall be

recorded when the specific lots that the affordable homes will be located on have been identified.

10. TITLE.
The Site shall be conveyed free from all mortgages, deeds of trust, liens, security interests, and other financial encumbrances.

11. EXPENSES OF SETTLEMENT.

a. Donee shall pay for its own attorney's fees as well as other charges customarily paid by a Donee of real estate in New Mexico.
b. Donee shall pay for the preparation of any documents it is required to provide hereunder, and its own attorney's fees as well as other charges customarily paid by a Donor of real estate in New Mexico.
c. All real estate taxes, assessments, utility charges, and rent, if any, shall be prorated as of the date conveyance is executed.

12. USE OF SITE.
Donee shall use the Site solely for the purpose of developing for sale housing, of which 40% of units will be sold to low-to-moderate income households, as provided for in the RFQ and RFQ Submission.

13. DEFAULT.
In the event of any default, the non-defaulting party shall be entitled to pursue any remedies at law or inequity in connection with the default of the other party. The election to terminate this Agreement under the terms hereof shall not constitute a default.

14. PRIOR AGREEMENTS MERGER.
This Agreement supersedes any and all prior understandings and agreements between the parties and constitutes the entire agreement between them. No representations, warranties, conditions, or statements, oral or written, not contained herein shall be considered a part hereof. This Agreement may not be amended, altered, or modified except by an instrument in writing signed by the party sought to be charged therewith.

15. NOTICES.
Any notices required or permitted to be given hereunder shall be deemed to have been properly given if sent by United States certified or registered mail, return receipt requested, postage prepaid,or if delivered in hand, as follows:

If delivered or mailed to
Donor: City of Santa Fe
Attn. City Attorney's Office
PO Box 909
Santa Fe, NM 87504-0909

With a copy to: City of Santa Fe
Attn. Asset Development Manager
PO Box 909
Santa Fe, NM 87504-0909

Donee: Homewise, Inc.
Attn. Ms. Lisa Huval
500 2nd Street
Albuquerque, NM 87102

16. GOVERNING LAW.
Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all terms and provisions hereof shall be construed and enforced in accordance with the laws of the STATE OF NEW MEXICO.

17. CERTIFICATES AND DOCUMENTS INCORPORATED.
The following certificates and documents are incorporated herein to the extent they are consistent with the terms and conditions of this Agreement:

a. RFQ # Tract 6A 23-02.
b. Donee RFQ submission dated January 29, 2024.
c. Donee written notice to request that Tract 6A be removed from Residential Covenants to meet the affordability threshold in the RFQ submission.

18. MISCELLANEOUS.
Subject to the provisions hereof, this Amended Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors, and permitted assigns. No assignment of this Amended Agreement shall be permitted except with the written consent of the other party, which consent shall not be withheld unreasonably. The warranties, representations, and terms of this Amended Agreement shall survive delivery of the Deed and shall not be merged therein.

19. EXECUTION OF CONVEYANCE.
The approval and execution of this Donation Agreement grants the authority to fully execute the conveyance of the property via Deed by the Mayor.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]
[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of their last signature below.

DONOR: **CITY OF SANTA FE**

_____
ALAN M. WEBBER, MAYOR

DATE: _____

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)SS
COUNTY OF SANTA FE)

This instrument was acknowledged before me this ___ day of _____, 20____ by Alan M. Webber, Mayor of the City of Santa Fe.

Seal:

_____
Notary Public

My Commission Expires:

_____

DONEE: **HOMEWISE, INC.**

Lisa Huval

LISA HUVAL, CHIEF GOVERNMENT AFFAIRS OFFICER

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)SS
COUNTY OF SANTA FE)

This instrument was acknowledged before me this 4 day of Sept, 2025 by Lisa Huval, Chief Government Affairs Officer for Homewise, Inc., a New Mexico nonprofit corporation.

