



AGENDA

MEETING OF THE PUBLIC
WORKS AND UTILITIES
COMMITTEE
SEPTEMBER 08, 2020 5:00 PM
ATTEND VIRTUALLY

SPECIAL PROCEDURES FOR PUBLIC WORKS AND UTILITIES COMMITTEE MEETING

Attendance: In response to the State’s declaration of a Public Health Emergency, the Mayor’s Proclamation of Emergency, and the ban on public gatherings of more than five (5) people, the Public Works and Utilities Committee meeting will be conducted virtually.

Viewing: Members of the public may stream the meeting live on the City of Santa Fe’s YouTube channel at <https://www.youtube.com/user/cityofsantafe>. The YouTube live stream can be accessed at this address from most smartphones, tablets, or computers.

The video recording of this meeting will also remain available for viewing at any time on the City’s YouTube channel at <https://www.youtube.com/user/cityofsantafe>. Staff is available to help members of the public access pre-recorded meetings on-line at any time during normal business hours. Please call 955-6521 for assistance.

Agenda: The agenda for the meeting will be posted at santafe.primegov.com/portal/search.

Written Comments: The public may submit written comments on any of the consent items to be considered on the Consent Agenda, through 4:00 p.m. the day of the meeting, via the virtual comment “button” at santafe.primegov.com/portal/search.

Public Comment: To provide live public comment during the *Public Comment* section, you must join the Zoom meeting by internet or phone, as follows:

Internet: To join the Zoom meeting on the internet using a computer, laptop, smartphone, or tablet, use the following link: <https://santafenm.gov.zoom.us/j/95803989859?pwd=MGptZ0tzeDJXeFdMTmJYWnNCSHVmQT09> Passcode: 571257

Attendees should use the “Raise Hand” function to be recognized by the Chairman to speak at the appropriate time.



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Phone: To join the Zoom meeting using a phone, use the following phone numbers and Webinar ID: US: +1 (669) 900-6833 - Webinar ID: 958 0398 9859 - Passcode: 571257

Phone attendees should press *9 to use the “Raise Hand” function to be recognized by the Chairman to speak at the appropriate time.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF AGENDA**
4. **APPROVAL OF CONSENT AGENDA**
5. **APPROVAL OF MINUTES**
 - a. Minutes from August 24, 2020 Public Works & Utilities Committee Meeting
6. **PUBLIC COMMENT**
 - a. To provide a live you must join the Zoom meeting by internet or phone, please e-mail or call Emily Pisula, Fiscal Administrator, Public Works, ekpisula@santafenm.gov, 955-6979 or Jamie-Rae Diaz, Administrative Manager, Public Utilities, jldiaz@santafenm.gov, 955-4233 by 4:00 p.m. the day of the meeting for the meeting link and/or call in number
7. **PRESENTATION/INFORMATIONAL ITEMS**
 - a. Placement of City of Santa Fe Water Meters on Domestic Wells within City Limits and Payment by City of Santa Fe Water for Automatic Reading Service Associated with Those Meters. (Jesse Roach, Water Division Director, jdroach@santafenm.gov, 955-4309). Presentation 10 minutes.
 - b. Presentation on BDD Shared Pool Agreement. (Jesse Roach, Water Division Director, jdroach@santafenm.gov, 955-4309) Presentation 10 minutes
9. **ACTION ITEMS: CONSENT**



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- a. Request for Approval of Amendment 1 to the Immix Technology Agreement Item # 20-0306 Contract #3201928 for the Kronos Workforce Telestaff Cloud Hosting Services for a 3 year Contract Procured Through Immix Technology on GSA GS-35F-0265X in the Amount of \$111,204.38 Budgeted in ITT Applications Software Subscriptions 6203600.530710 (Manuel Gonzales, ITT Project Manager, mmgonzales@santafenm.gov 955-5531)

COMMITTEE REVIEW

Finance Committee (Scheduled) 09/21/2020
Governing Body (Scheduled) 09/30/2020

- b. Request for Approval of the Capital Reallocation Budget Amendment Resolution; (John Romero, Traffic Division Director, jjromero1@santafenm.gov 955-6638), Bradley Fluetsch, Financial Planning & Investments, bjfluetsch@santafenm.gov, 955-6885

COMMITTEE REVIEW

Finance Committee (Approved) 08/31/2020
Governing Body (Scheduled) 09/09/2020

- c. Approval of Maintenance Agreement for Roadway Lighting at NM599- US 84/285 Interchange with the New Mexico Department of Transportation (NMDOT), (John Romero, Traffic Division Director, jjromero1@santafenm.gov 955-6638).

COMMITTEE REVIEW

Finance Committee (Scheduled) 09/21/2020
Governing Body (Scheduled) 09/30/2020

- d. Consideration of Bill No. 2020-__: An Ordinance Amending Section 23-6.2 SFCC 1987 to Extend the Time Period for Which Establishments That Have Obtained an Obstruction Permit From the City and a Temporary Change/Expansion of Liquor License Premises From the New Mexico Alcoholic Beverage Control Division May Serve Alcohol on City Sidewalks, Streets, Rights-of-Way, or Other Property That Has Been Specifically Authorized for Temporary Use Due to the COVID-c19 Public Health Emergency and its Effects. (Mayor Webber and Councilor Lindell) (Randy Randall, TOURISM Santa Fe Director, randall@santafenm.gov, 955-6209;



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John Romero, Acting Public Works Director, (jjromero1@santafenm.gov, 955-6638)

COMMITTEE REVIEW:

Public Works and Utilities Committee: 9/8/20

Governing Body (request to publish): 9/9/20

Quality of Life Committee: 9/16/20

Governing Body (public hearing): 10/14/20

11. **MATTERS FROM STAFF**
12. **MATTERS FROM THE COMMITTEE**
13. **MATTERS FROM THE CHAIR**
14. **NEXT MEETING: TUESDAY, SEPTEMBER 29, 2020**
15. **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.

Public Works and Utilities Committee Meeting
Attended Virtually
Monday, August 24 2020
5:00 P.M.

1. Call to Order

The meeting of the Public Works and Utilities Committee Meeting was called to order by Councilor Christopher Rivera, Chair at 5:01 p.m. on Monday, August 24, 2020 and was attended virtually.

2. Roll Call: Action: Quorum

Members Present

Councilor Christopher Rivera, Chair
Councilor Roman Abeyta
Councilor JoAnn Vigil Coppler
Councilor Michael Garcia
Councilor Signe Lindell

Others Present

John Romero, Acting Public Works Department Director
Regina Wheeler, Public Works Department Director
Erin McSherry, City Attorney
Shannon Jones, Public Utilities Department Director
Mary McCoy, Finance Director
Emily Pisula, Public Works Fiscal Administrator
Jamie-Rae Diaz, Public Utilities Administrative Manager
Joe Abeyta, Project Manager Multi Media Department
Jarel LaPan Hill, City Manager
Mayor Alan Webber
Nancy Jimenez, Utility Billing Division Director
Benjamin Valdez, Deputy Chief Police Department
John Delmar, Engineer, Water Division
Jesse Guillen, Legislative Liaison, City Attorney's Office
Elias Isaacson, Land Use Department Director
Jason Kluck, Assistant Land Use Department Director
Noah Berke, Planning and Policy Administrator, Land Use Department
Mark Duran, State Legislative Office

3. Approval of Agenda: Action: Approved

No changes from staff and no changes from the Committee

MOTION: A motion was made by Councilor Signe Lindell, second by Councilor JoAnn Vigil Coppler to approve the agenda as presented.

VOTE: The motion passed unanimously by roll call vote as follows:

Chairman Christopher Rivera – Yes
Councilor Roman Abeyta – Yes
Councilor JoAnn Vigil Coppler – Yes
Councilor Michael Garcia – Yes
Councilor Signe Lindell – Yes

4. Approval of Consent Agenda: Action: Approved

Chairman Rivera mentioned that there were several items that were sent out in the morning, the minutes from 8/10, the ICIP 2022-2026 listing (Item G) and the Fee Schedule (Item I).

Councilor Signe Lindell pulled Items C, G for discussion
Councilor JoAnn Vigil Coppler pulled Items B, C, G, I, J, M for discussion
Councilor Michael Garcia pulled Items C, G for discussion

MOTION: A motion was made by Councilor Signe Lindell, second by Councilor Michael Garcia to approve the consent agenda as amended.

VOTE: The motion passed unanimously by roll call vote as follows:

Chairman Christopher Rivera – Yes
Councilor Roman Abeyta – Yes
Councilor JoAnn Vigil Coppler – Yes
Councilor Michael Garcia – Yes
Councilor Signe Lindell – Yes

5. Approval of Minutes: Action: Approved

No changes from the committee or staff

MOTION: A motion was made by Councilor Michael Garcia, second by Councilor Signe Lindell to approve the consent agenda as amended.

VOTE: The motion passed unanimously by roll call vote as follows:

Chairman Christopher Rivera – Yes
Councilor Roman Abeyta – Yes
Councilor JoAnn Vigil Coppler – Yes
Councilor Michael Garcia – Yes
Councilor Signe Lindell – Yes

6. Public Comment: Action: Information/Discussion

Emily Pisula – None
Jamie-Rae Diaz – None

7. Presentation/Informational Items: Action: Information/Discussion

- a. Presentation on Effluent Reuse System Improvements and Diversification. (John Delmar, Water Division Engineer, jpdelmar@santafenm.gov, 955-4231)

8. Consent Agenda

- a. Request for Approval of Amendment No. 4 to the Alpha Southwest Contract to Provide Refurbishment of Newly Acquired Las Campanas Effluent Pump Station Tank in the Amount of \$298,193.00 (John Delmar, Water Division Engineer, jpdelmar@santafenm.gov, 955-4231)

Approved on Consent

- b. Request for the Approval to Utilize the Sourcewell Cooperative Agreement with Wex Bank in the Total Amount of \$495,000 for the Purchase of Fuel. (Wex Bank); (Deputy Chief Ben Valdez, bpvaldez@santafenm.gov, 955-5040)

Councilor Vigil Coppler: is there a cost breakdown of fuel for those living outside of Santa Fe? And is there any cost-sharing in that?

Deputy Chief Valdez: there is not currently any cost-sharing in the contract, but there is a car sharing plan that is agreed upon the City and POE. He can look into the cost of those commuting versus those that live in the City. He will have to follow up on the numbers of those that commute.

Deputy Chief Valdez: at a future date he will be bringing forward to committees the purchase of new vehicles – Ford offers a PD vehicle that is Hybrid, and they are looking at this as a possible cost-saving option.

Councilor Vigil Coppler: is looking for a simple formula: How many officers live outside of Santa Fe versus those who commute (miles round-trip) x price per gallon. Does not need officer by officer and the shifts that they work.

Chief Valdez: will look into this and what the average is across the board.

MOTION: A motion was made by Councilor JoAnn Vigil Coppler, second by Councilor Michael Garcia to approve this request.

VOTE: The motion passed unanimously by roll call vote as follows:

Chairman Christopher Rivera – Yes
Councilor Roman Abeyta – Yes
Councilor JoAnn Vigil Coppler – Yes
Councilor Michael Garcia – Yes
Councilor Signe Lindell – Yes

c. Utility Billing Division Director Accounts Receivable Update (Nancy Jimenez, Utility Billing Division Director, nljimenez@santafenm.gov, 955-4364)

Councilor Lindell: in the memo says the Utility Division was directed to wait to write off for close to counts from 1999-2015, did the Council direct that?

Director Jimenez: no, the direction was made by Finance Director so that they could get the CAFR out.

Councilor Lindell: what is the time period of the write offs that we are looking at?

Director Jimenez: this goes back to 1999 when the Billing Division did upgrades to 2 of the systems. Approx \$84K for one of the upgrades – PNM's billing system, approx. \$45K from the system that Utilities had in 1999-2000, will be accounts from 2002-2016 that need written off. There was a write off in 2017 that Council approved for period 2002-2012 for approx \$2.6M what the Divisions has found there were some stragglers of approx. 90 accounts 2002-2012 that for some reason did not get written off or were missed so this would true up the balances. NM State allows them to write off any account 4+ years and thus we need to catch up with 2013, 2014, 2015 & 2016.

Councilor Lindell: what happens to the liens that we place on these delinquent accounts?

Director Jimenez: we leave the liens on the books and reactivate them every 4 years with protocols from the State and the County.

Councilor Lindell: what is the highest amount owed to us in regards to liens?

Director Jimenez: there is an account that is approx. \$100K, less finance charges drops it down to \$80K. We would write off finance charges to help out the owner, but we would try collect the entire amount.

Councilor Vigil Coppler: did we do a write off after 2017? She recalls there was a write off in 2018 or after, are we missing a piece of information? Are these write offs inclusive of refuse, sewer and water?

Director Jimenez: there was a write-off in April 2017 for \$2.695M written off tenant-owner liability changed hands. These write offs do include refuse, sewer, water and stormwater.

Councilor Vigil Coppler: do we file liens?

City Attorney McSherry: that we do file liens

Director Jimenez: we do file liens and we file about 20-36 every month.

Councilor Vigil Coppler: is there a plan in place for collection after COVID?

Director Jimenez: they will continue to issue the 2 day notice but the department does not have a firm plan in place.

Councilor Vigil Coppler: asked do we have something on our water bills that we could contribute to another individual's bill who cannot pay their bills?

Director Jimenez: we do not have a program in place and is not sure how we would go about doing this.

Councilor Garcia: in the write off do we know how much is owed by owners versus tenants?

Director Jimenez: from 1999-2016 approx. \$740K is being requested to be written off and 68%-73% is tenants which is approx. \$518K (70%)

Councilor Abeyta: wanted to remind the committee that we have the Connect Program with Community Services that one of their charges is not only to assist residents with not only housing but utility issues.

MOTION: A motion was made by Councilor JoAnn Vigil Coppler, second by Councilor Signe Lindell to approve this request.

VOTE: The motion passed unanimously by roll call vote as follows:

Chairman Christopher Rivera – Yes
Councilor Roman Abeyta – Yes
Councilor JoAnn Vigil Coppler – Yes
Councilor Michael Garcia – Yes
Councilor Signe Lindell – Yes

- d. Request for Approval of Change Order No. 2 to the Original Contract No. 19-0714 with TLC Company, Inc. for the Canyon Road Water Treatment Plant Raw Water Supply Pipeline CIP No.3038C to Extend the Contract Term by 96 Calendar Days. (Robert Jorgenson, Water Division Engineer, rjorgenson@santafenm.gov, 955-4265)

Approved on Consent

- e. Consideration of Resolution No. 2020-__ : A Resolution Accepting a Municipal Arterial Program (“MAP”) Cooperative Grant from the New Mexico Department of Transportation (“NMDOT”) Identified as Control Number L500383 for the Planning, Design, and Construction of Agua Fria Street and South Meadows Road Intersection Improvements. (Councilors Rivera and Abeyta) (Tom Graham, ADA Coordinator, tmgraham@santafenm.gov, 955-6654)
- Request Approval of a Municipal Arterial Program Cooperation Agreement (MUNIS Contract No. 3202084) with the NMDOT in the amount of \$216,000.00 for Planning, Design and Construction of CIP 853 C – Agua Fria and South Meadows Road Intersection Improvement Project
 - Request for Approval of Budget Adjustment Resolution (BAR) to Budget NMDOT Grant Funding

Approved on Consent

- f. Consideration of Bill No. 2020-__ : An Ordinance Amending Section 24-2.6 SFCC 1987 to Restrict Certain Vehicles From Traveling on a Portion of Sabino Street Running East/West Between St. Francis Drive and Devargas Mall. (Councilors Villarreal and Lindell) (John Romero, Acting Public Works Department Director, jjromero1@santafenm.gov, 955-6638)

Approved on Consent

- g. Consideration of Resolution No. 2020-__ : A Resolution Adopting the 2022-2026 Infrastructure Capital Improvements Plan (ICIP). (Councilor Rivera) (John Romero, Acting Public Works Department Director, jjromero1@santafenm.gov, 955-6638)

Councilor Lindell: asked Director Romero to forward to all members of the Governing Body the memo on the CIP, ICIP listing and how the projects get on the list.

Director Romero: gave a quick presentation of current standing of the ICIP listing and the top 5. Top 5 #1 Southside Teen Center, #2 Airport Terminal, #3 Santa Fe Median Beautification, #4 Citywide Park Renovations & Repairs, #5 New Firestation #2

Director Romero: talked to Mark Duran regarding what kind of money we can expect to receive this year and he stated that we can expect \$1M-\$2M total, this includes City and District priorities. We also can seek money for utility improvements, but have not been super successful in receiving funding but it is eligible and can lobby for this.

Councilor Vigil Coppler made the suggestion to move Citywide Park renovations above Beautification of Medians. Councilor Vigil Coppler asked to cosponsor this Resolution

Councilor Garcia asked for clarification for the #1 priority the Southside Teen Center, on the report it states that \$2.1M was funded to date, but didn't we receive \$3.9M at the last legislative session?

Director Romero: yes, that is correct and that we are still working through the numbers. His records state that we have received \$5,010,000 for the teen center to date.

Chairman Rivera: is fine with the list provided and does approve the suggestion to switch Parks Renovations with the Medians.

Councilor Michael Garcia asked to be a cosponsor on this Resolution.

MOTION: A motion was made by Councilor JoAnn Vigil Coppler, second by Councilor Michael Garcia to approve this request with the amendment to switch Parks Renovations and Medians.

VOTE: The motion passed unanimously by roll call vote as follows:

Chairman Christopher Rivera – Yes
Councilor Roman Abeyta – Yes
Councilor JoAnn Vigil Coppler – Yes
Councilor Michael Garcia – Yes
Councilor Signe Lindell – Yes

- h. Consideration of Resolution No. 2020-__ : A Resolution Endorsing the North Central Regional Transit District’s FY2021 Budget Proposal; Approving the City of Santa Fe’s FY2021 Regional Transit Plan; and Directing Staff to Submit the City’s Regional Transit Plan for FY2021 to the North Central Regional Transit District Board of Directors for Consideration and Approval. (Councilor Cassutt-Sanchez) (Thomas Martinez, Director of Operations and Maintenance, tamartinez@santafenm.gov, 955-2006)

Approved on Consent

- i. Consideration of Bill No. 2020-__ : An Ordinance Creating New Section 7-1.11 and 14-13 SFCC 1987, Establishing a Fee Schedule for Services Provided by the Land Use Department; Repealing Section 7-3.3, Regarding the Permit Fee to Move a Building; Amending Section 14-9 to Allow the Land Use Director to Issue Certain Preliminary Permits at the Owner’s Own Risk; Amending Section 14-9.5 to Clarify the Process for Constructing Public and Quasi-Public Improvements Prior to Commencement of Other Aspects of Development; Adding a Definition to Subsection 14-12.1 for “Site Restoration”; and Establishing an Effective Date. (Mayor Webber) (Eli Isaacson, Land Use Department Director, eaisaacson@santafenm.gov, 955-6830)

Councilor Vigil Coppler: did not see any of the old fees on the documents and perhaps there are no old fees and that these are all new fees. Is there a comparison of new fees versus old fees.

Director Kluck: there was a fee table that was sent out earlier this morning.

Councilor Vigil Coppler: is there a document that says in one column this is the new fee and in the adjacent column this is our old fee.

Director Kluck: the table was not formatted that way but he would be happy to create a new document that shows the side-by-side comparison and send it out to the committee members.

Councilor Rivera asked Director Kluck if this is something that he can draft up before the council meeting.

Director Kluck: yes he will have it done before the council meeting.

MOTION: A motion was made by Councilor Signe Lindell, second by Councilor Roman Abeyta to approve this request.

VOTE: The motion passed by roll call vote as follows:

Chairman Christopher Rivera – Yes

Councilor Roman Abeyta – Yes

Councilor JoAnn Vigil Coppler – Abstained until she sees further documentation

Councilor Michael Garcia – Yes

Councilor Signe Lindell – Yes

- j. Consideration of Bill No. 2020-__ : An Ordinance Amending the Table of Permitted Uses in Section 1-6.1(C) SFCC 1987 to Include Commissary Kitchens as a Permitted Use Requiring a Special Use Permit in C-1 Zoning Districts; and Amending Section 14-12.1 to Add the Definition of Commissary Kitchens. (Councilors Lindell and Villarreal) (Eli Isaacson, Land Use Department Director, esisaacson@santafenm.gov, 955-6730)

Councilor Vigil Coppler: what precipitated this? Is there a need for Commissary Kitchens? And what is the need?

Director Isaacson: the need was brought to their attention by 2 constituents who wanted to open a commissary kitchen located within the C1 District. The idea of this is for individuals to rent out a kitchen for an hour or a couple of hours to produce food to sell at a larger scale. There are currently commissary kitchens in Taos and Albuquerque and both have proven to be very successful.

Councilor Vigil Coppler: wasn't there at open point a proposal to rent one of the kitchens in the Convention Center?

Councilor Lindell: yes, we do currently rent one of the kitchens and there are a few food truck vendors who use this to prep their food.

Councilor Vigil Coppler: What is required to get a permit within 200 feet of a residence?

Director Isaacson: the requirement for obtaining a special use permit are located in Chapter 14-3.6.

MOTION: A motion was made by Councilor Signe Lindell, second by Councilor JoAnn Vigil Coppler to approve this request.