Seal:

STATE OF NEW MEXICO
NOTARY PUBLIC
KANDRA LYNN PAYNE
COMMISSION # 1139277
COMMISSION EXPIRES 12/02/2026

Notary Public

My Commission Expires:

12/2/26

APPROVED AS TO FORM FOR ~~LEGAL~~ SUFFICIENCY:

CITY ATTORNEY

APPROVED AS TO FINANCE:

EMILY K. OSTER, FINANCE DIRECTOR
NO FUNDS ACCOUNT - DONATION

EXHIBIT A
To the Donation Agreement

"S.W. Part Remainder"
Tract
Las Estrellas Subdivision
TRACT 5C, TRACT 5D,
TRACT 5E & TRACT 6A
HIGH DESERT SURVEYING, INC.
SHEET 2 OF 2
TRACT 6A
TRACT 5C
TRACT 5D
TRACT 5E
TRACT 5G
CAMINO FRANCISCO
Veterans Memorial Highway
Legend

EXHIBIT A1
To the Donation Agreement

"TRACT 6A"
A CERTAIN PARCEL OF LAND KNOWN AS "TRACT 6A", CONTAINING 19.736 ACRES MORE OR LESS AND BEING SITUATE WITHIN PROJECTED SECTION 11 OF TOWNSHIP 17 NORTH, RANGE 09 EAST OF THE NEW MEXICO PRINCIPAL MERIDIAN, AND WITHIN THE CITY AND COUNTY OF SANTA FE, NEW MEXICO, AS SHOWN ON "LOT SPLIT OF THE SOUTHWEST PART REMAINDER TRACT, LAS ESTRELLAS SUBDIVISION, TRACT 5C, TRACT 5D, TRACT 5E & TRACT 6A", PREPARED BY DEAN SHRADER, NMPS, 12451, AND RECORDED ON OCTOBER 4, 2007, IN PLAT BOOK 665, PAGES 47-48, AS INST. #1501993, RECORDS OF SANTA FE COUNTY, NEW MEXICO.

EXHIBIT B
Special Warranty Deed from Donee to Donor

SPECIAL WARRANTY DEED

HOMEWISE, a private, not-for-profit organization, whose address is 2520 Camino Entrada Ste. A, Santa Fe, 500 2nd Street, Albuquerque, NM 87102, for no consideration paid, grants to The **CITY OF SANTA FE, a municipality chartered under the laws of New Mexico**, whose address is 200 Lincoln Avenue, Santa Fe, New Mexico, 87501, the following real estate in Santa Fe County, New Mexico described on Exhibit A, attached hereto and incorporated herein. Together with all and singular the rights and appurtenances thereto in anywise belonging including, without limitation, all rights, privileges, and easements, and conditions, and subject to covenants, restrictions, rights, rights of way and easements now of record, if any.

HOMEWISE, INC.

L Huval
LISA HUVAL, CHIEF GOVERNMENT AFFAIRS OFFICER

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)SS
COUNTY OF SANTA FE)

This instrument was acknowledged before me this 4 day of Sept., 2025 by Lisa Huval, Chief ~~Government Affairs Officer for Homewise~~, Inc., a New Mexico nonprofit corporation.

Seal:

STATE OF NEW MEXICO
NOTARY PUBLIC
KANDRA LYNN PAYNE
COMMISSION # 1139277
COMMISSION EXPIRES 12/02/2026

K Payne
Notary Public

My Commission Expires:

12/2/26

ACCEPTANCE by the CITY OF SANTA FE, of donation of real estate.

CITY OF SANTA FE

_____
ALAN M. WEBBER, MAYOR

ATTEST:

_____
ANDRÉA SALAZAR, CITY CLERK

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me this ___ day of _____, 20____ by Alan M. Webber, Mayor of the City of Santa Fe.

Seal:

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A (to EXHIBIT B)
Special Warranty Deed from Donee to Donor

A parcel of land lying and being situate within the municipal limits of the City and County of Santa Fe, State of New Mexico, being more particularly described as follows:

"TRACT 6A"
A CERTAIN PARCEL OF LAND KNOWN AS "TRACT 6A", CONTAINING 19.736 ACRES MORE OR LESS AND BEING SITUATE WITHIN PROJECTED SECTION 11 OF TOWNSHIP 17 NORTH, RANGE 09 EAST OF THE NEW MEXICO PRINCIPAL MERIDIAN, AND WITHIN THE CITY AND COUNTY OF SANTA FE, NEW MEXICO, AS SHOWN ON "LOT SPLIT OF THE SOUTHWEST PART REMAINDER TRACT, LAS ESTRELLAS SUBDIVISION, TRACT 5C, TRACT 5D, TRACT 5E & TRACT 6A", PREPARED BY DEAN SHRADER, NMPS, 12451, AND RECORDED ON OCTOBER 4, 2007, IN PLAT BOOK 665, PAGES 47-48, AS INST. #1501993, RECORDS OF SANTA FE COUNTY, NEW MEXICO.

EXHIBIT C

To the Donation Agreement

SAMPLE QUIT-CLAIM DEED

The City of Santa Fe, a municipality chartered under the laws of New Mexico, whose address is 200 Lincoln Avenue, Santa Fe, New Mexico, 87501, for no monetary consideration and as a donation authorized by NM Const. Art. 9, Section 14 and NMSA 1978, Section 6-27-1, et seq., grants to Homewise, Inc., whose address is 500 2nd Street, Albuquerque, NM 87102, the real estate in Santa Fe County, New Mexico, described on Exhibit A, attached hereto and incorporated herein, together with all and singular the rights and appurtenances thereto in anywise belonging including, without limitation, all rights, privileges, and easements, and conditions, and subject to covenants, restrictions, rights, rights-of-way and easements now of record and any infrastructure of the City installed on or within the Site, if any. Also subject to those restrictions and conditions as contained on "Real Estate Donation Agreement between the City of Santa Fe and Homewise, Inc., dated _____, 20_____ and the Land Use Restriction Agreement by Homewise, Inc., dated _____, 20_____.

This deed is an absolute conveyance, the Grantor having donated the above described property to the Grantee for a fair and adequate consideration. Grantor declares that this conveyance is freely and fairly made to Grantee, and by its acceptance hereof, does hereby assume and agree to pay all obligations and any ad valorem taxes, following the date of recording of this deed in the records of the Santa Fe County Clerk.

Witness my hand and seal this _____ day of _____, 20_____.

CITY OF SANTA FE

_____
ALAN M. WEBBER, MAYOR

ATTEST:

_____
ANDRÉA SALAZAR, CITY CLERK

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)SS.
COUNTY OF SANTA FE)

This instrument was acknowledged before me this ___ day of _____, 20_____ by Alan M. Webber, Mayor of the City of Santa Fe.

Seal:

_____
Notary Public

My Commission Expires:

_____

ACCEPTANCE by Homewise, Inc., a New Mexico nonprofit corporation, of donation of real estate and conditions imposed thereon by Grantor.

HOMEWISE, INC.

_____
LISA HUVAL, CHIEF GOVERNMENT AFFAIRS OFFICER

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)SS.
COUNTY OF SANTA FE)

This instrument was acknowledged before me this ___ day of _____, 20____ by Lisa Huval, Chief Government Affairs Officer for Homewise Inc.

Seal:

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A (to EXHIBIT C)
Sample Quitclaim Deed

A parcel of land lying and being situate within the municipal limits of the City and County of Santa Fe, State of New Mexico, being more particularly described as follows:

"TRACT 6A"
A CERTAIN PARCEL OF LAND KNOWN AS "TRACT 6A", CONTAINING 19.736 ACRES MORE OR LESS AND BEING SITUATE WITHIN PROJECTED SECTION 11 OF TOWNSHIP 17 NORTH, RANGE 09 EAST OF THE NEW MEXICO PRINCIPAL MERIDIAN, AND WITHIN THE CITY AND COUNTY OF SANTA FE, NEW MEXICO, AS SHOWN ON "LOT SPLIT OF THE SOUTHWEST PART REMAINDER TRACT, LAS ESTRELLAS SUBDIVISION, TRACT 5C, TRACT 5D, TRACT 5E & TRACT 6A", PREPARED BY DEAN SHRADER, NMPS, 12451, AND RECORDED ON OCTOBER 4, 2007, IN PLAT BOOK 665, PAGES 47-48, AS INST. #1501993, RECORDS OF SANTA FE COUNTY, NEW MEXICO.

EXHIBIT D
To the Donation Agreement
Land Use Restriction Agreement (LURA)

DECLARATION OF AFFORDABLE HOUSING RESTRICTIVE COVENANT

I. This Land Use Restriction Agreement ("LURA") is made and entered into this _____ day of _____by and between the City of Santa Fe, a New Mexico municipal corporation ("the City"), and Homewise, Inc., a New Mexico Nonprofit Corporation ("Donee").