VOTE: The motion passed unanimously by roll call vote as follows:

Chairman Christopher Rivera – Yes
Councilor Roman Abeyta – Yes
Councilor JoAnn Vigil Coppler – Yes
Councilor Michael Garcia – Yes
Councilor Signe Lindell – Yes

- k. Request for Approval of Lease Agreement Amendment #1 with the Santa Fe Recovery Center for extended use of the King Hall Dormitory located at Midtown Santa Fe. (Sam Burnett, Public Works Property Maintenance Manager, jsburnett@santafenm.gov, 955-5933)

Approved on Consent

- l. Request for Approval of Contract Amendment #9 with Allied Universal Security Which will Extend Security Service to Cover the Railyard and Railyard Park. (Sam Burnett, Public Works Property Maintenance Manager, jsburnett@santafenm.gov, 955-5933)

Approved on Consent

- m. Consideration of Bill No. 2020-20: An Ordinance Relating to Creating Efficiencies, Enhancing Effectiveness, and Eliminating Silos by Reorganizing Certain City Departments, Organizing the Economic Development Division, Affordable Housing Office, Land Use Department, Tourism Santa Fe Department, Recreation Division, and the Arts and Culture Department as Divisions of a Community Development Department; Organizing the Community Services Department, Police Department, Fire Department, and Office of Emergency Management as Divisions of a Community Health and Safety Department; and Placing the Constituent and Council Relations Department into the City Clerk's Office; Amending 2.6-3; Replacing Section 2-8 SFCC 1987 with a New Section 2-8 SFCC that Establishes all City Departments; Reorganizing Existing Sections 2-8, 2-14, 2-15, 2-19, and 2-10 as Subsections of the New Section 2-9; Establishing in Ordinance the Existing Information Technology and Telecommunications Department and the Constituent and Council Services Department; and Repealing the Sections of Chapter 2 that Establish Departments that Are Either Becoming Divisions or No Longer Exist, Sections 2-9, 2-10, 2-11, 2-12, 2-13, 2-16, 2-19, 2-21, and 2-23 SFCC 1987; Amending Section 2-22 SFCC 1987 to Provide Contract Internal Audit Functions; and Amending Sections 26-1.6 and 26-3.5 Regarding the Office of Affordable Housing. (Jesse Guillen, Legislative Liaison jbguillen@santafenm.gov, 955-6518; Erin K. McSherry, City

Attorney; ekmsherry@santafenm.gov, 955-6512, Jarel LaPan Hill, City Manager, jlapanhill@santafenm.gov 955-6534)

Councilor Vigil Coppler: was not aware of the details that went into planning this reorganization. How did you engage employees on this reorganization? Down to the bottom level, across Departments, Divisions and sections? And employees who are in the front line of this reorganization.

City Manager LaPan Hill: this reorganization has been a very long process and began during the first retreat at the start of Mayor Webber's administration Mr. Garza came down from Las Cruces and some of the findings from that report were "get our house in order" and a lot of conversation about the shape of our organization and how it needs to look and that was the beginning of this process. This process is not new and it has been ongoing for a long time on what our organization should look like and back in January, pre-COVID, there were conversations amongst Department Directors, Mayor and City Manager trying to figure out at what level and what would work? But back at that time we were looking at growing the budget, growing departments and staff. Started to meet with Directors in teams to see what would work. A lot of communication in the past has been surrounding how we can create a Public Safety Department – this proposal is more "in the moment" due to the issues surrounding COVID.

Councilor Garcia thanks City Manager LaPan Hill for sending the supporting documents that he had requested last week. After reviewing the org chart, is there a reason why the City Manager only falls under the Mayor.

City Manager LaPan Hill: yes, the City Manager is hired and fired by the Mayor along with the City Attorney and City Clerk

City Attorney McSherry: the City Code Chapter 2 needs to be updated based on charter amendments.

Councilor Garcia: these positions are recommended by the Mayor but hired by the Governing Body and can be fired by the Governing Body as well. Looking at the City code 2-4.1

Chairman Rivera: does the org chart super succeed the charter?

City Attorney McSherry: It does not super succeed the charter or any other ordinance.

Councilor Abeyta: The code was changed so that the Mayor could fire the City Manager without Council's approval.

Chairman Rivera: Asked the City Manager that under normal circumstances would she have taken a different approach to this reorganization?

City Manager LaPan Hill: Many aspects would have remained the same. When she was hired as the City Manager back in January she started to have discussions on what a reorganization would look like.

MOTION: A motion was made by Councilor Signe Lindell, second by Councilor Roman Abeyta to approve this request.

VOTE: The motion passed by roll call vote as follows:

Chairman Christopher Rivera – Yes
Councilor Roman Abeyta – Yes
Councilor JoAnn Vigil Coppler – No
Councilor Michael Garcia – Abstained until changes are made
Councilor Signe Lindell – Yes

9. **Matters from Staff:** **Action: Information/Discussion**

None

10. **Matters from the Committee:** **Action: Information/Discussion**

Councilor Vigil Coppler received a call from a constituent regarding the building that is going on at the corner of Mission Bend and Richards Avenue – Homewise project there is no dust control with this project and it is really bad, she asked Director Romero if there is any dust control procedures when building is going on.

Director Romero said that he will work with Land Use to work with the developer to address these issues.

11. **Matters from the Chair:** **Action: Information/Discussion**

None

12. **Next Meeting:** **Tuesday September 8, 2020**

13. **Adjourn**

There being no further business before the Committee the meeting adjourned at 7:48 p.m.

Councilor Christopher Rivera, Chair

Emily Pisula, Fiscal Administrator Public Works



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
Renee Villarreal, District 1
Michael J. Garcia, District 2
Carol Romero-Wirth, District 2
Roman "Tiger" Abeyta, District 3
Chris Rivera, District 3
Jamie Cassutt-Sanchez, District 4
JoAnne Vigil Coppler, District 4

MEMO

Date: August 24, 2020

To: Public Works & Utilities Committee

Via: Shannon Jones, Public Utilities Department Director

Via: Marcos Martinez, City Attorney's Office

From: Jesse Roach, Water Division Director, Public Utilities Department

ITEM

Placement of City of Santa Fe Water meters on domestic wells within City Limits and payment by City of Santa Fe Water for automatic reading service associated with those meters.

BACKGROUND

Wells in the Area

There are approximately 4000 groundwater wells in the Santa Fe River basin¹, of which almost 2000 are within the greater City Limits², and another nearly 1200 are in the La Cienaga area. Within City Limits, 7 production wells provide drinking water to the City of Santa Fe. It is estimated that the non-City wells within the greater City Limits and La Cienaga areas combined withdraw approximately 2000 acre feet of groundwater per year (AF/YR). The City wells are permitted to withdraw over 3500 AF/YR, and from 1995 through 2010 averaged a withdrawal of 2310 AF/YR, and since 2011 when the Buckman Direct Diversion came online have averaged 1067 AF/YR.

¹ May 7th 2019 Technical Memo titled "Inventory of wells in the area of City of Santa Fe, New Mexico" attached to this Memo.

² Greater City Limits includes all "donut holes" within the outer most City limits including all areas south of 599 and Agua Fria Traditional Historic Community. The attached well inventory memo refers to the sum of these "donut holes" as the presumptive City Limits.

Limits to New Wells within City Limits

The City of Santa Fe relies on local groundwater resources as an important component of a diverse water supply portfolio. In order to best protect this limited resource for the future, the City has asserted by ordinance³, and been granted by case law⁴ the right to restrict drilling of new domestic wells. This is memorialized in City Code Chapter 25, Section 1.10 “Regulations for the Drilling of New Domestic Water Wells”. Currently, new well construction within City Limits is only allowed if the property to be served by the well is further than 300 feet from an existing City water line, or it will be more expensive for the property owner to connect to City water than to drill a well.

Metering Groundwater Use and Monitoring Groundwater Levels at Non-City Wells

Understanding how the local aquifer is utilized by all wells that access it is of critical importance to sustainable management of this groundwater resource. Understanding the availability and nature of local groundwater resources is improved with data on groundwater levels, water quality information, and records of use. Before drilling a new well, or improving an existing well, a well owner within City Limits must agree to several conditions which include installing a meter on the well (redundant to a State requirement⁵), and providing access to the well by City Staff for the purpose of reading the meter, sampling for water quality, and measuring the depth to water.

New Meter Technology Provides New Opportunity for Understanding Groundwater Resources

In the past several years, City of Santa Fe Water (CoSF Water) has transitioned away from measuring customer water use with analog meters that needed to be read manually to a network of tens of thousands of meters which automatically record customer use and deliver this use via cellular network on a nearly real time basis to a central database. CoSF Water would like to have such meters, and potentially transducers or other water level measuring equipment on domestic wells within the City Limits. As of July 2019, we have begun to require the use of these meters on new or replacement wells within City Limits as a condition of City approval. CoSF Water provides the meters to the well owner at no additional cost, and pays for the cost of the automatic meter reading. In exchange, we receive data on groundwater use.

³ Ord. #1999-3, § 1; Ord. #2004-7, § 1; Ord. # 2019-32

⁴ In 2007, the NM Supreme Court ruled in *Smith vs. Santa Fe* with the Court of Appeals that the City had the authority to prohibit the drilling of domestic wells under its home rule authority, and that this authority was not preempted by existing state law

⁵ All new wells are required to have meters and to provide annual readings from these meters to the New Mexico Office of the State Engineer (OSE). Despite this legal requirement, the OSE does not have the resources for enforcement and such reports are not typically provided by well owners.

Anti-Donation Clause Implications

Although CoSF Water provides the meter for use by the well owner, CoSF Water maintains ownership over the meter. CoSF Water pays the data collection fee for the meters (currently 73 cents per month), and in exchange receives up to date information on groundwater use in the system. Although the New Mexico Constitution prohibits donations to private entities, providing wireless water metering is not a donation to a private party. Rather, the City would receive valuable consideration in the form of information about real time groundwater use at a particular location in the City that the City could not otherwise obtain. This information feeds into a larger data set that the City uses to better understand and manage the City's water supply. Thus the public benefits from having better information about water.

REQUEST

CoSF Water and the CAO request that the PW&UC understand that CoSF Water is providing our meters for use on domestic wells within City Limits, and paying the nominal fees associated with reading those meters in exchange for information on local groundwater pumping at non-City wells.



TECHNICAL MEMORANDUM

To: William H. Schneider, Santa Fe Water Division whschneider@ci.santa-fe.nm.us
From: Steven T. Finch, Jr., Principal Hydrogeologist
Sherry Galemore, GIS Analyst
Date: May 7, 2019
Subject: Inventory of wells in the area of City of Santa Fe, New Mexico

As requested by the City of Santa Fe Water Division, John Shomaker and Associates, Inc. (JSAI) developed an inventory of wells in the Santa Fe area. The purpose of the project was to create an inventory of non-city wells, and estimate water use.

Methodology

JSAI obtained a listing of wells, applications, and associated water right permits for the Santa Fe River watershed area from the New Mexico Office of the State Engineer (NMOSE) WATERS database. Data searches were performed by region (see color shading on Fig. 1), which included:

1. Within City Limits
2. Northwest Santa Fe including the Agua Fria Traditional Historic Community and Presumptive City Limits
3. La Cienega Area
4. Remainder of Santa Fe River Watershed

The WATERS database was culled for wells drilled and permitted. Duplicate records, expired permits for which no well was drilled, and repair applications were separated from entries for drilled wells. The WATERS database consisted of a total of 5,885 records, of which 4,028 were considered individual wells. The database was cross-checked with other historic well inventories by Spiegel and Baldwin (1963), NMOSE (1978), and Mourant (1980). Community water systems with wells were cross-checked with the New Mexico Environment Department (NMED) Drinking Water Watch online database.

The identified wells were sorted by use category for each region. Domestic use category included single dwelling domestic wells, shared domestic wells, and stock wells. Commercial use category included industrial, sanitation, and commercial uses.

Results

Results of the well inventory are presented on Figure 1. It is important to note that one symbol may represent several wells due to the map scale and identical locations. Symbol size and color represent size of associated water right. Some of the larger water right permits may have several wells under one permit.

The attached summary table lists, for each region, the number of wells, associated water right, and estimated use by category. Domestic well use was calculated using an average use rate of 0.28 acre-feet per year (ac-ft/yr) established by Lewis et al. (2013).

Based on past inventories, the number of wells for the area significantly increased between 1960 and 2010. For example:

- In the late 1950s, Spiegel and Baldwin (1963) identified 163 wells for the area.
- In the late 1970s, Mourant (1980) identified 803 wells for the area.
- For 2010, Lewis et al. (2013) identified 1,591 domestic wells for the area.

Domestic wells are the category with the biggest use (see attached table). There appears to be more Mobile Home Parks with individual water systems in the NMED Drinking Water Watch database than identified in the NMOSE WATERS database. It is possible that some Mobile Home Parks are listed as commercial in the WATERS database.

STF:SBG

Enc: References
Figures 1 and 2
Summary Table

References:

Lewis, A., Dorchow, W., and Nylander, C., 2013, Water resource inventory of the Española Basin: consultant's report prepared for Santa Fe County, 99 p.

Mourant, W.A., 1980, Hydrologic maps and data for Santa Fe County, New Mexico: Basic Data Report prepared for the New Mexico State Engineer in cooperation with the U.S. Geological Survey.

[NMED] New Mexico Environment Department, 2019, Drinking Water Watch online database.

[NMOSE] New Mexico Office of the State Engineer, 1978, Santa Fe River hydrographic survey report Volumes I and II: New Mexico Office of the State Engineer.

[NMOSE] New Mexico Office of the State Engineer WATERS, 2017, New Mexico Office of the State Engineer online database.

Spiegel, Z. and Baldwin, B., 1963, Geology and water resources of the Santa Fe area, New Mexico: U.S. Geological Survey Water Supply Paper 1525, 274 p.

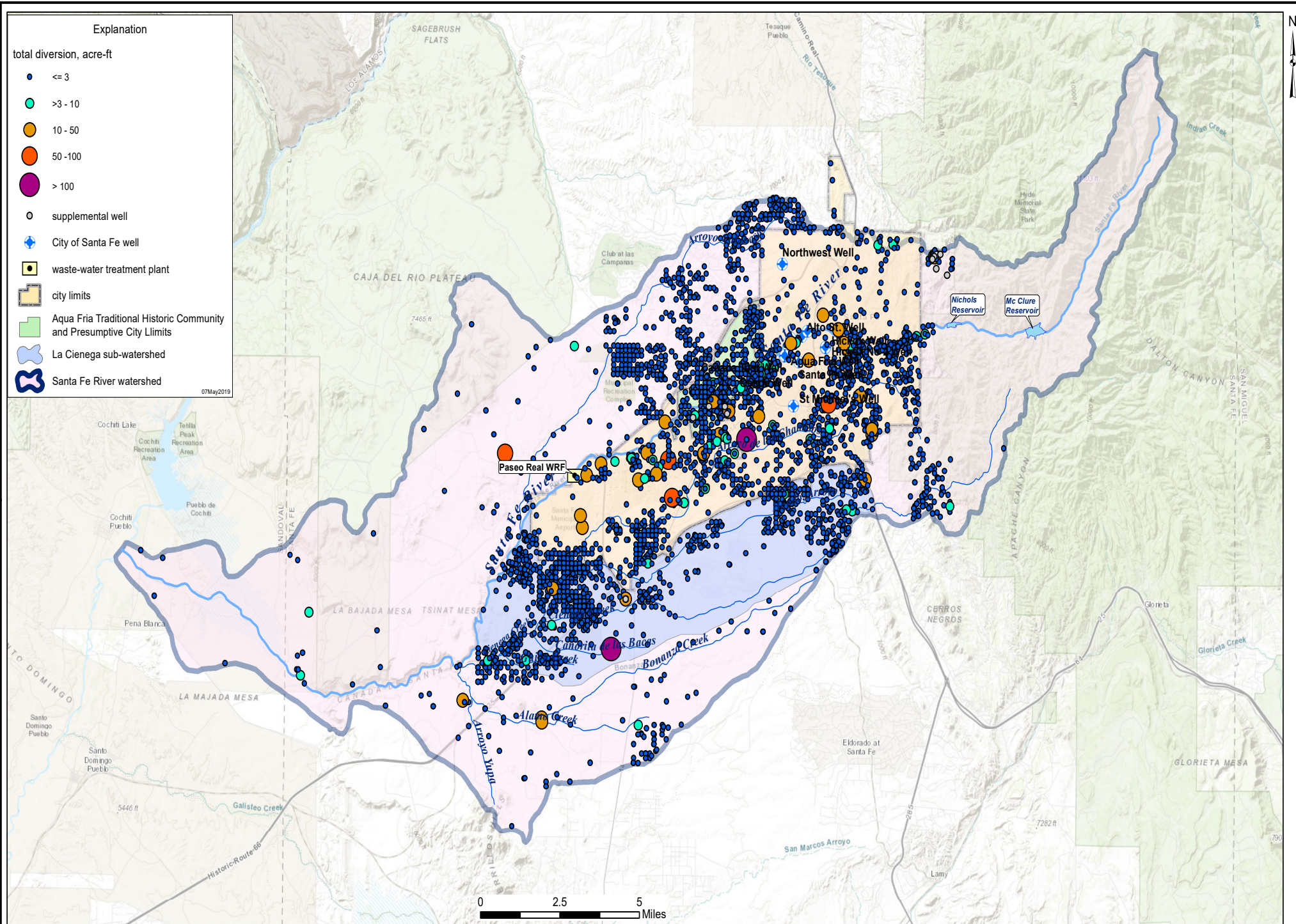


Figure 1. Map showing well inventory of Santa Fe River watershed, Santa Fe, New Mexico.

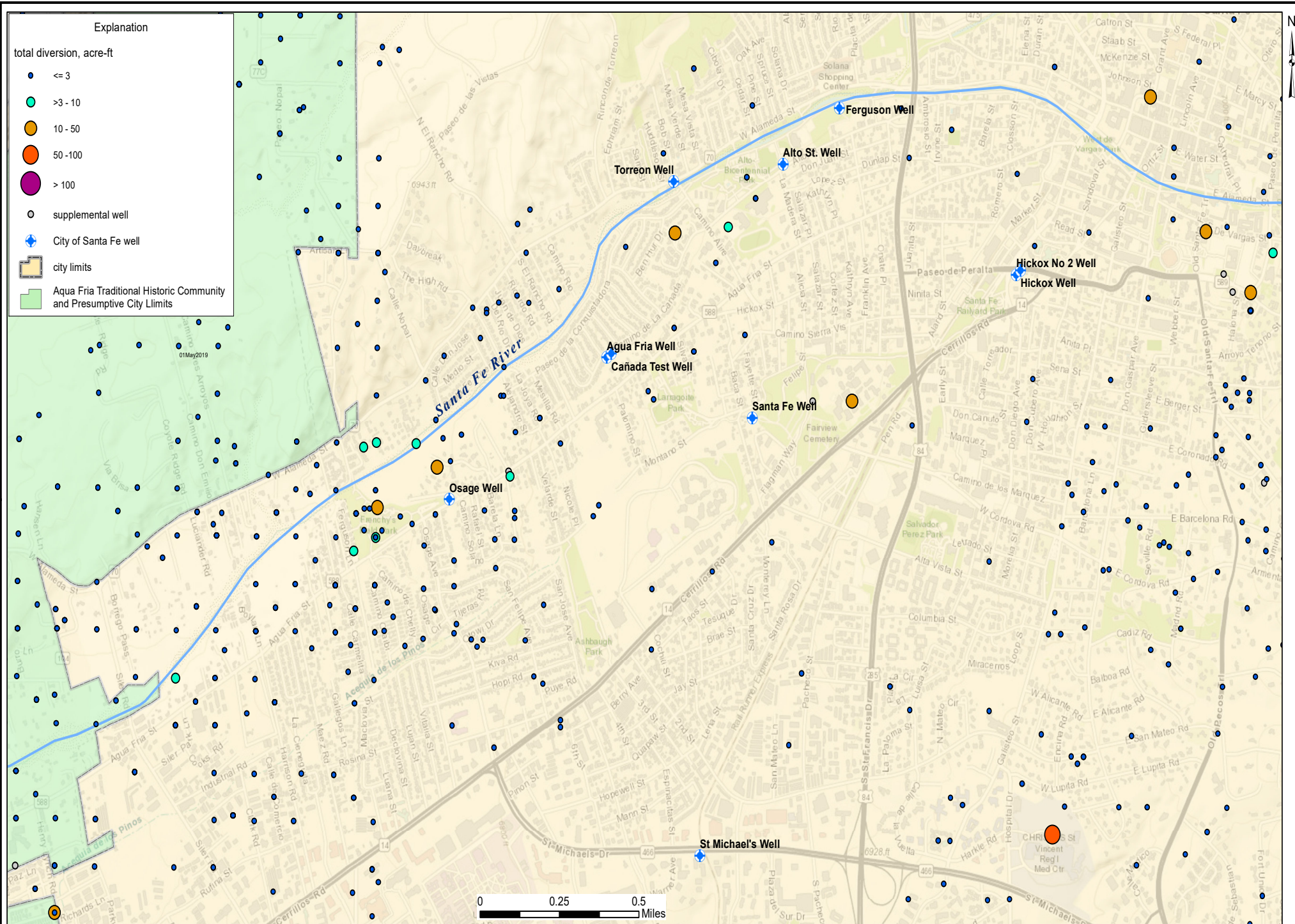


Figure 2. Map showing well inventory for City Well Field area, Santa Fe, New Mexico.

Summary of non-City of Santa Fe wells, water rights, and use by category, Santa Fe River watershed

category	Non-City Wells Within City Limits			Non-City Wells Within Presumptive City Limits and AFTHC			La Cienega area			Remainder of Santa Fe Watershed			TOTAL USE (ac-ft/yr)
	number of wells	water right (ac-ft/yr)	estimated use (ac-ft/yr)	number of wells	water right (ac-ft/yr)	estimated use (ac-ft/yr)	number of wells	water right (ac-ft/yr)	estimated use (ac-ft/yr)	number of wells	water right (ac-ft/yr)	estimated use (ac-ft/yr)	
domestic	1,368	4,013	383	388	1,080	109	1,115	3,142	312	861	2,446	241	1,045
MDWCA	1	17	17	2	42	42	1	27	27	2	53	53	139
MOB	11	114	114	4	28	28	0	0	0	1	53	53	195
commercial	115	561	414	6	19	19	42	126	126	30	82	82	641
irrigation	56	332	332	4	33	33	10	416	41	11	127	127	533
TOTAL	1,551	5,037	1,260	404	1,202	231	1,168	3,711	506	905	2,761	556	2,553

AFTHC - Agua Fria Traditional Historic Community

MDWCA - mutual domestic water consumer association

MOB - mobile home park

notes:

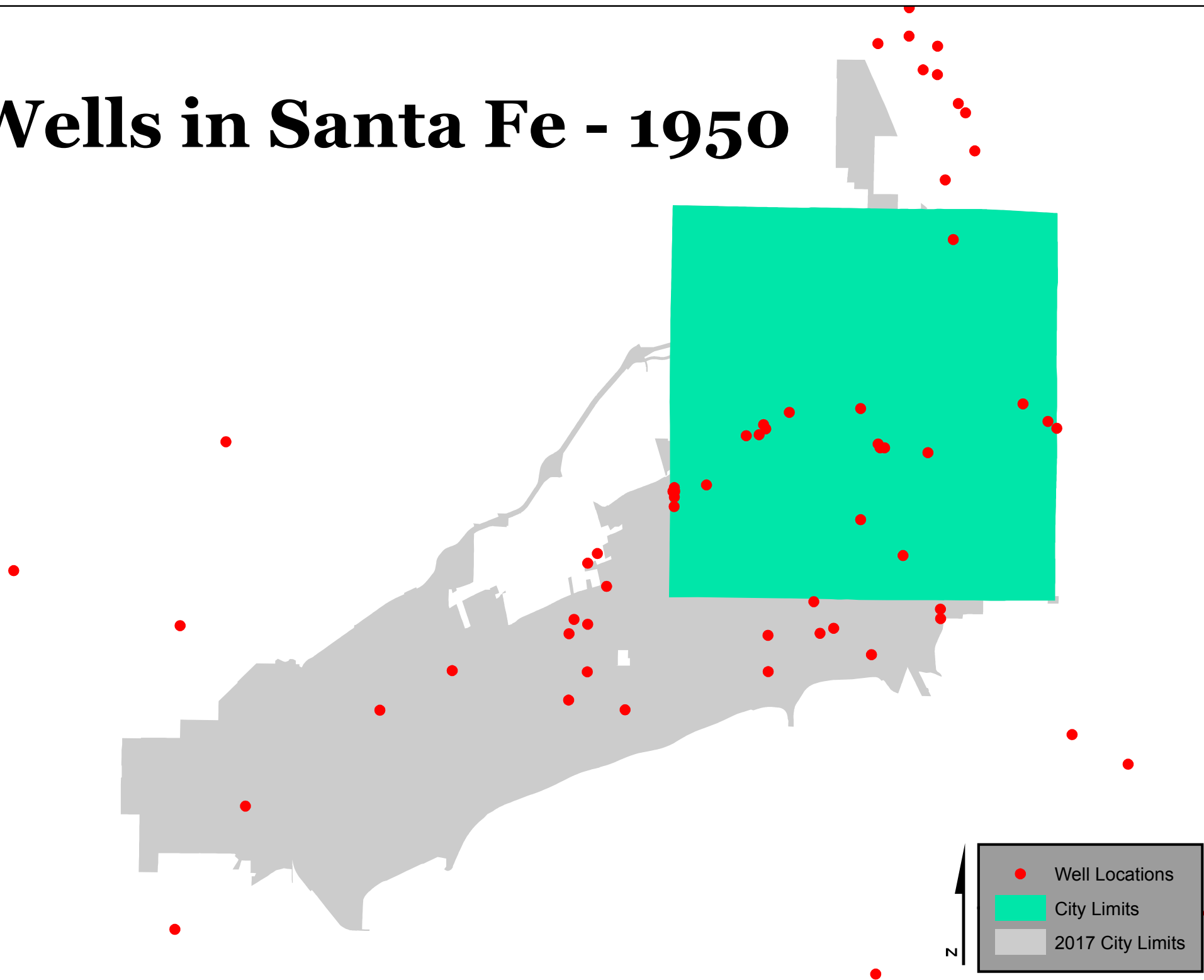
- 1 based on wells with records of completion queried from NMOSE WATERS database
- 2 use categories are combined. Domestic includes individual, shared, and stock wells. Commercial includes industrial, sanitation, and commercial
- 3 estimated use for domestic wells is based on 0.28 afy for indoor and outdoor watering (Lewis et al., 2013)

Top Users

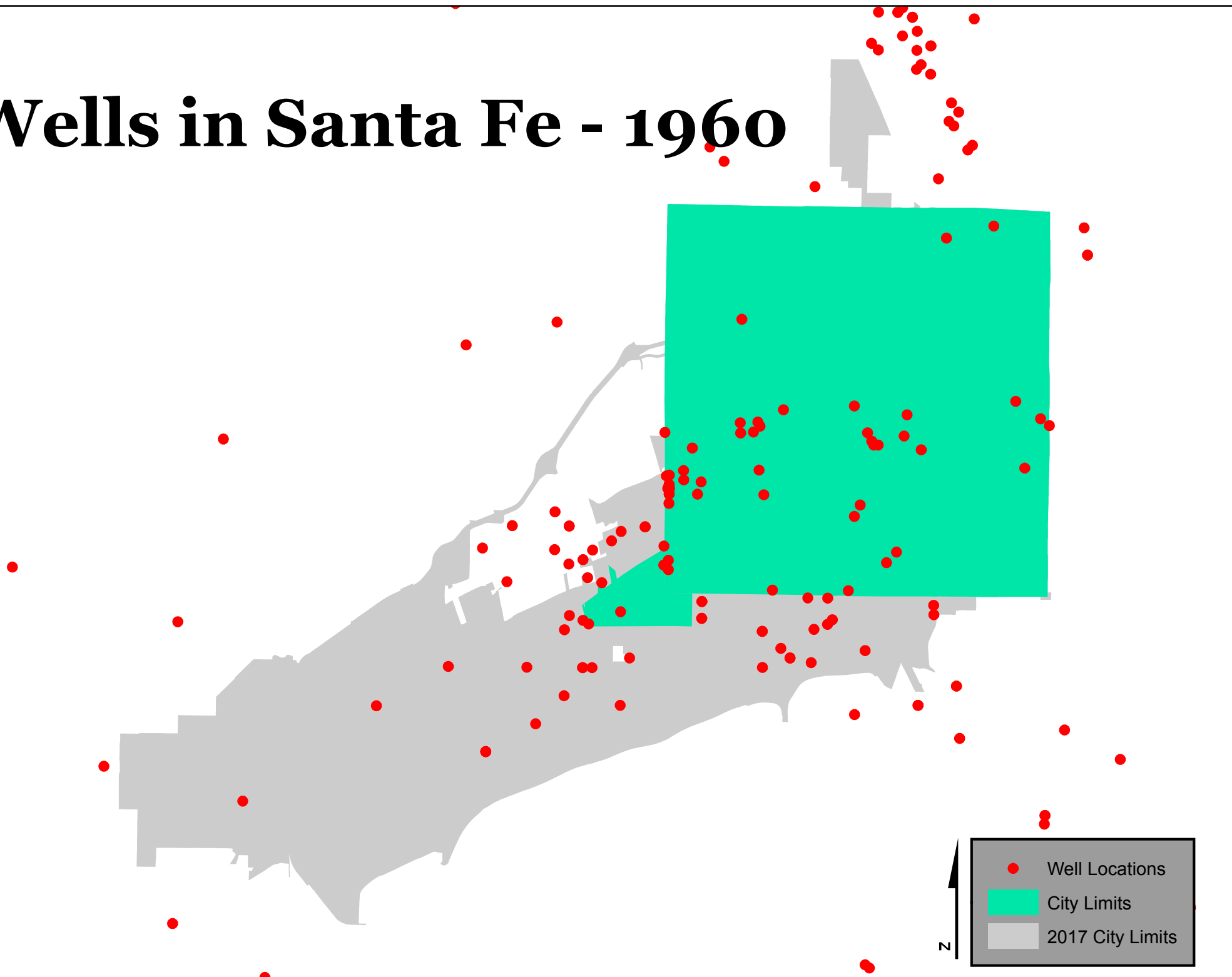
rank	ac-ft/yr	use	identifier	ac-ft/yr	use	identifier	ac-ft/yr	use	identifier	ac-ft/yr	use	identifier
1	146.5	inactive	Komis	42.3	MDWCA	Agua Fria	375.0	irr (inactive)	State Pen	52.8	mob	Kloos
2	60.0	com	St. Vincent Hsp	26.5	irr	individual	27.0	mun	SF County	50.0	MDWCA	Hyde Park
3	51.0	mob	Bolin MHP	18.6	mob	Water Bank	12.8	irr	individual	43.2	irr	Bonanza Ck
4	41.1	irr	La Farge	9.8	mob	The Village	12.5	irr	individual	32.4	irr	Bonanza Ck
5	40.5	irr	NM Sch Deaf	6.0	dom	individual	8.4	irr	individual	28.6	irr	individual
6	37.1	irr	Battaan Bldg	5.0	dom	individual	6.0	dom	individual	9.0	irr	SF Schools
7	30.0	dom	Douglas	3.0	dom	individual	6.0	dom	individual	9.0	irr	individual
8	25.8	mob	El Rancho MHP	3.0	dom	individual	6.0	dom	individual	6.5	dom	individual
9	25.5	irr	PNM	3.0	dom	individual	4.5	com	individual	6.0	dom	individual
10	20.0	com	Silver Saddle	3.0	dom	individual	4.4	dom	individual	4.8	stock	USFS