II. The City has donated to Donee the Property described below for the purpose of construction by Donee of for-sale housing units ("Units"). The City requires the Donee to restrict the use of such property pursuant to the terms hereof as a condition of donating the property. Therefore, in consideration of the donation from the City to the Donee, the Donee agrees that the real estate located in the County of Santa Fe State of New Mexico and more specifically described on Exhibit A hereto (the "Property") is subject to the following restrictions:

i. The original homebuyers of the homes built on the lots listed in Exhibit A shall be persons or households of low or moderate income within the meaning of New Mexico Statutes Annotated Chapter 6, Article 27 and consistent with Santa Fe City Code Chapter 26 ("Eligible Homeowner).

ii. The City will deliver to Donee a release of this LURA with respect to each Unit on or before the date of the sale of the Unit.

iii. Upon sale of a Unit to an eligible homebuyer the Donee shall place a lien on the Unit via a subordinate mortgage and note signed by the eligible homebuyer(s) that shall:
   a. Be approved as to form by the Donor.
   b. Be equal to the difference between the appraised value of the Unit or 95% of the appraised value of the Unit and the effective affordable price for the homebuyer.
   c. Be non-amortizing and carry a rate of zero percent interest
   d. Establish an affordability period of no less than 45 years.
   e. Require that if the eligible homebuyer sells the home prior to the expiration of the affordability period, Homewise shall have the right of first refusal to purchase the home for a formula price and, if Homewise does not exercise its right of first refusal, then the Donor may exercise the right. If neither Homewise nor the Donor exercise the right of first refusal, then the lien shall require that the eligible homebuyer make a good faith attempt to sell the home to another income qualified buyer approved by Homewise or the Donor and the income qualified buyer shall assume the lien. The lien shall further state that if the eligible homebuyer is unable to find another income qualified buyer, the lien shall be repaid to Homewise, dedicated to the approved purposes for the City's Affordable Housing Trust Fund. At the time of this Agreement, those purposes are (i) donating, provide or pay all, or a portion, of the costs of land for the construction on the land of affordable housing; (ii) donating, provide or pay all or a portion of the costs of conversion or renovation of existing buildings into affordable housing; (iii) providing or pay the costs of financing or infrastructure necessary to

support affordable housing projects; or (iv) providing or pay all or a portion of the costs of acquisition, development, construction, financing, operating or owning affordable housing.

f. Require the buyer to complete the Questionnaire adopted in Appendix E of the City of Santa Fe Administrative Procedures, as updated, assessing the effectiveness of the Santa Fe Homes Program.

III. This LURA is for the benefit of, and is enforceable by, the City.

IV. This LURA shall run with the land and expire on the date that is 45 years after the date of recordation of this LURA in the records of Santa Fe County, New Mexico or when the LURA is released as described in section II.ii, whichever is soonest, at which point this LURA shall be of no further force or effect with no further action being required of the City, Donee or any then owner of any portion of the Property.

BY:

CITY OF SANTA FE

_____
ALAN M. WEBBER, MAYOR

ATTEST:

_____
ANDRÉA SALAZAR, CITY CLERK

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me this ___ day of _____, 20____ by Alan M. Webber, Mayor of the City of Santa Fe.

Seal:

_____
Notary Public

My Commission Expires:

_____

HOMEWISE, INC.

L Huval

LISA HUVAL, CHIEF GOVERNMENT AFFAIRS OFFICER

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me this 4th day of Sept., 2025 by Lisa Huval, Chief Government ~~Affairs Officer for Homewise, Inc., a New~~ Mexico nonprofit corporation.

Seal:

STATE OF NEW MEXICO
NOTARY PUBLIC
KANDRA LYNN PAYNE
COMMISSION # 1139277
COMMISSION EXPIRES 12/02/2026

K Payne

Notary Public

My Commission Expires:

12/2/2025

EXHIBIT A (to EXHIBIT D)
Donation Agreement Land Use Restriction

A parcel of land lying and being situate within the municipal limits of the City and County of Santa Fe, State of New Mexico, being more particularly described as follows:

[List specific lots that affordable homes will be located on. Number of specific lots must equal 40% of total units that will be built].

CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2023-4

INTRODUCED BY:

Councilor Michael Garcia

Councilor Renee Villarreal

Mayor Alan Webber

A RESOLUTION

ADOPTING A STRATEGY FOR DONATING OR SELLING, AT BELOW-MARKET VALUE, A PROPERTY IDENTIFIED AS "LAS ESTRELLAS TRACT 6A" TO A DEVELOPER CERTIFIED AS A "QUALIFYING GRANTEE" UNDER THE NEW MEXICO AFFORDABLE HOUSING ACT TO DEVELOP SANTA FE HOMES PROGRAM HOMES, LOW-PRICED DWELLING UNITS, OR UNITS PRICE-RESTRICTED THROUGH ANOTHER AFFORDABLE HOUSING SUBSIDY; AND APPROVING AN ANNOUNCEMENT TO SELL THE REMAINING SEVEN LAS ESTRELLAS LOTS WITH A LOCAL PREFERENCE.