ac-ft/yr - acre-feet per year

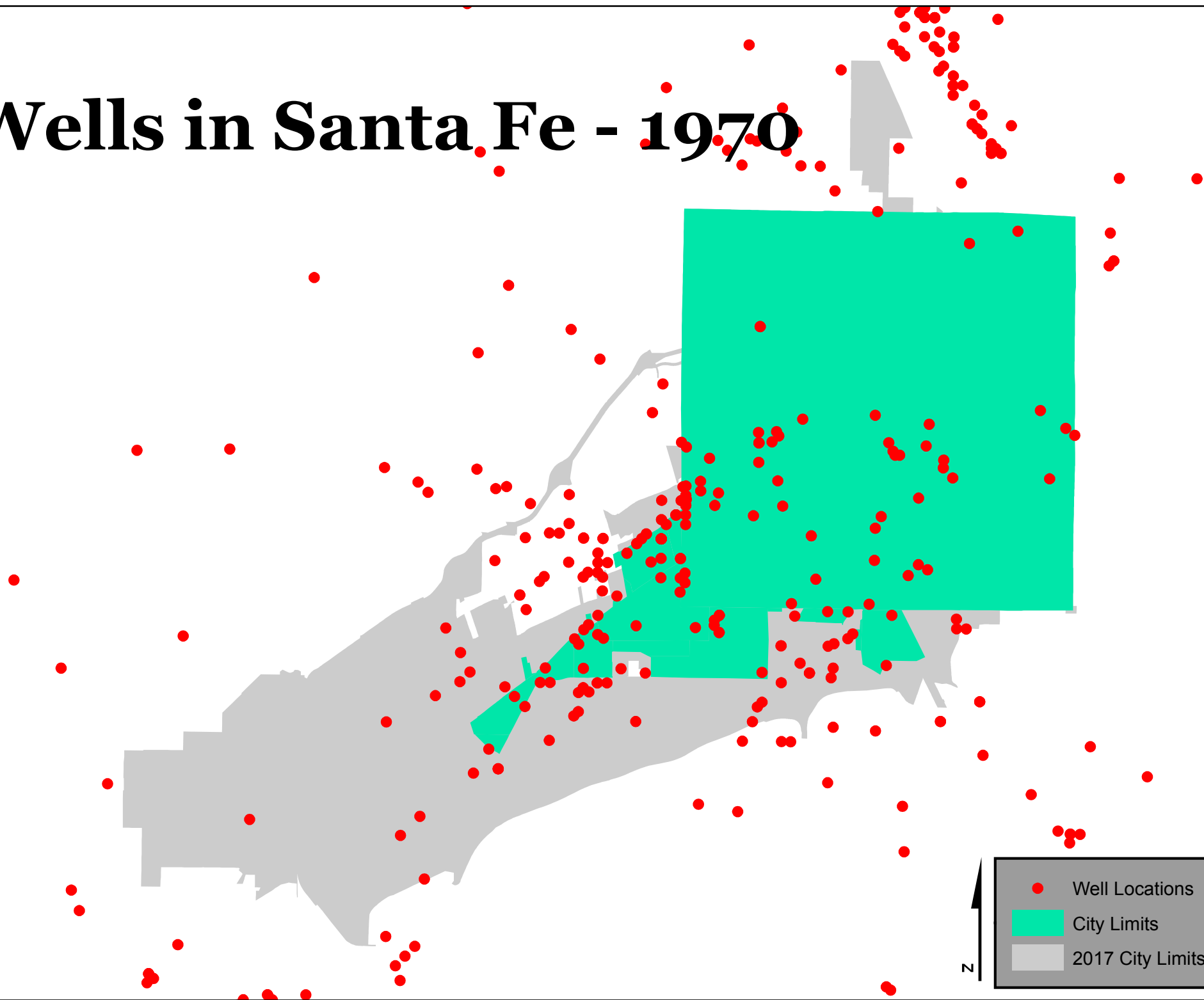
Wells in Santa Fe - 1950



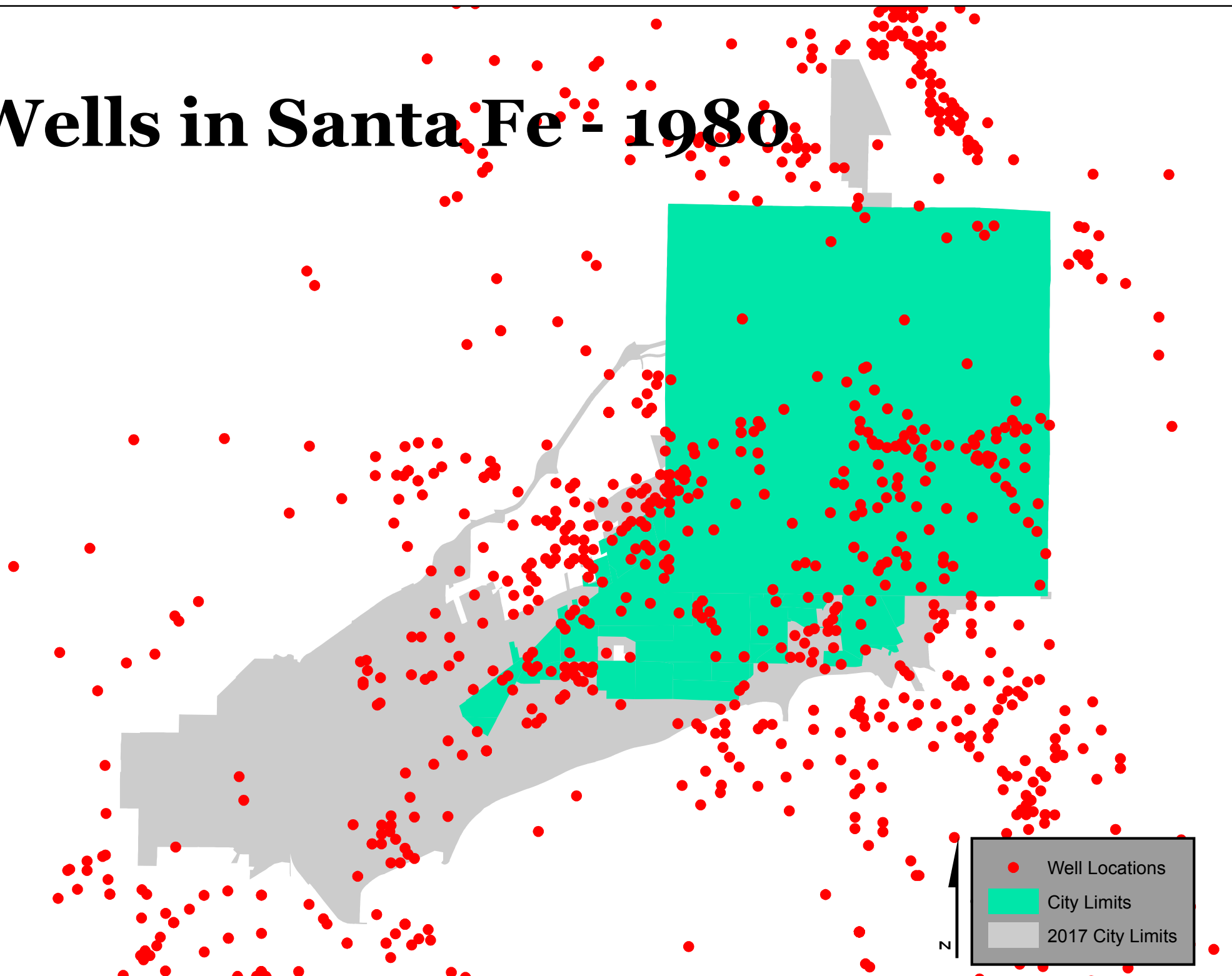
Wells in Santa Fe - 1960



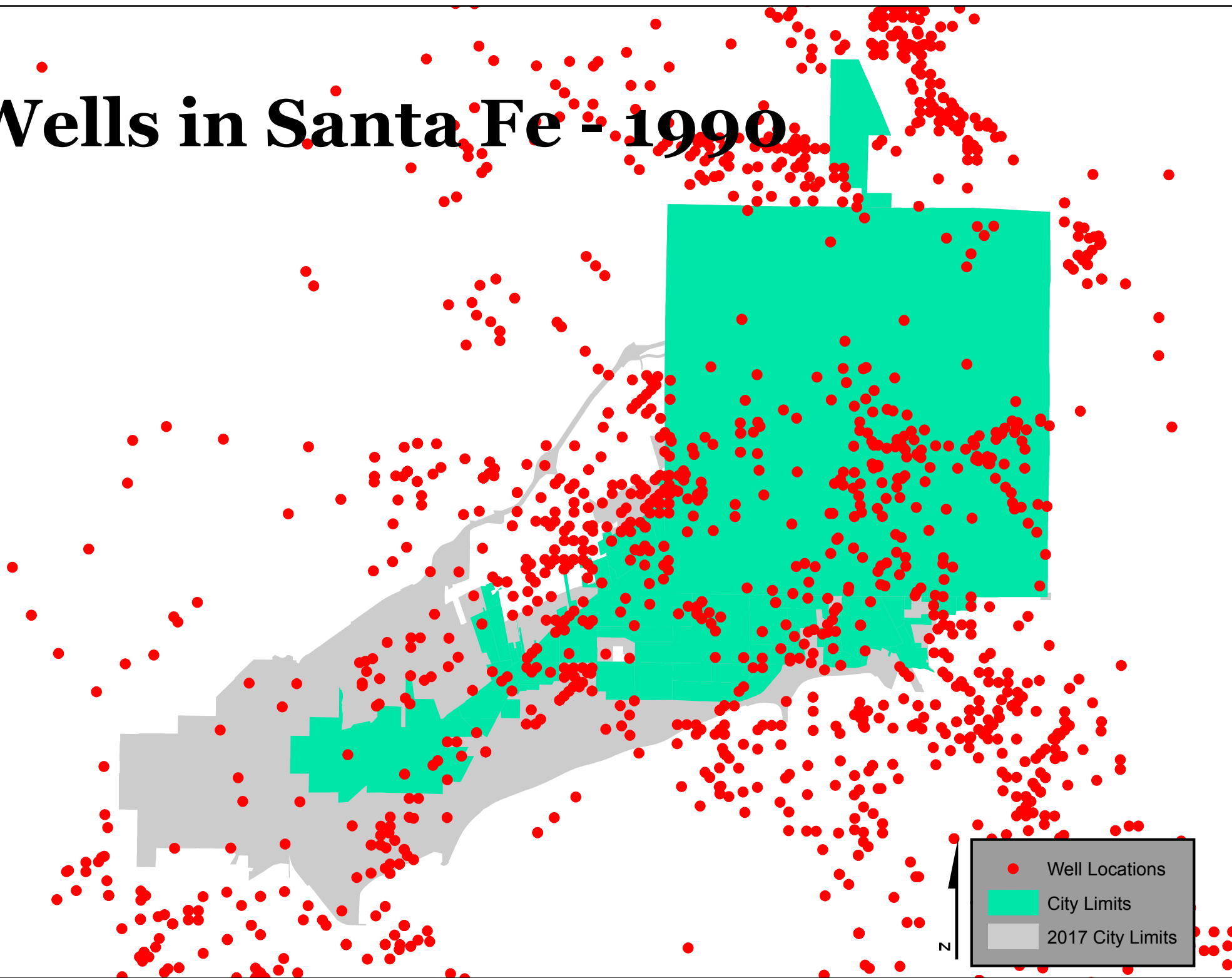
Wells in Santa Fe - 1970



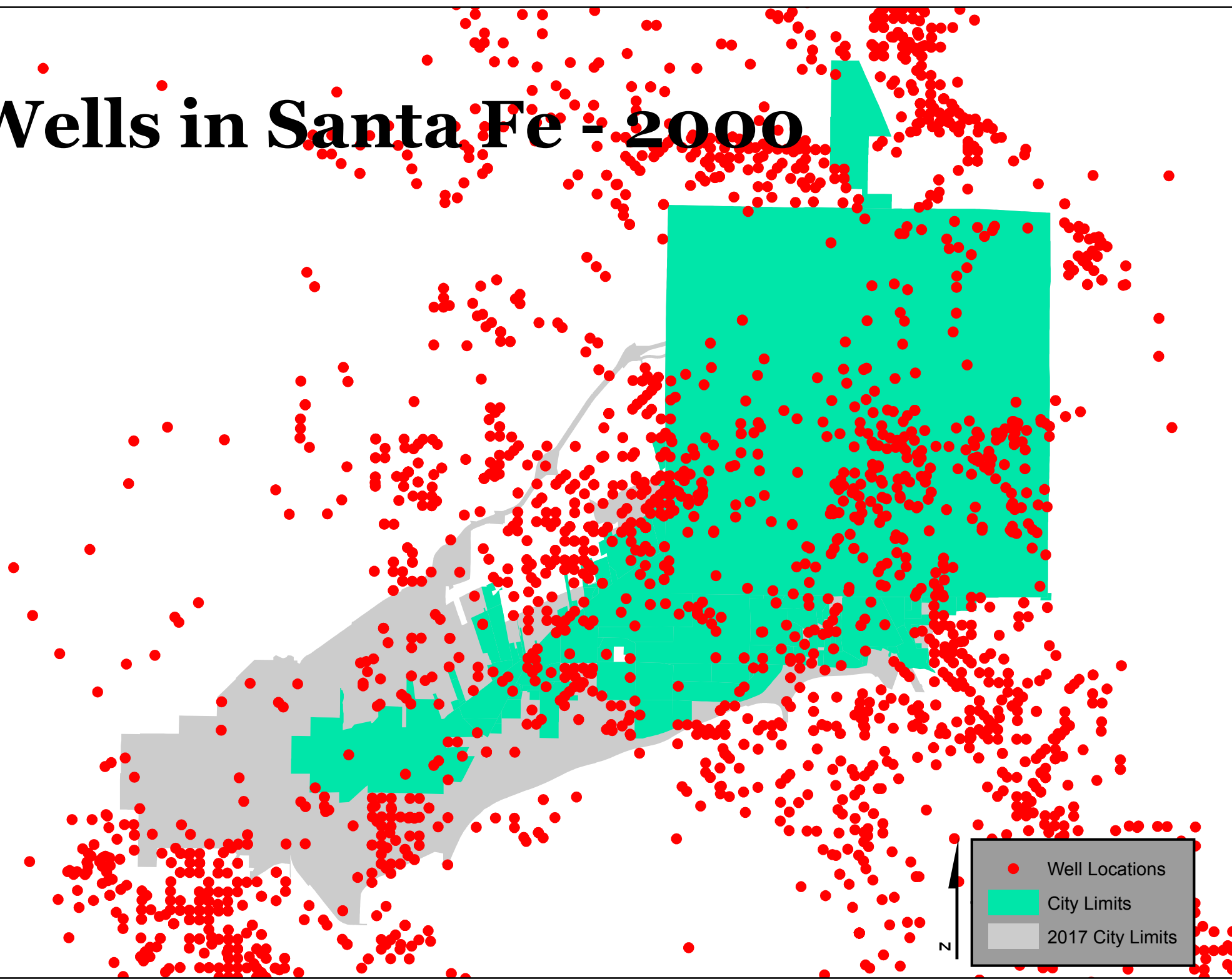
Wells in Santa Fe - 1980



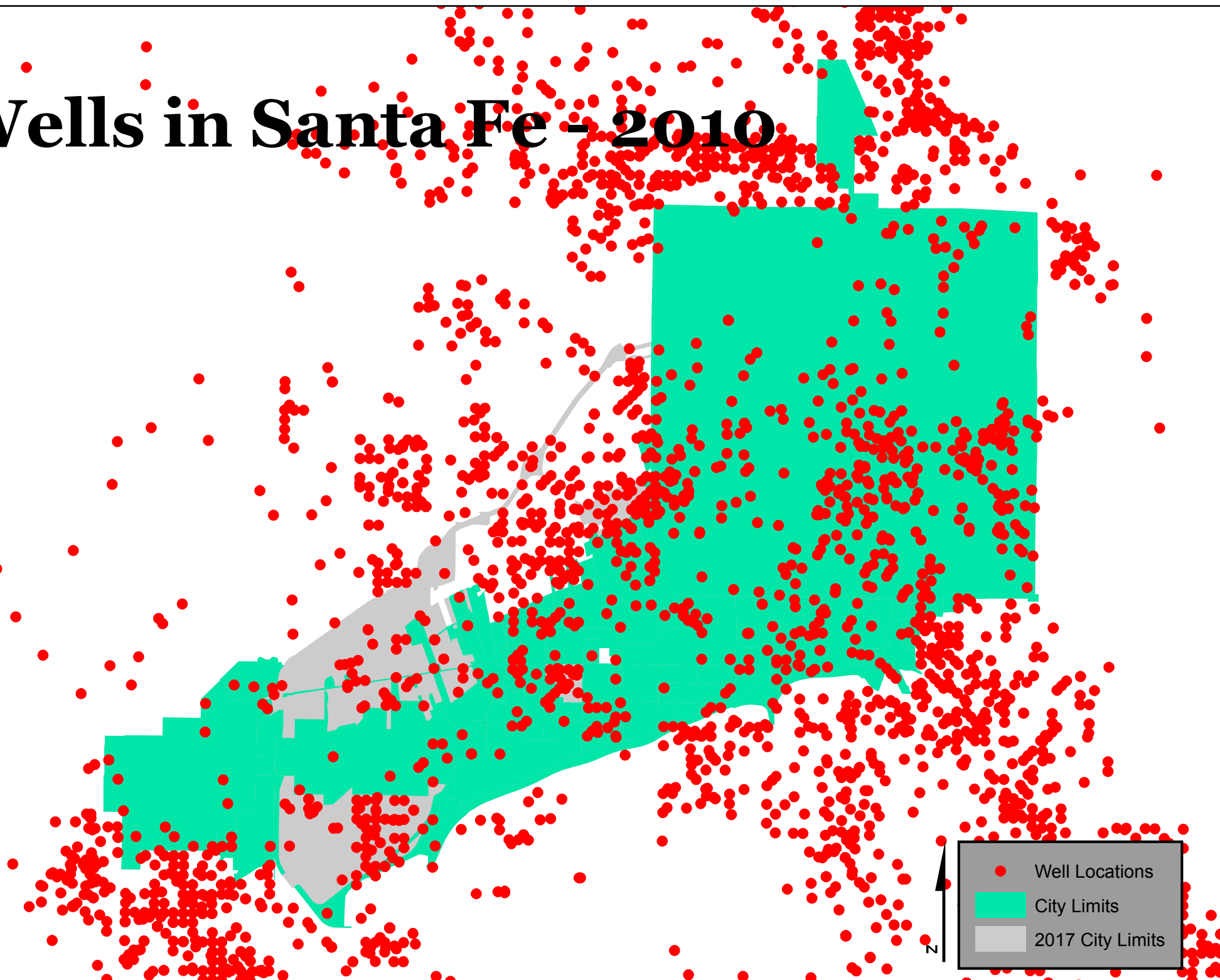
Wells in Santa Fe - 1990



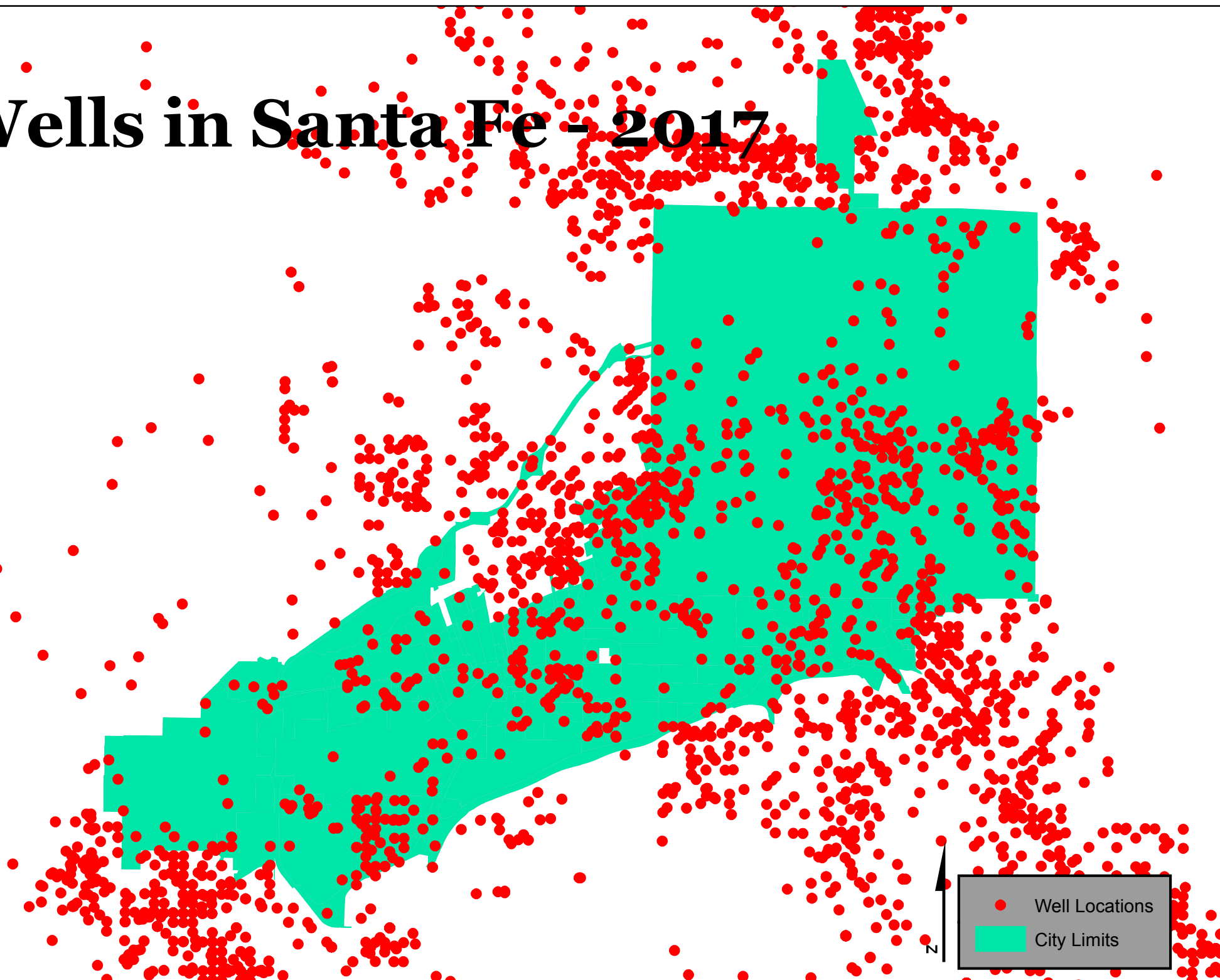
Wells in Santa Fe - 2000



Wells in Santa Fe - 2010



Wells in Santa Fe - 2017





City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909
www.santafenm.gov

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Councilors:

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Renee Villarreal, District 1
Michael J. Garcia, District 2
Carol Romero-Wirth, District 2
Roman “Tiger” Abeyta, District 3
Chris Rivera, District 3
Jamie Cassutt-Sanchez, District 4
JoAnne Vigil Coppler, District 4

MEMO

Date: September 3, 2020

To: Public Works & Public Utilities Committee

Via: Shannon Jones, Public Utilities Department Director

From: Jesse Roach, Water Division Director, Public Utilities Department

ITEM

BDD Shared Pool Agreement

BACKGROUND

Water resources used at Buckman Direct Diversion (BDD)

The City of Santa Fe (City) and Santa Fe County (County) are co-owners of the BDD. The water resource used by the City at BDD is “imported” San Juan – Chama (SJC) water, and the City has the ability to store that water in Heron and Abiquiu Reservoirs for use on demand. While the County also has SJC water, the majority of the water resource used by the County at BDD is “native” Rio Grande water without associated storage.

Advantages to the City of Sharing Water Resources

Generally SJC water with storage offers more operational flexibility than native water without storage, but there are some advantages to the City in being able to utilize native water from the County when it is available in excess of County demand, in exchange for the County utilizing City SJC water when the native water is not available. There are two advantages to the City:

1. Operational flexibility and planned BDD shutdowns. The City is the Project Manager of the BDD, and in certain years may choose to reduce costs and cross train operators from BDD at Canyon Road Water Treatment Plant (CRWTP) during annual scheduled shutdowns of BDD.

2. SJC water can get locked in storage during Abiquiu flood control operations. Among other purposes, Abiquiu Dam is operated to prevent downstream river flows along the Chama from exceeding approximately 1800 cubic feet per second (cfs). Currently, when native water is stored for flood control purposes, it must be evacuated as quickly as possible, meaning that when Abiquiu has stored flood waters there is no room in the 1800 cfs “pipe” to move SJC water down to BDD. When this occurs, there is more native water in the system than the County can use and it is advantageous to the City to be able to use it also.

Advantages to the County of Sharing Water Resources

It is very advantageous to the County to be able to “loan” native water to the City at BDD when available and be repaid when the native water is not available. This provides the County with a mechanism to (indirectly) store native water and with this create an additional backup supply.

1. Indirect native water storage. The county effectively stores water by loaning it when available and getting it back later. The Annual Operating Plan at BDD already incorporates “Optimized Annual Water Resources Accounting”, which allows this exchange to occur within a single year, and when BDD is operational. The BDD Shared Pool extends this ability to “storage” of native water across years and “repayment” when BDD is offline.
2. Additional backup water supply. In the Water Resources Agreement between the City and the County, the City promises to provide up to 1350 acre feet per year (AFY) of backup water supply (for context, total City Demand is about 8000 AFY). The BDD Shared Pool, will extend this backup by at least 500 AFY, and up to 1000 AFY depending on extent to which the City would need to rely on wells to meet the County demand.

General Terms of the BDD Shared Pool Agreement

Deposits to BDD Shared Pool. When County native water is diverted at BDD and used by the City, 90% of that diversion will be credited to the shared pool. The City will allow the County to add 150 AFY to the Shared Pool to a maximum of 1100 AF. The lost 10% is consistent with typical City losses between production and metered delivery known as “unaccounted water”.

Withdrawals from the BDD Shared Pool. When BDD is off, the Shared Pool will be drawn down as the City delivers water to the County from one of the City’s other 3 sources of water. The rate of drawdown and the cost to the County will vary depending on why BDD is shutdown.

Unplanned Shutdown: When BDD is off for an unplanned reason such as low river flows, high sediment in the river, or equipment failure, the County will receive 1 unit of water for 1.1 units of Shared Pool drawdown (the lost 10% representative of a one-time 10% loss the City pays for the ability to store SJC water in Abiquiu), and will pay the City a rate equivalent to the marginal cost of water production at BDD and an additional fee for the “wheeling” of water through the City pipes.

Planned Shutdown: When BDD is shutdown by the City for reasons of cost savings or operational efficiencies, the County will receive 1 unit of water for every 1 unit of Shared Pool drawdown and will pay the City a rate equivalent to the marginal cost of water production at BDD and no wheeling fee. The intent is that under this case the County be financially unaffected by the shutdown.

BDD Shared Pool Losses and Limits: The County cannot build up more than 1100 AF of credit in the Shared Pool, and loses 10% per year from the pool (representative of the approximate rate of loss of SJC water stored in Abiquiu to evaporation). During an extended unplanned shutdown the City may limit the deliveries of Shared Pool water to a rate of 1 million gallons per day and an annual volume of 500 AFY. The volume limit is invoked if the City's groundwater pumping will be more than 6000 AFY (a volume that hasn't been pumped by the City since 2006, but was pumped 15 of 18 years between 1989 and 2006). The agreement can be cancelled by either party with 60 days written notice.

Potential Disadvantages to the City of the BDD Shared Pool

The BDD Shared Pool allows the County to "store" native water when they have a surplus and call on that water when BDD is down. If BDD goes down and local surface water is limited, the City will need to rely on wells for 1) City use 2) to provide backup water guaranteed to the County, and 3) meet demand on the Shared Pool. The Shared Pool extends this potential "added" County backup demand from 1350 AFY to 1850 AFY in a year with limited local surface water. This is acceptable within the context of current supply and demand, but may need to be periodically revisited.

REQUEST

No request at this time. This is informational only. Once the City and County are in agreement on the specific language of the legal agreement (draft attached here for reference only), this item will be brought back to PW&PUC for formal approval.

BDD SHARED POOL AGREEMENT

This BDD Shared Pool Agreement (“Agreement”) is between Santa Fe County (“County”), a political subdivision of the State of New Mexico, and the City of Santa Fe (“City”), a New Mexico home-rule municipality (together the “Parties”).

Recitals

- A. The County and the City are partners in the Buckman Direct Diversion (“BDD”) under a Joint Powers Agreement (“the JPA”) executed on March 7, 2005.
- B. The County and City also executed a Water Resources Agreement on January 11, 2005 and then an Amended and Restated Water Resources Agreement on December 14, 2016 (“WRA”) to address utility-to-utility issues.
- C. The purpose of this Agreement is to make more efficient use of the parties’ respective available resources by making currently excess County native water rights available to the City and by making additional City system capacity and water sources available to the County through creation of a BDD Shared Pool. By creation of the BDD Shared Pool, the City will gain access to additional native supply, the County will gain additional back-up and sources of supply when the BDD is not in operation, and both parties will achieve greater flexibility in BDD operations.

Agreement

1. **Establishment of BDD Shared Pool.** The BDD Shared Pool is hereby created as an accounting pool of water within the BDD that will allow the City to use additional County native water rights and allow the County to deposit and bank water for later use at times when BDD production is restricted or shut down either for unplanned or uncontrollable reasons or because of discretionary operational shutdowns of the BDD, as described in Paragraph 3 below. The maximum quantity balance of water credited at any time in the BDD Shared Pool is limited to 1,100 acre-feet (AF), unless the Parties agree in writing to a larger amount. Operation of the BDD Shared Pool is separate from and does not affect the Parties’ current practice of joint use of native and San Juan-Chama Project water pursuant to Optimized Annual Water Rights Accounting as described in the BDD Annual Operating Plan.
2. **Deposits into the BDD Shared Pool.** On or before December 1 of each year, the County will advise the City and the BDD of the quantity of additional County native water rights that will be available the coming year for diversion by the BDD for delivery to the City. Each year the BDD will divert for delivery to the City a minimum of 167 of acre-feet (AF) of County native water, subject to the following conditions and limitations:
 - a. To account for typical unaccounted water losses, 90% of the amount of water diverted will be credited to the County and deposited in the BDD Shared Pool. For example, diversion of 167 AF will result in a deposit of 150 AF.

- b. The quantity diverted may not exceed the quantity made available by the County for that year.
- c. Once the BDD Shared Pool is at its limit of 1,100 AF, no additional deposits may be credited without written agreement by the Parties.
- d. When hydrological conditions reasonably preclude diversion of the minimum of 167 AF during a given year, the quantity diverted and the corresponding amount deposited will be based on the actual amount diverted that year.

3. **Withdrawals and Deliveries from the BDD Shared Pool.** The County may withdraw water credits from the BDD Shared Pool and the City shall deliver water from the City's Independent Water System, as defined in the WRA, to the County's requested Points of Delivery, as described in Paragraph 9 of the WRA, under the following terms and conditions:

- a. **Unplanned Shutdowns.** When BDD production is restricted or shut down completely by an unplanned operational cause, such as equipment failure, or by an uncontrollable natural cause, such as low Rio Grande flows or high Rio Grande turbidity, the rate of exchange of BDD Shared Pool water credits withdrawn to the quantity of water delivered by the City to the County shall be 1.1 to 1.0. In other words, for every AF of water that the City delivers to the County, the County's credit balance will be reduced by 1.1 AF. The Parties acknowledge that this exchange rate appropriately reflects that the City's water stored in Abiquiu Reservoir is a component of City back-up supply and is subject to a one time reduction of 10% of the amount stored for rights to such storage. In any calendar year, the City may limit withdrawal from the BDD Shared Pool to 550 AF and the associated delivery of City water to the County to 500 AF if delivery greater than that would result in more than 6,000 AF of groundwater use by the City. The City will exercise reasonable due diligence to make deliveries to the County at the greatest rate practicable, but the rate may be limited to no more than 1 million gallons per day during an unplanned shutdown.
- b. **Planned Shutdowns.** When the City as BDD operator chooses to temporarily shut down the BDD for a discretionary reason, such as for operational efficiency or for system-wide cost savings, the rate of exchange of BDD Shared Pool water credits withdrawn to the quantity of water delivered from the City to the County shall be 1.0 to 1.0, meaning that for every AF delivered by the City to the County, the County's credit balance will be reduced by one AF. The City may implement a planned shutdown of the BDD with a minimum of 3 days written notice to the County. Planned shutdowns shall not result in a debit to the BDD Shared Pool in excess of 150 AF per year, shall not result in a negative balance to the BDD Shared Pool, and must be timed and made at a sufficient flow rate so that all County demand otherwise supplied by the BDD will be met by the City from other City sources.

4. **Accounting of Credit Balance.** The Parties shall calculate and maintain a running balance of the quantity of County water credits in the BDD Shared Pool. The County's water credit balance shall be increased by the quantity of additional deposits to and reduced by the amount of new withdrawals from the BDD Shared Pool. The County's water credit balance will be reduced at the

end of each calendar year by 10% of the December 31st value to reflect evaporative losses of City water in Abiquiu. Upon request by the County, the City at its sole discretion may approve a temporary negative balance. Deposits made to the BDD Shared Pool not used within a calendar year shall be carried over to the next year and credited to the County's running balance. The Parties will direct BDD staff to administer the BDD Shared Pool based on monthly diversion and use accounting of BDD water.

5. Cost Accounting and Billing.

- a. City Costs. The City will pay all costs associated with diversion, pumping and treatment of County native water delivered by the BDD to the City under this Agreement.
- b. County Costs. For water the County receives from the City under this Agreement, the County will pay the City at a rate equal to the variable cost of BDD water paid by the County during the same fiscal year in which the BDD Shared Pool water is delivered. For example, during fiscal year 2018-2019, the County paid \$402,354 in variable operating costs (electricity, chemicals, and solids) at BDD for 1393 AF of treated water, representing a variable cost of \$288.89 per AF. This rate would have been charged for any BDD Shared Pool water delivered that year. Because that rate will not be available until after final BDD invoicing for the fiscal year, the City can bill during the fiscal year using the variable cost of BDD water to the County during the previous fiscal year, with final reconciliation occurring after final BDD invoicing. In addition, for water delivered by the City to the County during unplanned shutdowns, the County will pay the City for wheeling the water through the City system based on the rate specified in the current wheeling agreement. The County will not pay a wheeling fee for water delivered by the City during planned shutdowns. If during an unplanned BDD shutdown the County expends all water credits and reaches a zero balance in the BDD Shared Pool and the City does not approve a temporary negative balance as described in Paragraph 4, any additional County use of City water will be billed at the then-current agreed upon wholesale and wheeling rates.

6. WRA Unaffected. This Agreement does not amend or affect the terms and conditions of the WRA. In particular, delivery by the City of water to the County from the BDD Shared Pool is separate from and does not affect the County's right to Wholesale Water Delivery from the City under Paragraph 3 of the WRA.

7. Term.

a. This Agreement shall be effective on the latest signature date below and shall continue thereafter unless terminated pursuant to Paragraph 7(b).

b. Either Party may terminate this Agreement for any reason by giving sixty (60) day's written notice of termination to the other Party. If terminated, the BDD Shared Pool balance if any, will be continue to be available for use by the County during BDD shutdowns,

consistent with the terms and conditions of this Agreement, until the balance has been fully utilized.

8. **Amendment.** This Agreement may be modified only by a written agreement between the Parties.

9. **Dispute Resolution.** The City and County agree to mediate disputes consistent with the Mediation Procedures Act, NMSA 1978, secs. 44-7B-1 through 44-7B-6 prior to initiating any litigation, to resolve any conflicts arising under this Agreement, the expenses of which shall be shared equally by the City and County. Disputes shall be first discussed by representatives of each party. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within 60 days of the occurrence of the event or circumstances giving rise to the dispute, either party may give notice to the other party that the aggrieved party intends to litigate the dispute. Any dispute requiring notice shall be reported to the next meeting of the respective City and County governing bodies

10. **Entire Agreement.** This Agreement contains the Entire Agreement between the City and County with regard to the matters set forth herein.

11. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

12. **Law.** The laws of the State of New Mexico shall govern this Agreement

13. **Notices.** Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered or faxed as follows:

To the City:

Director of the Water Division
City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: 955-420
Fax: 955-4352

With a copy to:

City Manager City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: 955-6509
Fax: 955-6683

City Attorney City of Santa Fe
PO Box 909
Santa Fe, NM 87501 Phone:955-6511
Fax: 955-6748

To the County:

Santa Fe County Utilities Director Santa Fe County
PO Box 276
Santa Fe, N.M. 87504-0276 Phone: 992-9870
Fax: 992-3028

With a copy to:

County Manager
Santa Fe County
PO Box 276
Santa Fe, N.M.87504-0276 Phone: 986-6200
Fax: 986-2740

County Attorney
Santa Fe County
PO Box 276
Santa Fe, NM 87504-0276 Phone: 986-6279
Fax: 986-6362

a. Notice shall be deemed to have been given based upon the method of delivery, as follows: notices sent by facsimile or hand delivered shall be deemed given on the date of delivery, as evidenced, with respect to facsimile delivery, by a printout showing successful transmission of all pages included in the notice; notices sent by mail shall be deemed given three business days after the notice is mailed with postage prepaid.

b. A Party may change the persons to whom or addresses or fax numbers at which notice shall be given by giving all other Parties and the Authority notice of the change in accordance with this Article.

IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, and the County of Santa Fe, New Mexico, has caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below.

CITY OF SANTA FE

Date

Attest:

Date

Approved as to form:

Date

SANTA FE COUNTY

By: _____

Date: _____

Approval of Santa Fe County Utility:

By: _____

Approved as to form:

City of Santa Fe, New Mexico

memo

DATE: August 20, 2020

TO: City Council
Mary McCoy, Chief Financial Officer

Via: Joshua Elicio, ITT Director Joshua Elicio, ITT Director Digitally signed by Joshua Elicio,
Director Director ITT Director
Date: 2020.08.25 13:26:09 -0600

From: David C. Tapia, Contracts Administrator 

ITEM & ISSUE:

Request for Approval of Amendment 1 to the Immix Technology Agreement Item # 20-0306 Contract #3201928 for the Kronos Workforce Telestaff Cloud Hosting Services for a 3 year contract procured through Immix Technology on GSA GS-35F-0265X. The current Immix Technology contract specific to Kronos Workforce Telestaff for the Fire Department expired on 5/31/2020 and are requesting a new 3 year contract to go from 7/1/2020 - 6/30/2023. Procurement method is GSA GS-35F-0265X. Product is Workforce Telestaff (\$111,204.38) from Kronos Inc, through Immix Technology Inc.

BACKGROUND

The City implemented a Kronos Workforce Telestaff solution back in 2016 for the City Fire Department that added shift bidding and advanced work scheduling capabilities. It is a three year agreement that ended on 5/31/20. This request is to approve a new 3 year agreement for the Enterprise Licensing, Bidding Functionality and Cloud Hosting Services.

Immix Technology Inc., has a GSA GS-35F-0265X that will be the procurement method used for this purchase. Existing purchase order # 22000999 has a sufficient amount available to pay for the gap in services from May 31, 2020 – June 30, 2020. This methodology was utilized to true up the termination date with the original contract and the end of the fiscal year.

Operating Budget for Annual Subscription Fees:

Munis Fund Number: 620, Munis Org Number: 6203600, Munis Object Code: 530710, Amount \$111,204.38 (3 years)

ACTION REQUESTED:

Approval of Amendment 1 for Enterprise licensing, Bidding Functionality and Cloud Hosting Services for Kronos Workforce Telestaff through Immix Technology Inc. (\$111,204.38)

DOCUMENTS:

Immix Sales Quote # QUO-1129175-H9Y5C8
GSA Contract GS-35F-0265X (selected pages) Term Through March 2, 2021
New PSA Contract Item # 20-0306



City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, NM 87504-0909
www.santafenm.gov

Alan Webber, Mayor

Councilors:

- Signe I. Lindell, Mayor Pro Tem, District 1
- Renee Villarreal, District 1
- Peter N. Ives, District 2
- Carol Romero-Wirth, District 2
- Roman "Tiger" Abeyta, District 3
- Chris Rivera, District 3
- Mike Harris, District 4
- JoAnne Vigil Coppler, District 4

MEMORANDUM

Date: August 6, 2020

To: **Immix Technology, Inc**

Attn: **Vinu Mohan**

From: Fran Dunaway, CPO, CNBM, City of Santa Fe Purchasing Division

RE: GSA Contract **GS-35F-0265X, General Services Administration Federal Supply Service Multiple Award Schedule Authorized Federal Supply Schedule Pricelist**

The City of Santa Fe by mutual agreement between the City and **Immix Technology, Inc.** is willing to enter into a GSA price agreement based on the following requirements:

1. Provide an updated Federal Supply Schedule to include current or updated contract dates.
2. *Purchases based on 13-1-129 (A)(1) NMSA 1978:* The Contractor is willing to extend their GSA pricing, terms and conditions to the City of Santa Fe at prices equal to or less than the contractor's current federal supply contract price (GSA), providing the contractor has indicated in writing a willingness to extend such contractor pricing, terms and conditions to the City of Santa Fe and the purchase order adequately identifies the contract relied upon.

Please respond by completing the information below. Check the proper box, fill in the requested information, including signature, scan and upload to the email you received with this request.

I agree to extend and/or renew the above referenced GSA price agreement.

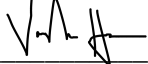
I DO NOT agree to extend and/or renew the above referenced GSA price agreement.

Vaughn Harman, Sr. Director

vaughn_harman@immixgroup.com

Print Name, Title

Email Address



immixGroup, Inc.

Signature

Company Name

8/7/2020

Date

Address



City of Santa Fe Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT or CONTRACT AMENDMENT

2 Name of Contractor Immix technology Inc. Reseller for KRONOS

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$383,516.62

Termination Date: June 30, 2023

Approved by Council Date: June 24, 2020

or by City Manager Date: _____

Contract is for: Enterprise Licensing, Bidding Functionality and Cloud Hosting Services for Kronos
Telestaff, Time Keeping and Attendance Software

Amendment # 1 to the Original Contract# 3201928 Item # 20-0306

Increase/(Decrease) Amount \$ \$111,204.38

Extend Termination Date to: _____

Approved by Council _____

or by City Manager Date: _____

Amendment is for:

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) Plus GRT
 Inclusive of GRT

Amount \$ 383,516.62 of original Contract# 3201928 Item# 20-0306 Termination Date: 6/30/2023

Reason: _____

Amount \$ 111,204.38 amendment # 1 Termination Date: 6/30/2023

Reason: Include Telestaff Software for Shift Bidding Public Safety

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ \$494,721.00

CITY OF SANTA FE OTHER METHOD PROCUREMENT CHECKLIST

Contractor Name: Immix Technology Inc. Kronos Telestaff

Procurement Title: Amendment to Immix Contract with City of Santa Fe 3201928 Item# 20-0306

Other Methods: State Price Agreement Cooperative Sole Source Exempt Other #GS-35F-0265X, __ Term Through March 2, 2021 _____

Department Requesting/Staff Member David C. Tapia

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	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Departments Recommendation of Award Memo addressed to Finance
<input type="checkbox"/>	<input checked="" type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cooperative Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sole Source Request and Determination Form
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contractors Exempt Letter
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Purchasing Officers approval for exempt procurement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	BAR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	FIR
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Contract, Agreement or Amendment
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Current Business Registration and CRS numbers on contract or agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Summary of Contracts and Agreements form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certificate of Insurance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Other: <u>Original Contract Attached</u> GS-35F-0265X

David C. Tapia
Department Rep Printed Name and Title

David C. Tapia
Department Rep Signature attesting that all information included


Fran Dunaway (Aug 25, 2020 15:38 MDT)

Purchasing Officer attesting that all information is reviewed

REQUIRED DOCUMENTS FOR OTHER METHOD FILE*

YES	N/A	
<input type="checkbox"/>	<input type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Cooperative Agreement

*

- | | | |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Sole source Request and Determination Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Contractors Exempt Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Purchasing Officers approval of exempt procurement |
| <input type="checkbox"/> | <input type="checkbox"/> | Copies of all Sole Source submittals |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Other: GS-35F-0265X, <u>Term Through March 2, 2021</u> |

AWARD*

YES N/A

- | | | |
|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Fully executed Memo to Committees from the Department with recommendation of award |
| <input type="checkbox"/> | <input type="checkbox"/> | Other: _____ |

CONTRACT*

YES N/A

- | | | |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Copy of Executed Contract |
| <input type="checkbox"/> | <input type="checkbox"/> | Copy of all documentation presented to the Committees |
| <input type="checkbox"/> | <input type="checkbox"/> | Finalized Council Committee Minutes |
| <input type="checkbox"/> | <input type="checkbox"/> | Other: _____ |

Include all other substantive documents and records of communication that pertain to the procurement and any resulting contract.

Create a separate file folder which may contain any documents with trade secrets or other competitively sensitive, confidential or proprietary information.

David C. Tapia

Department Rep Printed Name and Title

David C. Tapia

Department Rep Signature attesting that all information included



City of Santa Fe Summary of Contracts, Agreements, & Amendments

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP# 16/22 Date: January 29, 2016

RFQ _____ Date: _____

Sole Source _____ Date: _____

Other GS-35F-0265X Term March 2, 2020 through March 2, 2021

6 **Procurement History:** First year of a new 3 year contract (5th year of initial contract 16-0902/16-0903)
example: (First year of 4 year contract)

Fran Dunaway, COA Veto
Fran Dunaway (Aug 25, 2020 15:38 MDT)

Purchasing Officer Review

Comments or Exceptions: GSA/ letter attached.

7 **Funding Source:** ITT Enterprise Fund, Software Subscriptic **BU/Line Item:** 620, 6203600, 530710
Alexis Lotero Fund, Org, Object
Alexis Lotero (Aug 25, 2020 15:22 MDT)

Budget Officer Approval

Comments or Exceptions: _____

8 **Any out-of-the ordinary or unusual issues or concerns:**

(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** David Tapia

Phone # 955-5523

10 **Certificate of Insurance attached.** (if original Contract)

Submit to City Attorney for review/signature
Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:

Item# _____
Munis Contract# _____

**CITY OF SANTA FE
AMENDMENT No. 1 TO
Immix Technology Inc, AGREEMENT
ITEM#20-0306**

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE Immix Technology AGREEMENT, dated 6/24/20 (the "Agreement"), between the City of Santa Fe (the "City") and Immix Technology Inc., (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, Contractor has agreed to provide the Kronos Workforce Telestaff Software Enterprise Licensing, Bidding Functionality and Cloud Hosting Services 7/1/2020 – 6/30/2023.

B. Pursuant to Article 8 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. SCOPE OF SERVICES

Article 2 of the Agreement is amended to add Kronos Workforce Telestaff, so that Article 2 reads as follows: Kronos Workforce Telestaff Software Enterprise Licensing, Bidding Functionality and Cloud Hosting Services 7/1/2020 – 6/30/2023 as described in Exhibit “J” attached hereto and incorporated herein. The relevant portions of GSA Contract #GS-35F-0265X, Terms and Conditions, and State Price Agreement are also attached hereto.

2. COMPENSATION.

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation by a total of \$111,204.38 including Gross Receipts Tax so that Article 3, paragraph A reads in its entirety as follows:

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
05 Workforce Telestaff Bidding v5 7/1/2020 to 6/30/2021		\$ 2,286.60
06 Workforce Telestaff Enterprise v5 7/1/2020 to 6/30/2021		\$30,436.20
07 Workforce Telestaff Global Access v5 7/1/2020 to 6/30/2021		\$ 1,176.60
08 Workforce TeleStaff Bidding v5 v5 7/1/2021 to 6/30/2022		\$ 2,375.40
09 Workforce Telestaff Enterprise v5 7/1/2021 to 6/30/2022		\$31,635.00
10 Workforce Telestaff Global Access v5 7/1/2021 to 6/30/2022		\$ 1,221.00
11 Workforce TeleStaff Bidding v5 v5 7/1/2022 to 6/30/2023		\$ 2,486.40
12 Workforce Telestaff Enterprise v5 7/1/2022 to 6/30/2023		\$32,900.40
13 Workforce Telestaff Global Access v5 7/1/2022 to 6/30/2023		\$ 1,265.40

The total compensation under this Agreement shall not exceed four hundred ninety four thousand seven hundred twenty and ninety cents (\$494,720.90) including applicable gross receipts taxes as described in Exhibit “J” attached hereto and incorporated herein.

3. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the

Agreement as of the dates set forth below.

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

CITY ATTORNEY'S OFFICE:


SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

MARY MCCOY, FINANCE DIRECTOR
620,620/3600,530710
Org. Name/Org.#

CONTRACTOR:

Immix Technology Inc



NAME Vaughn Harman

Sr. Director
TITLE

DATE: July 17, 2020
CRS#03140957001

Registration # 20-227362

Agreement as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:
Immix Technology Inc

ALAN WEBBER, MAYOR

NAME

DATE: _____

TITLE

DATE: _____
CRS#03140957001

Registration # 20-227362

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jul 13, 2020 15:01 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

MARY MCCOY, FINANCE DIRECTOR
620,620/3600,530710
Org. Name/Org.#

AL
AL

Sales Quotation

Manuel Gonzales
CITY OF SANTA FE
, PH: 505-231-1749
mmgonzales@santafenm.gov

Contract No.: GS-35F-0265X
CAGE Code: 3CA29
DUNS No.: 09-869-2374
TAX ID#: 54-1912608
Terms: NET 30
FOB: Destination

Quote Number: QUO-1129175-H9Y5C8
Quote Date: 8/5/2020
Expiration Date: 9/25/2020

Order Address:
immixTechnology, Inc.
8444 Westpark Drive, Suite 200
McLean, VA 22102
PH: 703-752-0610 FX: 703-752-0611

immixTechnology, Inc. Mohan, Vinu
Contact: Vinu_Mohan@immixgroup.com

Manufacturer Quote #:
Manufacturer Ref #: 6105679

Manufacturer Contact: Kelly, Jennifer
978-947-2843 jennifer.kelly@kronos.com

*****FUTURE YEARS PRICING FOR BUDGETING PURPOSE ONLY*****

BILLING: MONTHLY IN ARREARS

Group 1 = 30 days (6/01/20 - 6/30/20) = \$3,022.94 W/ TAX

Group 2 = "YEAR 1" (07/01/20 - 06/30/21) = \$35,636.74 W/ TAX

Group 3 = "YEAR 2" (07/01/21 - 06/30/22) = \$37,037.01 W/ TAX

Group 4 = "YEAR 3" (07/01/22 -06/30/23) = \$38,530.63 W/ TAX

TOTAL = \$114,227.32 W/TAX

Item	Part Number	Contract	Trans Type	Product Description	Qty	Price	Extended Price
1	8604489-000-SAAS	GS-35F-0265X	XAAS	WORKFORCE TELESTAFF BIDDING- PEPM V7.1+ (30 Days)** TRUSTED PRODUCT **	185	\$1.0800	\$199.80
		Period of Performance: 6/1/2020 to 6/30/2020.					
2	8604488-000-SAAS	GS-35F-0265X	XAAS	WORKFORCE TELESTAFF ENTERPRISE - PEPM V7.1+ (30 Days)** TRUSTED PRODUCT **	185	\$4.9400	\$913.90
		Period of Performance: 6/1/2020 to 6/30/2020.					
3	8604495-000-SAAS	GS-35F-0265X	XAAS	WORKFORCE TELESTAFF GLOBAL ACCESS- PEPM V7.1+ (30 Days)** TRUSTED PRODUCT **	185	\$0.5500	\$101.75
		Period of Performance: 6/1/2020 to 6/30/2020.					
4	HOSTING-69	GS-35F-0265X	XAAS	Cloud Hosting Workforce TeleStaff Enterprise Base Fee Per Month (ONE MONTH ONLY)** TRUSTED PRODUCT **	1	\$1,745.2000	\$1,745.20
		Period of Performance: 6/1/2020 to 6/30/2021.					
Group Total:							\$2,960.65

Sales Quotation

Continued

Item	Part Number	Contract	Trans Type	Product Description	Qty	Price	Extended Price
5	8604489-000-SAAS	GS-35F-0265X	XAAS	WORKFORCE TELESTAFF BIDDING- PEPM V7.1+ (185 Lic x 12 Months)** TRUSTED PRODUCT **	2220	\$1.0300	\$2,286.60
Period of Performance: 7/1/2020 to 6/30/2021.							
6	8604488-000-SAAS	GS-35F-0265X	XAAS	WORKFORCE TELESTAFF ENTERPRISE - PEPM V7.1+ (185 Lic x 12 Months)** TRUSTED PRODUCT **	2220	\$13.7100	\$30,436.20
Period of Performance: 7/1/2020 to 6/30/2021.							
7	8604495-000-SAAS	GS-35F-0265X	XAAS	WORKFORCE TELESTAFF GLOBAL ACCESS- PEPM V7.1+ (185 Lic x 12 Months)** TRUSTED PRODUCT **	2220	\$0.5300	\$1,176.60
Period of Performance: 7/1/2020 to 6/30/2021.							
Group Total:							\$33,899.40
8	8604489-000-SAAS	GS-35F-0265X	XAAS	WORKFORCE TELESTAFF BIDDING- PEPM V7.1+ (185 Lic x 12 Months)** TRUSTED PRODUCT **	2220	\$1.0700	\$2,375.40
Period of Performance: 7/1/2021 to 6/30/2022.							
9	8604488-000-SAAS	GS-35F-0265X	XAAS	WORKFORCE TELESTAFF ENTERPRISE - PEPM V7.1+ (185 Lic x 12 Months)** TRUSTED PRODUCT **	2220	\$14.2500	\$31,635.00
Period of Performance: 7/1/2021 to 6/30/2022.							
10	8604495-000-SAAS	GS-35F-0265X	XAAS	WORKFORCE TELESTAFF GLOBAL ACCESS- PEPM V7.1+ (185 Lic x 12 Months) ** TRUSTED PRODUCT **	2220	\$0.5500	\$1,221.00
Period of Performance: 7/1/2021 to 6/30/2022.							
Group Total:							\$35,231.40
11	8604489-000-SAAS	GS-35F-0265X	XAAS	WORKFORCE TELESTAFF BIDDING- PEPM V7.1+ (185 Lic x 12 Months)** TRUSTED PRODUCT **	2220	\$1.1200	\$2,486.40
Period of Performance: 7/1/2022 to 6/30/2023.							
12	8604488-000-SAAS	GS-35F-0265X	XAAS	WORKFORCE TELESTAFF ENTERPRISE - PEPM V7.1+ (185 Lic x 12 Months)** TRUSTED PRODUCT **	2220	\$14.8200	\$32,900.40
Period of Performance: 7/1/2022 to 6/30/2023.							
13	8604495-000-SAAS	GS-35F-0265X	XAAS	WORKFORCE TELESTAFF GLOBAL ACCESS- PEPM V7.1+ (185 Lic x 12 Months)** TRUSTED PRODUCT **	2220	\$0.5700	\$1,265.40
Period of Performance: 7/1/2022 to 6/30/2023.							
Group Total:							\$36,652.20
ANYTHING AS A SERVICE							\$108,743.65
Grand Total							\$108,743.65

SID: 6105679
POP: 06/01/2020 - 6/30/2023

Subject to the Terms and Conditions of GSA MAS Contract Number GS-35F-0265X; See GSA eLibrary:
<http://www.gsaelibrary.gsa.gov/ElibMain/home.do>

Taxes: Sales tax shall be added at the time of an invoice, unless a copy of a valid tax exemption or resale certificate is provided.

All Purchase Orders must include: End User Name, Phone Number, Email Address, Purchase Order Number, Government Contract Number or Our Quote Number, Bill-To and Ship-To Address (Cannot ship to a PO Box), Period of Performance (if applicable), and a Signature of a duly Authorized Representative.

The identified line items are Trusted Products under the immixGroup Trusted Supplier Program.
immixGroup Trusted Supplier Program Policies, Commitments and Guarantees/Warranties can be obtained at:
http://www.immixgroup.com/uploadedFiles/Trusted-Supplier-Program_Guarantee-and-Warranty.pdf

immixTechnology, Inc.

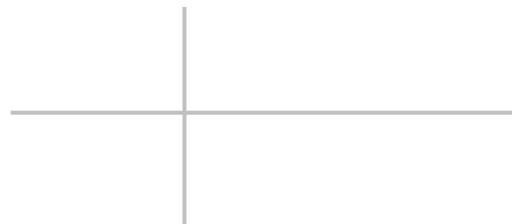
a subsidiary of  immixGroup



*General Services Administration
Federal Supply Service
Multiple Award Schedule
Authorized Federal Supply Schedule Pricelist
GS-35F-0265X*

Period Covered by Contract: March 3, 2011 through March 2, 2021.

Pricelist current through Modification #PO-2258 dated July 23, 2020.