WHEREAS, it is a policy goal of the City of Santa Fe ("City") to provide incentives and encourage proposals that support the production, acquisition, and redevelopment of affordably priced homes in mixed-income developments; and

WHEREAS, according to Santa Fe Housing Act Coalition, market-rate rents in Santa Fe have increased by almost 50% since 2014, and 65% of Santa Fe renters cannot afford the median priced home; and

WHEREAS, according to the Santa Fe Association of Realtors' Summer 2022 quarterly property statistics report, the median sales price in Santa Fe increased over 20% since 2021; and

WHEREAS, on December 17, 2019, the City and Santa Fe Estates, Incorporated, a New Mexico corporation ("Santa Fe Estates") terminated a 90-year-old development and profit-sharing agreement between the parties, which resulted in the City reacquiring fee simple title to 250.1 acres in the Northwest Quadrant of the City ("Las Estrellas"); and

WHEREAS, Las Estrellas consists of nine tracts of land: Tract NPR1, Tract NPR3, Tract NPR4, Tract NPR5, Tract NPR6, Tract NPR7, Tract 2, Tract 6A, and Tract 8B-1A; and

WHEREAS, these nine tracts of land are all subject to certain covenants, conditions, and restrictions and the Las Estrellas Master Plan, which governs the area's zoning, density, minimum requirements for affordable housing, and the location of open spaces ("Master Plan"); and

WHEREAS, the Governing Body wishes to sell seven of the nine parcels in Las Estrellas (Tract NPR1, Tract NPR3, Tract NPR4, Tract NPR5, Tract NPR6, Tract NPR7, and Tract 2) to a purchaser who will develop the parcels according to the applicable covenants, conditions, restrictions, and Master Plan; and

WHEREAS, for the seven parcels it intends to sell, the Governing Body wishes to offer a preference to local purchasers; and

WHEREAS, in addition to the local preference and applicable restrictions, the Governing Body wishes to obtain at least the appraised value of the seven parcels; and

WHEREAS, while the City retains ownership of Las Estrellas, it is also the "Declarant" under both the Residential the Declaration of Covenants, Conditions and Restrictions ("Residential Covenants") and Non-Residential (AKA "Master") Declaration of Covenants, Conditions, and Restrictions ("Non-Residential Covenants"); and

WHEREAS, the Governing Body wishes to make Tract 6A available for an affordable housing project; and

WHEREAS, the eighth parcel is designated "Community Services", and, therefore, the City will retain it for one of the following uses: Police, Fire, Library, Administrative Offices, or Recreational Uses; and

WHEREAS, as the "Declarant" under the Residential Covenants affecting the property (including Tract 6A), the City has the right to remove Tract 6A from the Residential Covenants (but not the Non-Residential Covenants); and

WHEREAS, in addition, or in lieu, the City may request the Las Estrellas Residential Association and/or Master Association Board limit the assessments for Tract 6A to support greater affordability; and

WHEREAS, the City intends to donate or sell at a discount Tract 6A as identified in the attached Exhibit A and Exhibit B for the development of homes that meet the definition in SFCC 1987, Sections 26-1 and 26-1 as "Santa Fe Homes Program Homes" ("SFHP") or Low Priced Dwelling Units" ("LPDU"), or other affordability definitions either as rental units, owned units, or land trust homes.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE, that the City Manager shall create an Evaluation Committee that will release a Request for Qualifications ("RFQ") and select a "Qualified Grantee," or a consortium that includes a "Qualified Grantee," to develop Tract 6A for residential uses, offering a mix of housing types, tenures, and affordability levels. The City shall award a disposal contract pursuant to the RFQ based on the following evaluation criteria, as applied to the applicants' proposed project(s):

- Funding Feasibility – the proposed project budget is realistic, funds are leveraged at least at a 3:1 ratio from other committed funding sources, revenue is sufficient to accomplish the proposed project.
- Need/Benefit and Project Feasibility – the project concept is responsive to current/future market demand and the applicant provides a realistic timeframe for the

completion of the proposed activities.