Advantage![®]

www.gsaadvantage.gov

**GENERAL SERVICES ADMINISTRATION
FEDERAL SUPPLY SERVICE
MULTIPLE AWARD SCHEDULE
AUTHORIZED FEDERAL SUPPLY SCHEDULE PRICE
LIST**

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA Advantage!®, a menu-driven database system. The INTERNET address GSA Advantage!® is: GSAAdvantage.gov.

Contract Number:
GS-35F-0265X

For more information on ordering from Federal Supply Schedules click on the FSS

Schedules button at <https://www.gsa.gov/buying-selling/purchasing-programs/gsa-schedules>.

Contract Period:
March 3, 2011 through March 2, 2021

Pricelist current through Modification #PO-2258 dated July 23, 2020.

Contractor:
immixTechnology, Inc.
8444 Westpark Drive, Suite 200
McLean, VA 22102

Phone:
703-752-0610

Email:
GSAteam@immixgroup.com

Website:
<https://www.immixgroup.com/contract-vehicles/gsa/it-70/0265X/>

Business Size:
Other than small

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CUSTOMER INFORMATION

1a. Table of awarded special item number(s) with appropriate cross-reference to item descriptions and awarded price(s).

SIN	SIN Title
811212	Maintenance of Equipment, Repair Services and/or Repair/Spare Parts
511210	Software Licenses
54151	Software Maintenance Services
518210C	Cloud and Cloud-Related IT Professional Services
541519CDM	Continuous Diagnostics and Mitigation (CDM) Tools
611420	Information Technology Training
54151ECOM	Electronic Commerce and Subscription Services
517312	Wireless Mobility Solutions
33411	Purchasing of new electronic equipment

1b. Identification of the lowest priced model number and lowest unit price for that model for each special item number awarded in the contract. This price is the Government price based on a unit of one, exclusive of any quantity/dollar volume, prompt payment, or any other concession affecting price. Those contracts that have unit prices based on the geographic location of the customer, should show the range of the lowest price, and cite the areas to which the prices apply.

See attached authorized price list – Attachment B

1c. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles, experience, functional responsibility and education for those types of employees or subcontractors who will perform services shall be provided. If hourly rates are not applicable, indicate “Not applicable” for this item.

Not Applicable

2. Maximum order.

SIN	SIN Title	Maximum Order (\$)
811212	Maintenance of Equipment, Repair Services and/or Repair/Spare Parts	500,000
511210	Software Licenses	500,000
54151	Software Maintenance Services	500,000
518210C	Cloud and Cloud-Related IT Professional Services	500,000
541519CDM	Continuous Diagnostics and Mitigation (CDM) Tools	500,000
611420	Information Technology Training	250,000
54151ECOM	Electronic Commerce and Subscription Services	500,000
517312	Wireless Mobility Solutions	500,000
33411	Purchasing of new electronic equipment	500,000

3. Minimum order.

\$100.00

4. Geographic coverage (delivery area).

Domestic delivery

5. Point(s) of production (city, county, and State or foreign country).

For a current list of all Authorized Service and Distribution points by Manufacturer, visit: <https://www.immixgroup.com/contract-vehicles/gsa/it-70/0265X/>

6. Discount from list prices or statement of net price.

Prices shown herein are Net (discounts deducted)

7. Quantity discounts.

None unless otherwise specified in the pricelist

8. Prompt payment terms. Note: Prompt payment terms must be followed by the statement "Information for Ordering Offices: Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions."

0% - Net 30 days from receipt of invoice or date of acceptance, whichever is later

9a. Notification that Government purchase cards are accepted at or below the micro-purchase threshold.

Government purchase cards are accepted at or below the micro-purchase threshold but above the Minimum order threshold.

9b. Notification whether Government purchase cards are accepted or not accepted above the micro-purchase threshold.

Government purchase cards are accepted above the micro-purchase threshold

10. Foreign items (list items by country of origin).

See attached authorized price list – Attachment B

11a. Time of delivery. (Contractor insert number of days.)

The Contractor shall deliver to destination within thirty (30) calendar days after receipt of order (ARO), unless set forth otherwise on the Schedule Contract Pricelist to this schedule pricelist appended hereto and incorporated herein

11b. Expedited Delivery. The Contractor will insert the sentence "Items available for expedited delivery are noted in this price list." under this heading. The Contractor may use a symbol of its choosing to highlight items in its price lists that have expedited delivery.

Quicker delivery times than those set forth in the Schedule Contract Pricelist are available from the Contractor based on the availability of product inventory. Improved delivery times in the number of days after receipt of an order (ARO) if available, are as negotiated between the ordering activity and the Contractor or its Authorized Government Resellers

11c. Overnight and 2-day delivery. The Contractor will indicate whether overnight and 2-day delivery are available. Also, the Contractor will indicate that the schedule customer may contact the Contractor for rates for overnight and 2-day delivery.

Unless otherwise specified by Manufacturer in the Schedule Contract Pricelist, when ordering activities require overnight or 2-day delivery, ordering activities are encouraged to contact the Contractor for the purpose of obtaining accelerated delivery. Overnight and 2-day delivery times are subject to the availability of product inventory

11d. Urgent Requirements. The Contractor will note in its price list the "Urgent Requirements" clause of its contract and advise agencies that they can also contact the Contractor's representative to affect a faster delivery.

When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the Ordering Activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract

12. F.O.B. point(s).

Destination

13a. Ordering address(es).

immixTechnology, Inc.
8444 Westpark Drive, Suite 200
McLean, VA 22102

Or

See Authorized Dealers Listing by Manufacturer for Ordering Address and Contact Information at:

<https://www.immixgroup.com/contract-vehicles/gsa/it-70/0265X/>

13b. Ordering procedures: For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPA's) are found in Federal Acquisition Regulation (FAR) 8.405-3.

14. Payment address(es).

immixTechnology, Inc.
8444 Westpark Drive, Suite 200
McLean, VA 22102

Or

See Authorized Dealers Listing by Manufacturer for Ordering Address and Contact Information at:
<https://www.immixgroup.com/contract-vehicles/gsa/it-70/0265X/>

15. Warranty provision.

See attached Contractor Supplemental Pricelist Information and Incorporated Terms – Attachment A

16. Export packing charges, if applicable.

Not applicable

17. Terms and conditions of Government purchase card acceptance (any thresholds above the micro-purchase level).

None

18. Terms and conditions of rental, maintenance, and repair (if applicable).

See attached Contractor Supplemental Pricelist Information and Incorporated Terms – Attachment A

19. Terms and conditions of installation (if applicable).

See attached Contractor Supplemental Pricelist Information and Incorporated Terms – Attachment A

20. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable).

See attached Contractor Supplemental Pricelist Information and Incorporated Terms – Attachment A

20a. Terms and conditions for any other services (if applicable).

See attached Contractor Supplemental Pricelist Information and Incorporated Terms – Attachment A

21. List of service and distribution points (if applicable).

For a current list of all Authorized Service and Distribution points by Manufacturer, visit: <https://www.immixgroup.com/contract-vehicles/gsa/it-70/0265X/>

22. List of participating dealers (if applicable).

For a current list of all Authorized Service and Distribution points by Manufacturer, visit: <https://www.immixgroup.com/contract-vehicles/gsa/it-70/0265X/>

23. Preventive maintenance (if applicable).

See attached Contractor Supplemental Pricelist Information and Incorporated Terms – Attachment A

24a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants).

Please contact immixTechnology, Inc. at
GSAteam@immixgroup.com

24b. If applicable, indicate that Section 508 compliance information is available on Electronic and Information Technology (EIT) supplies and services and show where full details can be found (e.g. contractor's website or other location.) The EIT standards can be found at:
www.Section508.gov/.

Please contact immixTechnology, Inc. at
GSAteam@immixgroup.com

25. Data Universal Number System (DUNS) number.

098692374

26. Notification regarding registration in System for Award Management (SAM) database.

Registration active

27. Integration:

The Non-Disclosure provisions set forth in Section 9b.(7), the IP Infringement provisions set forth in Section 9b.(9) and the Limitation of Liability provisions set forth in Section 3c. of the Terms and Conditions Applicable to Software Licenses (Special Item Number 511210) and Software Maintenance Services (Special Item Number 54151) of General Purpose Commercial Information Technology Software are hereby incorporated into and made a part of the terms applicable to all SINs.

28. Glossary of Definitions:

- a. “Contractor” means immixTechnology, Inc.
- b. “Contractor and its affiliates” and “Contractor or its affiliates” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.
- c. “Manufacturer” shall mean a manufacturer, supplier or producer of Equipment (as defined below) or a publisher or developer of Software or related Training Materials (as defined below) provided to Contractor through a letter of supply to be licensed or sold to Ordering Activities under this contract.
- d. “Ordering Activity” shall mean, 1) any entity authorized to use GSA sources of supply and services as set forth in GSA Directive OGP 4800.21 or such later issued version, and 2) any entity acting on behalf of an Ordering Activity pursuant to a properly issued letter of authorization per Section 24 above – “Prime Contractor Ordering from Federal Supply Schedules” under Information for Ordering Activities applicable to All Special Item Numbers.

29. Responsibilities of Contractor:

The parties understand and agree that Contractor acts as a reseller of all Equipment, Software, Documentation, and services offered under this contract. With regard to Equipment, Software, and Documentation, Contractor represents that it has the requisite right and authority under its reseller agreements with the Manufacturers

to offer the products and grant the rights specified in this contract, and Manufacturers shall have no privity of contract with an Ordering Activity hereunder. With regard to services, while some or all of the services ordered hereunder may be physically performed by Manufacturer, Service Provider, or other third-party personnel (as is specified under applicable SINs) acting under a subcontract or similar arrangement with Contractor, and while the scope and price of such services are defined by the applicable provider's policies (such as Maintenance Services Policies, Electronic Commerce Service Policies, or Wireless Services plans), Contractor remains solely responsible to the Ordering Activity for all such performance.

TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF GENERAL-PURPOSE COMMERCIAL INFORMATION TECHNOLOGY HARDWARE SUBCATEGORY, PURCHASING OF NEW ELECTRONIC EQUIPMENT (SPECIAL ITEM NUMBER 33411)

1. GLOSSARY OF DEFINITIONS

- a. **“Documentation”** shall mean Manufacturer’s then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for the Equipment whether on-line or in hard copy.
- b. **“Equipment”** shall mean the computer hardware identified on Attachment B to this schedule pricelist.

2. MATERIAL AND WORKMANSHIP

All Equipment furnished hereunder must substantially perform the function for which it is intended as set forth in the accompanying Documentation.

3. ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order.

For credit card orders and BPAs, telephone orders are permissible.

4. TRANSPORTATION OF EQUIPMENT

FOB DESTINATION. Prices cover Equipment delivery to destination, for any location within the geographic scope of this contract.

5. INSTALLATION AND TECHNICAL SERVICES

- a. **INSTALLATION.** When the Equipment provided under this contract is not normally self-installable, the Contractor its Manufacturer or other authorized service provider’s technical personnel shall be available to the Ordering Activity, at the Ordering Activity’s location, to install the Equipment and to train Ordering Activity personnel in the use and maintenance of the Equipment. The charges, for such services are listed by Manufacturer, in the schedule pricelist.
- b. **OPERATING AND MAINTENANCE MANUALS.** The Contractor or its Manufacturer

shall furnish the Ordering Activity with one (1) copy of all Documentation, which is normally provided with the Equipment being purchased. For Documentation only available on-line, Contractor or its Manufacturer shall provide Ordering Activity access to such Documentation.

6. INSPECTION/ACCEPTANCE

The Contractor shall only deliver those items ordered that substantially conform to the requirements of this contract and the applicable Manufacturer’s Documentation. Therefore, items delivered shall be deemed accepted upon delivery to Ordering Activity’s designated receiving facility. The Ordering Activity reserves the right to inspect or test any equipment that has been delivered. The Ordering Activity may require repair or replacement of nonconforming equipment at no increase in contract price. The ordering activity must exercise its post-acceptance rights (1) within the applicable warranty period as set forth below; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

7. WARRANTY

- a. Unless specified otherwise in this contract, the warranties extended to the Ordering Activity for Equipment and Documentation, and the exclusions and disclaimers applicable to such warranties, shall be as set forth on Attachment A to this schedule pricelist (Contractor Supplemental Pricelist Information and Incorporated Terms). Notwithstanding anything to the contrary that may be marked on or provided with the Equipment or Documentation, the parties understand and agree that such warranties, exclusions and disclaimers follow the applicable Manufacturer’s standard commercial warranties, exclusions and disclaimers but are provided to the Ordering Activity by the Contractor, who will be responsible to the Ordering Activity for all compliance, service and remedies thereunder.
- b. **Limitation of Liability**
 - i. **Exclusion of Consequential Damages.** EXCEPT FOR A) A CLAIM OF IP INFRINGEMENT HEREUNDER, OR B) AS PROVIDED IN SUBSECTION (b)(iii) BELOW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
 - ii. **Limitation of Direct Damages.** Except for a) a claim of IP Infringement, hereunder, or b) as provided in subsection (b)(iii) below, the aggregate and cumulative liability of

Contractor for damages hereunder shall in no event exceed the amount of fees paid by Ordering Activity under the order giving rise to such liability, and if such damages relate to particular Equipment such liability shall be limited to fees paid for the relevant Equipment.

- iii. Non-Applicability to Statutory or Regulatory Rights. Nothing herein shall operate to impair or prejudice the U.S. Government's right (a) to recover for fraud or crimes arising out of or relating to this contract under any Federal fraud statute, including without limitation the False Claims Act (31 USC §§3729 through 3733), or (b) to express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into this contract, including without limitation the GSAR 552.215-72 Price Adjustment – Failure to Provide Accurate Information (August 1997) or GSAR 552.238-75 Price Reductions (May 2004) Alternate I (May 2003).
- c. Inspection and repair of defective Equipment under this warranty may be performed, at the option of the Contractor, at a service facility/plant authorized by the Contractor. The Ordering Activity may not return defective Equipment to the Contractor, the Manufacturer or its authorized service provider for repair or replacement without prior consultation and instruction.

8. PURCHASE PRICE FOR ORDERED EQUIPMENT

The purchase price that the Ordering Activity will be charged will be the Ordering Activity purchase price in effect at the time of order placement (which shall not exceed the price agreed to at the time of award of the GSA Schedule contract, as may be revised from time to time through a contract modification agreed to and issued by the GSA Schedule contracting officer), or the Ordering Activity purchase price in effect on the installation date (or delivery date when installation is not applicable), whichever is less. Provided, however, that the Ordering Activity shall only be entitled to a lower price if the installation date is no longer than thirty (30) days after the date of order placement.

9. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City or otherwise) covering work of this character, and shall include all costs, if any, of such compliance in the prices quoted in this offer.

10. TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT

When an Ordering Activity determines that Information Technology Equipment will be replaced, the Ordering Activity shall follow the contracting policies and procedures in the Federal Acquisition Regulation (FAR), the policies and procedures regarding disposition of information technology excess personal property in the Federal Property Management Regulations (FPMR) (41 CFR 101-43.6), and the policies and procedures on exchange/sale contained in the FPMR (41 CFR part 101-46).

TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF GENERAL-PURPOSE COMMERCIAL INFORMATION TECHNOLOGY HARDWARE SUBCATEGORY, COMPUTER AND OFFICE MACHINE REPAIR AND MAINTENANCE (SPECIAL ITEM NUMBER 811212)

1. GLOSSARY OF DEFINITIONS

- a. **“Documentation”** shall mean Manufacturer’s then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for the Equipment whether on-line or in hard copy.
- b. **“Maintenance Services”** shall mean the services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer’s then current Maintenance Services Policy.
- c. **“Maintenance Services Policy”** shall mean the commercial terms describing a Manufacturer’s standard maintenance and support offerings, policies and procedures for its Equipment, a copy of which is set forth in Attachment A to this schedule pricelist.
- d. **“Equipment”** shall mean the computer hardware identified on Attachment B to this schedule pricelist.

2. SERVICE AREAS

- a. The types/levels of maintenance, geographic scope of availability, and applicable rates vary by Manufacturer and are generally set forth in an applicable Manufacturer’s Maintenance Services Policy. If any additional charge is to apply because of distance from the Contractor’s service locations, the mileage rate or other distance factor shall be negotiated at the Task Order level.
- b. When repair services cannot be performed at the Ordering Activity installation site, the repair services will be performed at the Contractor’s, Manufacturer’s or authorized service provider’s plant(s).

3. MAINTENANCE ORDER

- a. Agencies may use written orders, EDI orders, credit card orders, or BPAs, for ordering maintenance under this contract. The Contractor shall confirm orders within fifteen (15) calendar days from the date of receipt, except that confirmation of orders shall be considered automatic for renewals for maintenance (Special Item Number 132-12). Automatic acceptance of order renewals for maintenance service shall apply for machines which may have been discontinued from use for temporary periods of time not longer than 120 calendar days. If the order is not confirmed by the Contractor as prescribed by this paragraph, the order shall be considered to be confirmed by the Contractor.
- b. The Contractor shall honor orders for Maintenance Services for the duration of the contract period or a lesser period of time, for the Equipment shown in the schedule pricelist.

Maintenance Services shall commence on a mutually agreed upon date, which will be written into the maintenance order. Maintenance orders shall not be made effective before the expiration of any applicable maintenance and parts guarantee/warranty period associated with the purchase of Equipment. Orders for Maintenance Service shall not extend beyond the end of the contract period.

- c. Maintenance Services may be discontinued by the Ordering Activity on thirty (30) calendar days written notice, or shorter notice when agreed to by the Contractor; such notice to become effective thirty (30) calendar days from the date on the notification. However, the Ordering Activity may extend the original discontinuance date upon written notice to the Contractor, provided that such notice is furnished at least ten (10) calendar days prior to the original discontinuance date.
- d. Annual Funding. When annually appropriated funds are cited on a maintenance order, the period of maintenance shall automatically expire on September 30th of the contract period, or at the end of the contract period, whichever occurs first. Renewal of a maintenance order citing the new appropriation shall be required, if maintenance is to continue during any remainder of the contract period.
- e. Cross-year Funding Within Contract Period. Where an Ordering Activity's specific appropriation authority provides for funds in excess of a 12-month, fiscal year period, the Ordering Activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
- f. Ordering Activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of Maintenance Services, if maintenance is to be terminated at that time. Orders for continued maintenance will be required if maintenance is to be continued during the subsequent period.

4. REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS ORDERS

Repair service and repair parts/spare parts orders are not available under the scope of this schedule contract.

5. LOSS OR DAMAGE

- a. When the Contractor, through the Manufacturer, or its authorized service provider removes equipment to its establishment for repairs, the Contractor shall be responsible for any damage or loss, from the time the Equipment is removed from the Ordering Activity installation, until the equipment is returned to such installation.
- b. When Equipment is returned by Ordering Activity to the Contractor through the Manufacturer's or its authorized service provider's facility for repairs, the Ordering Activity shall be responsible for any loss or damage to the Equipment being returned by the Ordering Activity for repair.

Contractor shall only be responsible for any loss or damage while the Equipment is at the Contractor's or its Manufacturer's or authorized service provider's facility and until it is returned to the Ordering Activity's location.

6. SCOPE

- a. In exchange for the applicable fees, the Contractor, through the Manufacturer or its authorized service provider shall provide Maintenance Services for all Equipment listed herein, as requested by the Ordering Activity during the contract term. Repair service and repair parts/spare parts shall apply exclusively to the Equipment types/models within the scope of this Information Technology Schedule.
- b. Equipment placed under Maintenance Service shall be in good operating condition.
 - 1) In order to determine that the Equipment is in good operating condition, the Equipment shall be subject to inspection by the Contractor through the Manufacturer or its authorized service provider without charge to the Ordering Activity.
 - 2) Costs of any repairs performed for the purpose of placing the Equipment in good operating condition shall be borne by the Contractor, provided the Equipment was under the Contractor's guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order.
 - 3) If the Equipment was not under the Contractor's responsibility, the costs necessary to place the Equipment in proper operating condition shall be borne by the Ordering Activity, in accordance with the provisions of Special Item Number 132-12 (or outside the scope of this contract).
 - 4) Contractor shall have no obligation to provide Maintenance Services for Equipment that has been modified by Ordering Activity, is in disrepair or subject to any other exclusions as set out in Manufacturer's Maintenance Services Policy.

7. RESPONSIBILITIES OF THE ORDERING ACTIVITY

- a. Ordering Activity personnel shall not perform maintenance or attempt repairs to Equipment while such Equipment is under the purview of a maintenance order, unless agreed to by the Contractor. The Ordering Activity will follow Contractor's designated procedures when returning Equipment to Contractor's, Manufacturer's or its authorized service provider's facility for repairs.
- b. Subject to security regulations, the Ordering Activity shall permit access to the Equipment, which is to be maintained or repaired by

Contractor, Manufacturer or its authorized service provider.

- c. If the Ordering Activity desires a factory authorized/certified service personnel, then this should be clearly stated in the task or delivery order.

8. RESPONSIBILITIES OF THE CONTRACTOR

- a. For Equipment not covered by a maintenance contract or warranty, the Contractor, through the Manufacturer's or its authorized service provider's repair service personnel shall complete repairs as soon as reasonably possible after notification by the Ordering Activity that service is required.
- b. If the Ordering Activity task or delivery order specifies factory authorized/certified service personnel then the Contractor is obligated to provide such factory authorized/certified service personnel for the Equipment to be repaired or serviced, unless otherwise agreed to in advance between the Ordering Activity and the Contractor.

9. MAINTENANCE RATE PROVISIONS

- a. For Equipment under monthly Maintenance Services, the Contractor shall bear all costs of maintenance, including labor, parts, and such other expenses as are necessary to keep the Equipment in good operating condition, provided that the required repairs are not occasioned by fault or negligence of the Ordering Activity.
- b. **REGULAR HOURS.** The basic monthly rate for each makes and model of Equipment shall entitle the Ordering Activity to the Maintenance Services as set forth in the applicable Manufacturer's Maintenance Services Policy.
- c. **AFTER HOURS.** Should the Ordering Activity require that maintenance be performed outside of Regular Hours, charges for such maintenance, if any, will be specified in the pricelist or in the applicable Manufacturer's Maintenance Services Policy. Periods of less than one hour will be prorated to the nearest quarter hour.
- d. **TRAVEL AND TRANSPORTATION.** If any charge is to apply, over and above the regular maintenance rates, because of the distance between the Ordering Activity location and the Contractor's service area, the charge will be negotiated at the Task Order level.
- e. **QUANTITY DISCOUNTS.** Quantity discounts from listed Maintenance Services rates for multiple Equipment owned and/or leased by a Ordering Activity are not provided under this schedule contract unless otherwise specified by a Manufacturer in the pricelist.

10. REPAIR SERVICE RATE PROVISIONS

Repair service rate fees and provisions for Equipment not under monthly Maintenance Services are not available under the scope of this schedule contract.

11. REPAIR PARTS/SPARE PARTS RATE PROVISIONS

Repair parts/spare parts rate provisions after the expiration of the guarantee/warranty provisions are not available under the scope of this schedule contract.

12. GUARANTEE/WARRANTY—REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS

Guarantee/warranty-repair parts/spare parts after the expiration of the guarantee/warranty provisions are not available under the scope of this schedule contract.

13. INVOICES AND PAYMENTS

Invoices for Maintenance Services shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

Payment for Maintenance Services of less than one month's duration shall be prorated at 1/30th of the monthly rate for each calendar day.

TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF GENERAL-PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE SUBCATEGORY, SOFTWARE LICENSES (SPECIAL ITEM NUMBER 511210) AND SOFTWARE MAINTENANCE SERVICES (SPECIAL ITEM NUMBER 54151)

1. GLOSSARY OF DEFINITIONS

- a. **“Documentation”** shall mean Manufacturer's then current help guides, and manuals issued by Manufacturer and made generally available by Manufacturer for the Software whether on-line or in hard copy. Documentation shall include any updated Documentation that Manufacturer provides with any updates.
- b. **“Maintenance Services”** shall mean the Software maintenance and support services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer's then current Maintenance Services Policy.
- c. **“Maintenance Services Policy”** shall mean the commercial terms describing a Manufacturer's standard Software maintenance and support offerings, policies and procedures, a copy of which is located on Attachment A to this schedule pricelist.
- d. **“Software”** shall mean (i) the version of the computer program identified on Attachment B and (ii) updates to such programs.

2. INSPECTION/ACCEPTANCE

The Contractor shall only deliver those items ordered that substantially conform to the requirements of this contract and the Software's Documentation. Therefore, items delivered shall be deemed accepted upon delivery. The Ordering Activity reserves the right to inspect or test any Software that has been delivered. The Ordering Activity may require repair or replacement of nonconforming Software at no increase in contract price. The Ordering Activity must exercise its post-acceptance rights (1)

within the warranty period as set forth below; and (2) before any substantial change occurs in the condition of the Software, unless the change is due to the defect in the Software.

3. GUARANTEE/WARRANTY

a. Unless specified otherwise in this contract, the warranties extended to the Ordering Activity for Software and Documentation, and the exclusions and disclaimers applicable to such warranties, shall be as set forth on Attachment A to this schedule pricelist (Contractor Supplemental Pricelist Information and Incorporated Terms). Notwithstanding anything to the contrary that may be marked on or provided with the Software or Documentation, the parties understand and agree that such warranties, exclusions and disclaimers follow the applicable Manufacturer's standard commercial warranties, exclusions and disclaimers but are provided to the Ordering Activity by the Contractor, who will be responsible to the Ordering Activity for all compliance, service and remedies thereunder.

b. Limitation of Liability.

- (1) Exclusion of Consequential Damages. EXCEPT FOR A) A CLAIM OF IP INFRINGEMENT HEREUNDER, OR B) AS PROVIDED IN (b)(iii) BELOW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES provided however, that in the event Ordering Activity makes unauthorized copies of the Software, Contractor shall be entitled to recover the full amount of any license fees that would relate to such copies.
- (2) Limitation of Direct Damages. Except for a) a claim of IP Infringement hereunder, or b) as provided in (b)(iii) below, the aggregate and cumulative liability of Contractor and licensors for damages hereunder shall in no event exceed the amount of fees paid by Ordering Activity under the order giving rise to such liability, and if such damages relate to particular Software or Maintenance Services, such liability shall be limited to fees paid for the relevant Software or Maintenance Services giving rise to the liability.
- (3) Non-Applicability to Statutory or Regulatory Rights. Nothing herein shall operate to impair or prejudice the U.S. Government's right (a) to recover

for fraud or crimes arising out of or relating to this contract under any Federal fraud statute, including without limitation the False Claims Act (31 USC §§3729 through 3733), or (b) to express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into this contract, including without limitation the GSAR 552.215-72 Price Adjustment – Failure to Provide Accurate Information (August 1997) or GSAR 552.238-75 Price Reductions (May 2004) Alternate I (May 2003).

4. TECHNICAL SERVICES

A hot line technical support number for the purpose of providing user assistance and guidance to the Ordering Activity in the implementation of the Software may be provided as part of Maintenance Services.

5. SOFTWARE MAINTENANCE

a. Software maintenance as it is defined:

- (1) Software Maintenance as a Product (SIN 511210)

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self-diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

Software Maintenance as a product is billed at the time of purchase.

- (2) Software Maintenance as a Service (SIN 54151)

Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-

line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324.

Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.

- b. If purchased by Ordering Activity, Contractor, through the applicable Manufacturer, shall provide Maintenance Services for the Software pursuant to the applicable Manufacturer's then current Maintenance Services Policy. Fees or rates for such Maintenance Services are set forth in Attachment B.
- c. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324) for Maintenance as a Service. PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

6. PERIODS OF TERM LICENSES AND MAINTENANCE

- a. The Contractor shall honor orders for periods for the duration of the contract period or a lessor period of time.
- b. Term licenses and/or maintenance may be discontinued by the Ordering Activity on thirty (30) calendar days written notice to the Contractor.
- c. Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or maintenance is to be continued during any remainder of the contract period.
- d. Cross-Year Funding Within Contract Period. Where an Ordering Activity's specific appropriation authority provides for funds in excess of a 12-month (fiscal year) period, the Ordering Activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
- e. Ordering Activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE

Conversion from term licenses to perpetual licenses for any or all Software is not available under the scope of this contract.

Outside the scope of this contract, the Ordering Activity may contact the Manufacturer directly to discuss the permissibility, costs and operation of such conversion(s). Contractor agrees to reasonably assist Ordering Activity in this regard.

8. TERM LICENSE CESSATION

If a term Software license granted hereunder terminates for any reason, Ordering Activity shall (i) cease using the applicable Software, Documentation, and related Confidential Information, and (ii) certify to Contractor within thirty (30) days after termination that Ordering Activity has destroyed, or has returned to Contractor or its Manufacturer the Software, Documentation, related Confidential Information of Contractor and all copies thereof, whether or not modified or merged into other materials.

9. UTILIZATION LIMITATIONS (SIN 511210 AND SIN 54151)

- a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
- b. When acquired by the Ordering Activity, commercial computer Software and related Documentation shall be subject to the following:
 - (1) Title to and ownership of the Software and Documentation shall remain with the Contractor or its Manufacturer or licensors, unless otherwise specified. Contractor and its Manufacturers reserve all rights in and to the Software and Documentation not expressly granted to Ordering Activity herein.
 - (2) United States Government Legends. The Software, Documentation and any other technical data provided hereunder is commercial in nature and developed solely at private expense. The Software is delivered as "Commercial Computer Software" as defined in DFARS 252.227-7014 (June 1995) or as a "Commercial Item" as defined in FAR 2.101(a) and as such is provided with only such rights as are provided in Manufacturer's standard commercial license for the Software. Technical data is provided with limited rights only as provided in DFAR 252.227-7015 (Nov. 1995) or FAR 52.227-14 (June 1987), whichever is applicable.

Contractor grants Ordering Activity only those utilization rights (and reserves the same utilization limitations) as specified in the applicable Manufacturer's commercial license terms, a description of which is set forth on Attachment A to this schedule pricelist and incorporated herein.

Notwithstanding the forgoing, Contractor acknowledges and agrees that Ordering Activity shall have the minimum restricted rights as set forth in 9.b(4) below.

- (3) Except as is provided in paragraph 9.b(2) above, the Ordering Activity shall not provide or otherwise make available the Software or Documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the Ordering Activity who have the Ordering Activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed Software and Documentation only in accordance with these restrictions. This provision does not limit the right of the Ordering activity to use Software, Documentation, or information therein, which the Ordering Activity may already have or obtains without restrictions.
- (4) The Ordering Activity shall have the right to use the computer Software and Documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of Disaster Recovery, the Ordering Activity has the right to transfer the Software to another site if the Ordering Activity site for which it is acquired is deemed to be unsafe for Ordering Activity personnel; to use the computer Software and Documentation with a backup computer when the primary computer is inoperative; and to copy computer Software for safekeeping (archive) or backup purposes; to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.
- (5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.
- (6) The Software and Documentation hereunder is offered by the Contractor under licenses customarily provided to the public. The Contractor does not

furnish technical information related to commercial computer Software (or commercial computer software Documentation) that is not customarily provided to the public. Further, the Contractor does not relinquish rights to use, modify, reproduce, release, perform, display, or disclose commercial computer Software (or commercial computer Software Documentation) except as mutually agreed to by the parties. See 48 CFR 12.212.

- (7) Nondisclosure. Ordering Activity may have access to information that is confidential to Contractor or its Manufacturers ("Confidential Information"). Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Contractor's Confidential Information shall include, but not be limited to, the Software, Documentation, all materials provided to Ordering Activity in the course of performing Maintenance Services hereunder, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, and the terms and pricing hereunder, regardless of whether such information is identified as confidential. Confidential Information includes all information received from third parties that Contractor is obligated to treat as confidential.

Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information. In addition, if Ordering Activity recommends to Contractor additional features, functionality, or performance or if Contractor retains generalized information hereunder that Contractor or its Manufacturer subsequently incorporates into its product or service offerings, then with respect to such recommendations and information, Ordering Activity hereby (a) grants

Contractor a worldwide, non-exclusive, royalty-free, perpetual right and license to use and incorporate such recommendations and such information into such offerings, and (b) acknowledges that all right and title to such offerings incorporating such recommendations and information shall be the sole and exclusive property of Contractor or its Manufacturer and all such recommendations and information shall be free from any confidentiality restrictions that might otherwise be imposed upon Contractor pursuant to this section.

Further, this section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority.

Ordering Activity shall not disclose the results of any performance tests of the Software to any third party without Contractor's prior written approval. Ordering Activity agrees to hold Confidential Information in confidence and to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in breach of these Terms and Conditions. Ordering Activity acknowledges and agrees that, due to the unique nature of Confidential Information, there can be no adequate remedy at law for breach of this section, and that such breach would cause irreparable harm to Contractor; therefore, Contractor shall be entitled to seek immediate injunctive relief, in addition to whatever remedies it might have at law or under these terms and conditions.

- (8) Verification. At Contractor's written request, but not more frequently than annually, Ordering Activity shall furnish Contractor with a document signed by Ordering Activity's authorized representative verifying that the Software is being used pursuant to the provisions of this contract. To the extent permitted by and subject to an Ordering Activity's security requirements (including, but not limited to, use of cleared personnel, badging and other requirements). Contractor reserves the right to audit Ordering Activity's use of the Software no more than once annually at Contractor's expense. Contractor shall schedule any audit at least thirty (30) days in advance. Any such audit shall be conducted during regular business hour at Ordering Activity's facilities and shall not unreasonably

interfere with Ordering Activity's business.

- (9) Intellectual Property Infringement. If a third party makes a claim against Ordering Activity that the Software directly infringes any patent, copyright, or trademark or misappropriates any trade secret ("IP Claim"); Contractor will (i) assist in defending Ordering Activity against the IP Claim at Contractor's cost and expense, and (ii) pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Ordering Activity by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Contractor arising out of such IP Claim; provided that: (i) Ordering Activity promptly notifies Contractor in writing no later than sixty (60) days after Ordering Activity's receipt of notification of a potential claim and (ii) Ordering Activity provides Contractor, at Contractor's request and expense, with the assistance, information and authority necessary to perform Contractor's obligations under this Section. Notwithstanding the foregoing, Contractor shall have no liability for any claim of infringement based on (a) the use of a superseded or altered release of the Software if the infringement would have been avoided by the use of a current unaltered release of the Software, (b) the modification of the Software, (c) the use of the Software other than in accordance with the Documentation or this contract, or (d) any materials or information provided to Contractor by Ordering Activity, for which Ordering Activity shall be solely responsible.

If the Software is held to infringe or are believed by Contractor to infringe, Contractor shall have the option, at its expense, to (a) replace or modify the Software to be non-infringing, or (b) obtain for Ordering Activity a license to continue using the Software. If it is not commercially reasonable to perform either of the foregoing options, then Contractor may terminate the Program license for the infringing Software and refund the license fees paid for the Software upon return of the Software by Ordering Activity. This section states Contractor's entire liability and Ordering Activity's exclusive remedy for any claim of infringement.

- (10) Delivery. All Software and Documentation provided by Contractor hereunder shall be deemed to be delivered by Contractor: 1) Upon physical delivery, or 2) Once the Software is made available to Ordering

Activity via electronic download by provision of a license key, link to a website, FTP site or similar site from which the Ordering Activity can electronically download or otherwise access the Software and Documentation.

10. SOFTWARE CONVERSIONS

Conversion from one version of the Software to another such as the result of a change in operating system, or from one computer system to another is not available under the scope of the contract.

Outside the scope of this contract, the Ordering Activity may contact the Manufacturer directly to discuss the permissibility, costs and operation of such conversion(s). Contractor agrees to reasonably assist Ordering Activity in this regard.

11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

For information concerning supported hardware or compatibility requirements the Ordering Activity is advised to contact the Contractor or the applicable Manufacturer.

12. RIGHT TO COPY PRICING

Right-to-copy license pricing is not available under the scope of this contract unless specifically specified in the pricelist. The Ordering Activity must contact the Manufacturer directly to discuss the applicability and associated costs of right-to-copy pricing.

TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF GENERAL-PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOLUTIONS SUBCATEGORY, CLOUD AND CLOUD-RELATED IT PROFESSIONAL SERVICES (SPECIAL ITEM NUMBER 518210C)

1. SCOPE

The prices, terms and conditions stated under Special Item Number (SIN) 518210C Cloud Computing Services apply exclusively to Cloud Computing Services within the scope of this Information Technology Schedule.

This SIN provides ordering activities with access to technical services that run-in cloud environments and meet the NIST Definition of Cloud Computing Essential Characteristics. Services relating to or impinging on cloud that do not meet all NIST essential characteristics should be listed in other SINs.

The scope of this SIN is limited to cloud capabilities provided entirely as a service. Hardware, software and other artifacts supporting the physical construction of a private or other cloud are out of scope for this SIN. Currently, an Ordering Activity can procure the hardware and software needed to build on premise cloud functionality, through combining different services on other Federal Supply Schedule SINs (e.g. 54151S).

Sub-categories in scope for this SIN are the three NIST Service Models: Software as a Service (SaaS), Platform as a Service (PaaS), and Infrastructure as a Service (IaaS). Offerors may optionally select a single sub-category that best fits a proposed cloud service offering. Only one sub-category may be selected per each proposed cloud service offering. Offerors may elect to submit multiple cloud service offerings, each with its own single sub-category. The selection of one of three sub-categories does not

prevent Offerors from competing for orders under the other two sub-categories.

See service model guidance for advice on sub-category selection.

Sub-category selection within this SIN is optional for any individual cloud service offering, and new cloud computing technologies that do not align with the aforementioned three sub-categories may be included without a sub-category selection so long as they comply with the essential characteristics of cloud computing as outlined by NIST.

See Table 1 for a representation of the scope and sub-categories.

Table 1: Cloud Computing Services SIN

SIN Description	Sub-Categories ¹
<ul style="list-style-type: none"> Commercially available cloud computing services Meets the National Institute for Standards and Technology (NIST) definition of Cloud Computing essential characteristics Open to all deployment models (private, public, community or hybrid), vendors specify deployment models 	<p>1. Software as a Service (SaaS): Consumer uses provider’s applications on cloud infrastructure. Does not manage/control platform or infrastructure. Limited application level configuration may be available.</p> <p>2. Platform as a Service (PaaS): Consumer deploys applications onto cloud platform service using provider-supplied tools. Has control over deployed applications and some limited platform configuration but does not manage the platform or infrastructure.</p> <p>3. Infrastructure as a Service (IaaS): Consumer provisions computing resources. Has control over OS, storage, platform, deployed applications and some limited infrastructure configuration, but does not manage the infrastructure.</p>

¹ Offerors may optionally select the single sub-category that best fits each cloud service offering, per Service Model Guidance, or select no sub-category if the offering does not fit an existing NIST service model.

2. DESCRIPTION OF CLOUD COMPUTING SERVICES AND PRICING

a. Service Description Requirements for Listing Contractors

The description requirements below are in addition to the overall Schedule 70 evaluation criteria described in SCP-FSS-001-N Instructions Applicable to New Offerors (Alternate I – MAR 2016) or SCP-FSS-001-S Instructions Applicable to Successful FSS Program Contractors, as applicable, SCP-FSS-004 and other relevant publications.

Refer to overall Federal Supply Schedule requirements for timelines related to description and other schedule updates, including but not limited to clauses 552.238-81 – section E and clause I-FSS-600.

Table 2 summarizes the additional Contractor-provided description requirements for services proposed under the Cloud Computing Services SIN. All mandatory description requirements must be complete, and adequate according to evaluation criteria.

In addition, there is one “Optional” reporting description which exists to provide convenient service selection by relevant criteria. Where provided, optional description requirements must be complete and adequate according to evaluation criteria:

- (1) The NIST Service Model provides sub-categories for the Cloud SIN and is strongly encouraged, but not required. The Service Model based sub-categories provide this SIN with a structure to assist ordering activities in locating and comparing services of interest. Contractors may optionally select the single service model most closely corresponding to the specific service offering.
- (2) If a sub-category is selected it will be evaluated with respect to the NIST Service Model definitions and guidelines in “Guidance for Contractors”.

Table 2: Cloud Service Description Requirements

#	Descriptions Requirement	Reporting Type	Instructions
1	Provide a brief written description of how the proposed cloud computing services satisfies each individual essential NIST Characteristic	Mandatory	The cloud service must be capable of satisfying each of the five NIST essential Characteristics as outlined in NIST Special Publication 800-145. See ‘GUIDANCE FOR CONTRACTORS: NIST Essential Characteristics’ below in this document for detailed overall direction, as well as guidance on inheriting essential characteristics.
2	Select NIST deployment models for the cloud computing service proposed.	Mandatory	Contractors must select at least one NIST deployment model as outlined in NIST Special Publication 800-145 describing how the proposed cloud computing service is deployed. Select multiple deployment models if the service is offered in more than one deployment model. See ‘GUIDANCE FOR CONTRACTORS: NIST Deployment Model’ below in this document for detailed direction on how to best categorize a service for the NIST deployment models.
3	Optionally select the most appropriate NIST service model that will be the designated sub-category or may select no sub-category.	Optional	Contractor may select a single NIST Service model to sub-categorize the service as outlined in NIST Special Publication 800-145. Sub-category selection is optional but recommended. See ‘GUIDANCE FOR CONTRACTORS: NIST Service Model’ below in this document for detailed direction on how to best categorize a service for the NIST IaaS, PaaS, and SaaS service models.

b. Pricing of Cloud Computing Services

All current pricing requirements for Schedule 70, including provision SCP-FSS-001-N (Section III Price Proposal), SCP-FSS-001-S, SCP-FSS-004 (Section III Price Proposal), and clause I-FSS-600 Contract Price Lists, apply. At the current time there is no provision for reducing or eliminating standard price list posting requirements to accommodate rapid cloud price fluctuations.

In addition to standard pricing requirements, all pricing models must have the core capability to meet the NIST Essential Cloud Characteristics, particularly with respect to on-demand self-service, while allowing alternate variations at the task order level at agency discretion, pursuant to the guidance on NIST Essential Characteristics.

3. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

a. Acceptance Testing

Any required Acceptance Test Plans and Procedures shall be negotiated by the Ordering Activity at task order level. The Contractor shall perform acceptance testing of the systems for Ordering Activity approval in accordance with the approved test procedures.

b. Training

If training is provided commercially the Contractor shall provide normal commercial installation, operation, maintenance, and engineering interface training on the system. Contractor is responsible for indicating if there are separate training charges.

c. Information Assurance/Security Requirements

The contractor shall meet information assurance/security requirements in accordance with the Ordering Activity requirements at the Task Order level.

d. Related Professional Services

The Contractor is responsible for working with the Ordering Activity to identify related professional services and any other services available on other SINs that may be associated with deploying a complete cloud solution. Any additional substantial and ongoing professional services related to the offering such as integration, migration, and other cloud professional services are out of scope for this SIN.

e. Performance of Cloud Computing Services

The Contractor shall respond to Ordering Activity requirements at the Task Order level with proposed capabilities to Ordering Activity performance specifications or indicate that only standard specifications are offered. In all cases the

Contractor shall clearly indicate standard service levels, performance and scale capabilities.

The Contractor shall provide appropriate cloud computing services on the date and to the extent and scope agreed to by the Contractor and the Ordering Activity.

f. Reporting

The Contractor shall respond to Ordering Activity requirements and specify general reporting capabilities available for the Ordering Activity to verify performance, cost and availability.

In accordance with commercial practices, the Contractor may furnish the Ordering Activity/user with a monthly summary Ordering Activity report.

4. RESPONSIBILITIES OF THE ORDERING ACTIVITY

The Ordering Activity is responsible for indicating the cloud computing services requirements unique to the Ordering Activity. Additional requirements should not contradict existing SIN or IT Schedule 70 Terms and Conditions. Ordering Activities should include (as applicable) Terms & Conditions to address Pricing, Security, Data Ownership, Geographic Restrictions, Privacy, SLAs, etc.