- Affordability – the proposed project effectively meets the income eligibility requirements of the New Mexico Affordable Housing Act, and the applicant describes how it will achieve affordability targets; how the applicant and/or the City may monitor the project over time for compliance; and how the applicant will secure.
- Organizational Capacity and Management – the applicant adequately demonstrates experience and expertise in this type of housing construction, including work samples and funding commitments.
- Innovative Design and Sustainability Targets – the applicant demonstrates the ability to design and construct buildings that achieve high standards of sustainability, have innovative designs, and exceed the green building criteria in City code.

BE IT FURTHER RESOLVED that, based on the criteria above, the Evaluation Committee shall identify a development partner and potential future owner of Tract 6A, in order for staff to prepare an agreement regarding the proposed project for approval by the Governing Body.

BE IT FURTHER RESOLVED that the City Manager shall order an update to the November 16, 2021 appraisal, of Tract 6A and an updated appraisal for the seven parcels it intends to sell.

BE IT FURTHER RESOLVED that the City Manager shall develop a Real Estate Donation Agreement and Special Warranty Deed for Governing Body approval, imposing a land use restriction that will ensure an affordability period of no less than forty-five years and that will run concurrently with any requirements imposed by any other subsidy provider, to be executed upon transfer of Tract 6A.

BE IT FURTHER RESOLVED that, if the Qualifying Entity that is awarded Tract 6A deems it necessary to provide affordable housing, the City shall either remove Tract 6A from the

Residential Declaration of Covenants, Conditions, and Restrictions, prior to selling the other seven parcels, or the City shall request the Las Estrellas Residential Association Board and Master Association Board limit the assessments on Tract 6A.

BE IT FURTHER RESOLVED that the Governing Body approves the public announcement of sale for the seven parcels of Las Estrellas with the following minimum criteria:

1. a minimum bid of the appraised price or higher;
2. documentation of financial ability to pay for the land; and
3. documentation of financial viability to develop the land in accordance with the Master Plan.

BE IT FURTHER RESOLVED that the City will select a purchaser for the seven parcels of Las Estrellas as follows:

1. Requiring the minimum criteria, listed above;
2. Applying a local preference for local purchasers of up to six percent (6%), which is consistent with the weight of the local preference offered in City and State procurement; and
3. Selecting the offer that meets the minimum criteria and offers the highest purchase price, as adjusted by the local preference.

BE IT FURTHER RESOLVED that, to receive the local preference, a purchaser must meet one or both of the two following criteria, which may result in a cumulative six percent (6%) local preference if both criteria are met:

1. Hold a current City of Santa Fe or Santa Fe County business license, and have held said license for the proceeding three (3) years, to receive a three percent (3%) local preference, or
2. Provide a New Mexico Tax and Revenue Department Resident Business Certificate to receive a three percent (3%) local preference.

BE IT FURTHER RESOLVED that the purchase agreement shall stipulate that, in the event the purchaser is awarded a local preference, the purchaser shall not sell the property for a period of three (3) years, unless selling to a buyer who meets the qualifications for an equal or greater percentage of the local preference offered in the Request for Qualifications, except that the sale of developed homes or ready-to-build individual plots to individual homeowners is permitted. The purchase agreement shall require the purchaser to secure this requirement with a letter of credit in the amount of 2% of the contracted purchase price.

BE IT FURTHER RESOLVED that the purchase agreement shall stipulate that a purchaser awarded a local preference shall begin development of the property, including spine infrastructure, engineering, and utility development, within five (5) years of the completion of purchase and shall require the purchaser to secure compliance with this requirement with a letter of credit in the amount of 1% of the contracted purchase price.

PASSED, APPROVED, and ADOPTED this 25th day of January, 2023.

ALAN WEBBER, MAYOR

ATTEST:

KRISTINE MIHELCIC, CITY CLERK

APPROVED AS TO FORM:

ERIN K. McSHERRY, CITY ATTORNEY

Legislation/2022/Resolutions/2023-4 (R) Las Estrellas Tract 6A Disposition

Signature: 

Email: tjlease@santafenm.gov

Signature: Johanna Nelson (Sep 5, 2025 13:31:29 MDT)

Email: jcnelson@santafenm.gov

CITY OF SANTA FE

Memorandum

Date: August 15, 2025

To: Governing Body; Public Works and Utilities Committee; Finance Committee

From: Jesse Roach, Interim Public Utilities Director JR

RE: Amending Fluoridation Ordinance 25-1.8

EXECUTIVE SUMMARY:

This bill would require monitoring of the naturally occurring level of fluoride in the City's municipal water supply and end the requirement for supplemental fluoridation of that water supply.

BACKGROUND AND JUSTIFICATION:

Current Code & Federal Guidance

Santa Fe City Code (25-1.8) directs fluoridation of the municipal water supply to maintain a concentration between 0.8 and 1.2 parts per million (ppm), while the Center for Disease Control (CDC) has recommended a concentration of 0.7 ppm in drinking water for the purpose of dental health since 2015. Emerging, but unsettled science suggests possible negative cognitive impacts in children at levels associated with current federal guidelines. In 2024, a California District Court judge in the case *Food & Water Watch, Inc. vs. United States Environmental Protection Agency* found that fluoridation of water at the level currently recommended by the United States poses an "unreasonable risk" of reduced IQ in children. The judge also noted that "this finding does not conclude with certainty that fluoridated water is injurious to public health." Rather, "there is an unreasonable *risk* of such injury", sufficient to require the Environmental Protection Agency "to engage with a regulatory response." A regulatory response would be a rulemaking, during which the EPA would consider options ranging from requiring a notice be provided to the public, to prohibiting manufacture or distribution. This remains an area of active public policy and scientific debate, and additional investigation will be necessary to improve understanding of potential cognitive impacts associated with fluoridated water.

Naturally Occurring Fluoride in Santa Fe Water

The City of Santa Fe ("City") typically meets about 80% of water demand with river water, and the remainder comes from wells. Fluoride occurs naturally in the river water the City utilizes and is not removed by the City's treatment plants. Within the past decade background fluoride concentrations in treated water from the Canyon Road Water Treatment Plant ("CRWTP") and the Buckman Direct Diversion ("BDD") Water Treatment Plant (BDDWTP) have typically ranged from 0.2 to 0.7 ppm*.

Infrastructure Upgrades Necessary to Accurately Add Fluoride
Currently, fluoride can be added to water treated at CRWTP. However, equipment limitations make it difficult to accurately add fluoride at low flows. As a result, the City is currently only fluoridating water from CRWTP when flows from that plant are above 4 million gallons per day. Fluoride can also be added to water treated at BDDWTP, but because BDDWTP is jointly operated with the County, and governed by its own board which has not adopted a fluoridation policy, this equipment is not used. To add fluoride from BDDWTP water after treatment, but before delivery to City customers, would require system upgrades. Equipment at wells would also need to be replaced to fluoridate well water. Staff estimates that between $400k and $600k of capital investment would be necessary to accurately add fluoride to consistent levels for all water delivered to City customers.

Safety Considerations
The Sodium fluorosilicate powder that is used to fluoridate at CRWTP is a breathing and skin contact hazard.

Operations Costs to Add Fluoride
City staff estimates that fluoridating City potable water from an average background concentration of between 0.3 ppm and 0.6 ppm* to the current code target of 1 ppm would cost approximately $30,000-$40,000 per year in sodium fluorosilicate material.

Conclusion
There are dental benefits associated with having fluoride in drinking water. The findings in the *Food & Water Watch, Inc.*, California district court case also concluded that there are risks associated with fluoridation. In addition, the current level required by City Code exceeds CDC guidance of 0.7 ppm. Natural fluoride in City water provides on average 0.5 ppm and at times up to 0.7 ppm. Adding more fluoride to increase that level to code requirements involves safety risks, would be expensive, and is perhaps unwarranted. The advisable course of action at this time is to remove the code requirement, monitor the natural levels, and monitor legal and scientific developments at the national level.

* From 2018 to 2021, 507 fluoride samples were taken at BDD and the average value was 0.58 ppm and half of the measurements were between 0.5 and 0.7 ppm inclusive. In 2023 and 2024, 190 fluoride samples were taken at CRWTP and the average value was 0.29 ppm and half of the measurements were between 0.23 and 0.33 ppm inclusive. In the distribution system in 2021 and 2022, 320 fluoride samples were taken and the average value was 0.49 ppm and half of the measurements were between 0.3 and 0.6 ppm.

ATTACHMENTS:

Bill and FIR

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2025-17

INTRODUCED BY:

Councilor Carol Romero-Wirth

Councilor Jamie Cassutt

underscored material = new [~~bracketed material~~] = delete

A BILL

AMENDING SFCC 1987, SECTION 25-1.8 (A) TO REQUIRE THE CITY OF SANTA FE ("CITY") TO CONTINUE TO MONITOR THE NATURALLY OCCURRING FLUORIDE LEVELS IN ITS WATER SYSTEM AT REPRESENTATIVE SAMPLE LOCATIONS AND TO END THE REQUIREMENT TO ADD FLUORIDE TO THE SYSTEM.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Section 25-1.8 of SFCC 1987 (being Ord. No. 2003-25, § 32, as amended) is amended to read:

25-1.8 Fluoridation of water supply

A. [~~The water supply of the city shall be fluoridated by the addition of sufficient fluoride ion to raise the concentration of fluoride ion reaching each customer to an optimal level on one (1) part per million parts of water. The fluoride ion level shall be maintained between a minimum of eight tenths (.8) part per million parts and a maximum of one and two tenths (1.2) parts per million parts of water.~~]

~~B.~~] The city shall monitor naturally occurring fluoride ion levels in representative

sample locations at least once per month. The water division shall report the results of the monthly monitoring in its annual water quality report.

PASSED, APPROVED, and ADOPTED this _____day of _____, 2025.

APPROVED AS TO FORM:

Erin McSherry
Erin McSherry (Aug 19, 2025 13:16:41 MDT)

ERIN K. McSHERRY, CITY ATTORNEY

FIR No. 10694.0

FISCAL IMPACT REPORT

General Information:

(Check) **Bill:** X **Resolution:** _____

Short Title(s): Cease Augmenting Fluoride Levels in Drinking Water

Sponsor(s): Councilor Romero-Wirth and Councilor Jamie Cassutt

Reviewing Department(s): Public Utilities Department (Water Division)

Staff Completing FIR: Jesse Roach, Interim Public Utilities Department Director **Date:** 07/02/2025

Phone: (505) 955-4309

Reviewed by City Attorney: Erin McSherry (Aug 19, 2025 13:16:41 MDT) **Date:** 08/19/2025

Reviewed by Finance Director: Emily K. Oster **Date:** 08/19/2025

Summary:
The proposed Bill amends Section 25-1.8 to require the City of Santa Fe ("City") to continue to monitor naturally occurring fluoride levels in the City's municipal water system and stop requiring the City add fluoride to the municipal water supply to achieve a specific range of concentrations.

Departments Affected:
Public Utilities Department

Consequences of Not Enacting Legislation:
If this legislation is not adopted, the City's Code will continue to require the Water Division of the Public Utilities Department (PUD) to add fluoride to drinking water to between eight-tenths (.8) part per million and one and two-tenths (1.2) parts per million, which is above Center for Disease Control guidance, of 0.7 parts per million. If the requirement to add fluoride remains, the Water Division will also need to invest an estimated $400,000 to $600,000 on fluoridation infrastructure and support an ongoing budget of $30,000 to $40,000 per year in fluoride material costs.

Conflict, Duplication, Companionship, or Relationship to Other Legislation:
None identified.

Performance and Administrative Implications:
This bill would simplify operational requirements in the City's water system.

Fiscal Implications:
This bill would result in reduced capital costs to PUD of between $400,000 and $600,000 in FY2027 and a reduction in ongoing operational costs of between $30,000 and $40,000 per year.

Fiscal Impact

_____ Check here if no fiscal impact

Expenditures

Expenditure Type	FYE '26	FYE '27	FYE '28	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
Personnel and Benefits*	$	$	$				
Capital Outlay	$	$(500,000)	$		NR		
Contractual/ Professional Services	$	$	$				
Operating	$(20,000)	$(35,000)	$(35,000)		R		$
Total:	$(20,000)	$(535,000)	$(35,000)				$ (590,000)

* This includes all staff time associated with executing the job functions of the proposed legislation.

Expenditure Narrative: Implementation of this bill will save PUD approximately $590,000 in the next three years. Materials costs are assumed to be less than long term need in FYE 2026 due to current lack of infrastructure necessary to fluoridate all water.

Revenue

Revenue Type	FYE '26	FYE '27	FYE '28	Recurring (R) or Non-recurring (NR)	Fund
General Fund	$	$	$		
Special Revenue	$	$	$		
CIP	$	$	$		
Enterprise	$	$	$		
Internal Service	$	$	$		
Trust and Agency	$	$	$		
Federal	$	$	$		
Other	$	$	$		
Total	$	$	$		

Revenue Narrative: There are no revenue implications associated with this bill.

Signature: 

Email: jdroach@santafenm.gov