Cloud services typically operate under a shared responsibility model, with some responsibilities assigned to the Cloud Service Provider (CSP), some assigned to the Ordering Activity, and others shared between the two. The distribution of responsibilities will vary between providers and across service models. Ordering activities should engage with CSPs to fully understand and evaluate the shared responsibility model proposed. Federal Risk and Authorization Management Program (FedRAMP) documentation will be helpful regarding the security aspects of shared responsibilities, but operational aspects may require additional discussion with the provider.

a. Ordering Activity Information Assurance/Security Requirements Guidance

- (1) The Ordering Activity is responsible for ensuring to the maximum extent practicable that each requirement issued is in compliance with the Federal Information Security Management Act (FISMA) as applicable.
- (2) The Ordering Activity shall assign a required impact level for confidentiality, integrity and availability (CIA) prior to issuing the initial statement of work.¹

The Contractor must be capable of meeting at least the minimum-security requirements assigned against a low-impact information system in each CIA assessment area (per FIPS 200) and must detail the FISMA capabilities

of the system in each of CIA assessment area.

- (3) Agency level FISMA certification, accreditation, and evaluation activities are the responsibility of the Ordering Activity. The Ordering Activity reserves the right to independently evaluate, audit, and verify the FISMA compliance for any proposed or awarded Cloud Computing Services.
- (4) The Ordering Activity has final responsibility for assessing the FedRAMP status of the service, complying with and making a risk-based decision to grant an Authorization to Operate (ATO) for the cloud computing service, and continuous monitoring. A memorandum issued by the Office of Management and Budget (OMB) on Dec 8, 2011 outlines the responsibilities of Executive departments and agencies in the context of FedRAMP compliance.²
- (5) Ordering activities are responsible for determining any additional information assurance and security related requirements based on the nature of the application and relevant mandates.

b. Deployment Model

If a particular deployment model (Private, Public, Community, or Hybrid) is desired, Ordering Activities are responsible for identifying the desired model(s). Alternately, Ordering Activities could identify requirements and assess Contractor responses to determine the most appropriate deployment model(s).

c. Delivery Schedule

The Ordering Activity shall specify the delivery schedule as part of the initial requirement. The Delivery Schedule options are found in Information for Ordering Activities Applicable to All Special Item Numbers.

d. Interoperability

Ordering Activities are responsible for identifying interoperability requirements. Ordering Activities should clearly delineate requirements for API implementation and standards conformance.

e. Performance of Cloud Computing Services

The Ordering Activity should clearly indicate any custom minimum service levels, performance and scale requirements as part of the initial requirement.

¹ Per Federal Information Processing Standards Publication 199 & 200 (FIPS 199, "Standards for Security Categorization of Federal Information and Information Systems") (FIPS 200, "Minimum Security Requirements for Federal Information and Information Systems")

² MEMORANDUM FOR CHIEF INFORMATION OFFICERS: Security Authorization of Information Systems in Cloud Computing Environments. December 8, 2011

f. Reporting

The Ordering Activity should clearly indicate any cost, performance or availability reporting as part of the initial requirement.

Because of considerations arising from cloud shared responsibility models, ordering activities should engage with the Contractor to develop more cloud-specific understandings of the boundaries between data owned by the government and that owned by the cloud service provider, and the specific terms of data retrieval.

g. Privacy

The Ordering Activity should specify the privacy characteristics of their service and engage with the Contractor to determine if the cloud service is capable of meeting Ordering Activity requirements. For example, a requirement could be requiring assurance that the service is capable of safeguarding Personally Identifiable Information (PII), in accordance with NIST SP 800-1224³ and OMB memos M-06-16⁴ and M-07-16⁵. An Ordering Activity will determine what data elements constitute PII according to OMB Policy, NIST Guidance and Ordering Activity policy.

In all cases, the Ordering Activity should enter into an agreement with a clear and enforceable understanding of the boundaries between government and cloud service provider data, and the form, format and mode of delivery for each kind of data belonging to the government.

The Ordering Activity should expect that the Contractor shall transfer data to the government at the government's request at any time, and in all cases when the service or order is terminated for any reason, by means, in formats and within a scope clearly understood at the initiation of the service. Example cases that might require clarification include status and mode of delivery for:

- Configuration information created by the government and affecting the government's use of the cloud provider's service.
- Virtual machine configurations created by the government but operating on the cloud provider's service.
- Profile, configuration and other metadata used to configure SaaS application services or PaaS platform services.

The key is to determine in advance the ownership of classes of data and the means by which Government owned data can be returned to the Government.

h. Accessibility

The Ordering Activity should specify the accessibility characteristics of their service and engage with the Contractor to determine the cloud service is capable of meeting Ordering Activity requirements. For example, a requirement could require assurance that the service is capable of providing accessibility based on Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

i. Geographic Requirements

Ordering activities are responsible for specifying any geographic requirements and engaging with the Contractor to determine that the cloud services offered have the capabilities to meet geographic requirements for all anticipated task orders. Common geographic concerns could include whether service data, processes and related artifacts can be confined on request to the United States and its territories, or the continental United States (CONUS).

k. Service Location Distribution

The Ordering Activity should determine requirements for continuity of operations and performance and engage with the Contractor to ensure that cloud services have adequate service location distribution to meet anticipated requirements. Typical concerns include ensuring that:

- (1) Physical locations underlying the cloud are numerous enough to provide continuity of operations and geographically separate enough to avoid an anticipated single point of failure within the scope of anticipated emergency events.
- (2) Service endpoints for the cloud are able to meet anticipated performance

j. Data Ownership and Retrieval and Intellectual Property

Intellectual property rights are not typically transferred in a cloud model. In general, CSPs retain ownership of the Intellectual Property (IP) underlying their services and the customer retains ownership of its intellectual property. The CSP gives the customer a license to use the cloud services for the duration of the contract without transferring rights. The government retains ownership of the IP and data they bring to the customized use of the service as spelled out in the FAR and related materials.

General considerations of data ownership and retrieval are covered under the terms of Schedule 70 and the FAR and other laws, ordinances, and regulations (Federal, State, City, or otherwise).

³ NIST SP 800-122, "Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)"

⁴ OMB memo M-06-16: Protection of Sensitive Agency Information Hyperlink: <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2006/m06-16.pdf>

⁵ OMB Memo M-07-16: Safeguarding Against and Responding to the Breach of Personally Identifiable Information. Hyperlink:

<http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>

requirements in terms of geographic proximity to service requestors.

Note that cloud providers may address concerns in the form of minimum distance between service locations, general regions where service locations are available, etc.

1. Related Professional Services

Ordering activities should engage with Contractors to discuss the availability of limited assistance with initial setup, training and access to the services that may be available through this SIN.

Any additional substantial and ongoing professional services related to the offering such as integration, migration, and other cloud professional services are out of scope for this SIN. Ordering activities should consult the appropriate GSA professional services schedule.

TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF GENERAL-PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOLUTIONS SUBCATEGORY, CONTINUOUS DIAGNOSTICS AND MITIGATION (CDM) TOOLS (SPECIAL ITEM NUMBER 541519CDM)

1. GLOSSARY OF DEFINITIONS

- a. **“Documentation”** shall mean Manufacturer’s then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for the Equipment and/or Software whether on-line or in hard copy.
- b. **“Equipment”** shall mean the computer hardware identified on Attachment B to this schedule pricelist.
- c. **“Equipment Maintenance Services”** shall mean the Equipment maintenance services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer’s then-current Maintenance Services Policy.
- d. **“Software Maintenance Services”** shall mean the Software maintenance and support services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer’s then current Maintenance Services Policy.
- e. **“Maintenance Services Policy”** shall mean the commercial terms describing a Manufacturer’s standard Equipment or Software maintenance and support offerings, policies and procedures, a copy of which is located on Attachment A to this schedule pricelist.
- f. **“Services”** shall mean services associated with products, other than Software Maintenance Services, Equipment Maintenance Services, and training.

- g. **“Software”** shall mean (i) the version of the computer program identified on Attachment B and (ii) updates to such programs.

2. SCOPE

- a. Special Item Number (SIN) 541519CDM Continuous Diagnostics and Mitigation (CDM) Tools is a solutions SIN. This SIN includes both Equipment and Software products and any associated services for the products to include installation, maintenance, and training.
- b. In addition to the terms and conditions of this CDM SIN: the terms and conditions of SIN 33411 shall apply to the purchase of Equipment provided under the CDM SIN; the terms and conditions of SIN 811212 shall apply to Equipment Maintenance Services provided under the CDM SIN; the terms and conditions of SINs 511210 and 54151 shall apply to Software and Software Maintenance Services provided under the CDM SIN; and the terms and conditions of SIN 611420 shall apply to the purchase of training courses provided under the CDM SIN.
- c. 541519CDM - Continuous Diagnostics and Mitigation Tools - SUBJECT TO COOPERATIVE PURCHASING - Includes Continuous Diagnostics and Mitigation (CDM) Approved Products List (APL) Equipment and Software products/tools and associated Services and Maintenance Services. The full complement of CDM subcategories includes tools, associated Maintenance Services, and other related activities such as training.
- d. The 5 subcategories CDM capabilities specified under this SIN are:
 - (1) Manage “What is on the network?”: Identifies the existence of hardware, software, configuration characteristics and known security vulnerabilities.
 - (2) Manage “Who is on the network?”: Identifies and determines the users or systems with access authorization, authenticated permissions and granted resource rights.
 - (3) Manage “How is the network protected?”: Determines the user/system actions and behavior at the network boundaries and within the computing infrastructure.
 - (4) Manage “What is happening on the network?”: Prepares for events/incidents, gathers data from appropriate sources; and identifies incidents through analysis of data.
 - (5) Emerging Tools and Technology: Includes CDM cybersecurity tools and technology not in any other subcategory.

5 subcategories represent the scope of the CDM program and reflect widely exercised functional

and operational scenarios that CDM is interested in identifying, monitoring and addressing from a security perspective.

To provide a holistic security approach, these capabilities adhere to the National Institute of Science and Technology (NIST) Cybersecurity Framework security functions to identify, protect, detect, respond and recover. CDM also supports and can be used in the NIST Risk Management Framework (RMF) to achieve ongoing assessment and authorization.

As shown in Table 1, the 5 CDM Tools SIN subcategories cover the previous CDM BPA 15 CDM Tool Functional Areas (TFAs) and allow for future innovation.

Table 1: SIN to TFA mapping

5 SIN Subcategories	15 CDM BPA TFAs
1. Manage “What is on the network?”	<ul style="list-style-type: none"> ● TFA 1 – Hardware Asset Management ● TFA 2 – Software Asset Management ● TFA 3 – Configuration Settings Management ● TFA 4 – Vulnerability Management
2. Manage “Who is on the network?”	<ul style="list-style-type: none"> ● TFA 6 – Manage Trust in People Granted Access ● TFA 7 – Manage Security-Related Behavior ● TFA 8 – Manage Credential and Authentication ● TFA 9 – Manage Account/Access/Manage Privileges
3. Manage “How is the boundary protected?” for BOUND	<ul style="list-style-type: none"> ● TFA 5 – Manage Network Access Controls
4. Manage “What is happening on the network?” for MNGEVT	<ul style="list-style-type: none"> ● TFA 10 – Prepare for Contingencies and Incidents ● TFA 11 – Respond to Contingencies and Incidents
4. Manage “What is happening on the network?” for DBS	<ul style="list-style-type: none"> ● TFA 12 – Design and Build in Requirements Policy and Planning ● TFA 13 – Design and Build in Quality
4. Manage “What is happening on the network?” for OMI	<ul style="list-style-type: none"> ● TFA 14 – Manage Audit Information ● TFA 15 – Manage Operation Security
5. Emerging Tools and Technologies	Future innovations

(1) Manage “What is on the network?”

Focus: The primary focus of Manage Assets is to identify “What is on the network?”; that is, to identify the existence of hardware, software, configuration characteristics and known security vulnerabilities.

Manage hardware and software baseline system inventory is based on Phase 1 Hardware Asset Management (HWAM) and Software Asset Management (SWAM) requirements that requires the discovery and identification of devices to define a baseline of inventory hardware and software assets to establish the Agency’s span of control.

Hardware and software configurations are based on Phase 1 Configuration Settings Management (CSM) requirements to ensure

that hardware and software (specifically the operating system and installed applications) assets are securely configured and hardened.

Manage vulnerabilities is based on Phase 1 Vulnerability Management (VUL) requirements to identify and manage vulnerabilities in software installed on network devices to minimize exploitation of known software weaknesses.

These CDM capabilities cover verification and validation for the existence of hardware infrastructure devices; the accurate identification of approved software components; verification and validation that hardware devices have the correct security configuration settings, and system platform is hardened to reduce the platform attack surface; and the identification and management of risks presented by known software weaknesses that are subject to exploitation.

These CDM capabilities support the Cybersecurity Framework functions of: identify, protect and detect.

(2) Manage “Who is on the network?”

Focus: The primary focus of Manage People is to determine “Who is on the network?”; that is, identify and determine the users or systems with authorized access.

Manage People is based on Phase 2 PRIV, CRED, TRUST and BEHAVE requirements that require the management of users/accounts as an asset to assure the appropriate individual has the right access to the right resource.

This CDM capability covers the verification and validation of allowed user privileges, issuance and management of user owned credentials, appropriate user security behavior training, trustworthiness, authenticated permissions, and management of resource access rights granted to users.

These CDM capabilities support the Cybersecurity Framework functions of: identify, protect and detect.

(3) Manage “How is the boundary protected?”

Focus: The primary focus of Manage Boundary Protection is to determine “How is the boundary protected?”; that is, to determine the user/system actions and behavior at the physical/logical network boundaries and within the computing infrastructure.

“How is the boundary protected?” is based on Phase 3 BOUND requirements to defend physical and logical network boundaries and identify abnormal behavior (of networks and users) that may identify that an incident has occurred.

This CDM capability covers verification and validation of logical and physical network interfaces to reduce intrusive, malicious, and disruptive attacks; cryptographic mechanisms ensure confidentiality and integrity of data on the network; and methods to identify security incidents.

These CDM capabilities support the Cybersecurity Framework functions of: identify, protect and detect.

(4) Manage “What is happening on the network?”

Due to the complexity to manage “What is happening on the network?”; this area is covered by three focus areas:

- a. Manage Events (MNGEVT)
- b. Operate, Monitor and Improve (OMI)
- c. Design and Build in Security (DBS)

Manage Events

Focus: Manage Events is responsible for preparing for events/incidents, gathering appropriate audit data from appropriate sources, identifying incidents through analysis of data, and performing ongoing assessment.

Manage Events is based on the Phase 3 MNGEVT requirements to prepare for incidents/events (through processes, policies, and procedures), gather appropriate audit/log data from appropriate sources, and identify events/incidents (network and user abnormal behavior) through the analysis of audit/log data.

Manage Events supports the runtime collection of attributes (actual state) and continuous monitoring of the policies related to attributes for Ongoing Assessment (actual state vs. desired state) to enhance current or apply new security and privacy controls and countermeasures. The results of the Ongoing Assessment will be used as inputs to OMI Ongoing Authorization risk assessment process to determine if the level of risk remains acceptable for a given information system to support continued authorization and operation.

Ongoing Assessment is the continuous process of comparing security related attributes between the Actual State and the Desired State. This comparison is performed by the CDM Policy Decision Point (PDP). The discrepancy between Actual State and Desired state impacts the security posture of the implementation of NIST SP 800-53 controls and countermeasures. The results of the Ongoing Assessment are used to evaluate the changes in risk posture associated with the discrepancy. Ideally, the Ongoing Assessment process is fully automated with the Desired State being encoded in the CDM PDP and the Actual State being measured using CDM sensors.

This CDM capability covers verification and validation of processes, policies, and procedures supporting cybersecurity preparation, audit and log data collection, security analysis of audit/log data, incident reporting to provide forensic evidence of malicious or suspicious behavior, and ongoing assessment.

To provide a holistic security approach, this capability adheres to the Cybersecurity Framework security functions to identify, protect, detect, respond and recover CDM also supports and can be used in the NIST Risk Management Framework (RMF) to achieve ongoing assessment and authorization.

Operate, Monitor and Improve

Focus: Operate, Monitor and Improve is responsible for audit data aggregation, correlation, and analysis, incident prioritization and response, and post-incident activities (e.g., information sharing).

Operate, Monitor and Improve is based on Phase 3 OMI requirements for audit data aggregation, correlation and analysis, incident prioritization and response, and post incident activities (e.g., information sharing).

Ongoing Authorization is the continuous evaluation of the change in risk level related to changes in security policies concerning static object attributes (i.e., actual state and desired state) for threat behaviors that impact the security posture. This impact to security is measured by capturing changes in existing safeguards (e.g., NIST SP 800-53 controls and countermeasures) and identification of new component weaknesses and vulnerabilities.

This CDM capability covers verification and validation of processes/procedures to aggregate, correlate, and analyze audit/log data, to prioritize incidents and associated response actions, to quickly mitigate the impact of an incidents, to take appropriate remediation actions to eliminate the impact (restore normal

operations) of the same incident, to support information sharing and collaboration (both internal and external) to minimize or prevent impact of future incidents, and ongoing authorization.

To provide a holistic security approach, this capability adheres to the Cybersecurity Framework security functions to identify, protect, detect, respond and recover. CDM also supports and can be used in the NIST Risk Management Framework (RMF) to achieve ongoing assessment and authorization.

Design and Build in Security

Focus: Design and Build in Security is responsible for preventing exploitable vulnerabilities from being effective in the software/system while in development or deployment. The Design and Build in Security process is focused on identifying, controlling and removing weaknesses/vulnerabilities from the software/system. Exploitable vulnerabilities may include software/system design, coding errors, software/system designs that leave a large and complex attack surface that cannot be defended, and weaknesses that can only be exploited during system/software execution.

Design and Build in Security is based on the Phase 3 DBS requirements that extend the focus of Phase 1 Software Asset Management and Vulnerability Management to achieve a level of confidence that software is free from vulnerabilities, either intentionally designed into the software or accidentally inserted at any time during its life cycle and that the software functions in the intended manner.

The U.S. government and critical infrastructure sectors are increasingly dependent on commercial products and systems, which present significant benefits including low cost, interoperability, rapid innovation, a variety of product features, and choice among competing vendors. However, with some of these benefits there is an increase in the risk of a threat event which can directly or indirectly affect the supply chain, which often go undetected, and may result in risks to the acquirer. The purpose of Supply Chain Risk Management (SCRM) is to enable the provisioning of the least vulnerable solutions to agencies, through a robust assessment of supply chain risks, communication about those risks to the agencies, and appropriate response and monitoring of those risks throughout the entire system lifespan.

This CDM capability covers verification and validation of processes/procedures to prevent and detect software vulnerabilities, to determine the provenance of system components, and to measure software assurance for built and acquired software components.

To provide a holistic security approach, this capability adheres to the Cybersecurity Framework security functions to identify, protect, detect, respond and recover to security infractions due to malicious behavior and unintentional user actions during normal operations.

(5) Emerging Tools and Technologies

Focus: Innovative capabilities to cybersecurity not currently encompassed by the other capability areas.

3. STANDARDS COMPLIANCE

Contractors providing offerings through the CDM Tools SIN must provide compliant products and services in accordance with the laws and standards cited herein. Additional laws and standards may be applicable to specific orders and Blanket Purchase Agreements.

4. ORDER

- a. Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order.
- b. All delivery or task orders are subject to the terms and conditions of the contract. In the event of conflict between an order and the contract, the contract will take precedence.

5. ENTERPRISE USER LICENSE AGREEMENTS REQUIREMENTS (EULA)/COMMERCIAL SUPPLIER AGREEMENTS (CSAs)

The Contractor shall provide all Commercial Supplier Agreements (CSAs) to include End User License Agreements (EULAs) or Terms of Service (ToS) in an editable Microsoft Office (Word) format.

6. TECHNICAL SERVICES

A hotline technical support number for the purpose of providing user assistance and guidance in the implementation of any software provided as part of Equipment Maintenance Services or Software Maintenance Services.

7. PERFORMANCE OF SERVICES ASSOCIATED WITH PRODUCTS

- a. The Contractor shall commence performance of Services on the date agreed to by the Contractor and the Ordering Activity.
- b. The Contractor agrees to render Services during normal working hours, unless otherwise agreed to by the Contractor and the Ordering Activity.
- c. The Ordering Activity should include the criteria for satisfactory completion of each order. Services shall be completed in a good and workmanlike manner.
- d. Any Contractor travel required in the performance of the CDM Tools SIN for a specific requirement at the order level must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts. All travel will be agreed upon with the Ordering Activity prior to the Contractor's travel.

8. RESPONSIBILITIES OF THE CONTRACTOR

- a. The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of an order is custom-developed software, FAR 52.227-14 Rights in Data may apply.

- b. The Contractor shall comply with contract clause (FAR 52.204-21) for the basic safeguarding of contractor information systems that process, store, or transmit Federal contract information (as defined in the contract clause) received by the Contractor in performance of the contract.

9. INVOICES FOR SERVICES

The Contractor, upon completion of the Services ordered, shall submit invoices. FAR 52.212-4 in the contract contains terms for commercial items. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring Services performed during the preceding month

10. DESCRIPTION OF PRODUCTS AND SERVICES AND PRICING

The Contractor shall provide a description of offerings under CDM Tools SIN in the same manner as the Contractor sells to its commercial and Ordering Activity customers. The Contractor shall provide pricing and a description with part numbers for products and the associated services that have been approved as part of the Product Qualification Requirements of the SIN. Any applicable delivery and licensing terms should be included.

11. TOTAL SOLUTION

Labor categories/qualifications are not included in this SIN; however, ordering activities may acquire a total solution to meet a specific requirement for an order or BPA involving multiple Federal Supply Schedule SINs. Contractors report the sales to GSA under the SINs the items are sold. For example, an agency may post an RFQ requesting a total solution anticipating offerings from multiple SINs, such as IT Professional Services 54151S or Highly Adaptive Cybersecurity Services (HACS) 54151HACS along with CDM Tools 541519CDM for products and product associated services.

TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF GENERAL-PURPOSE COMMERCIAL INFORMATION TECHNOLOGY TRAINING SUBCATEGORY, INFORMATION TECHNOLOGY TRAINING (SPECIAL ITEM NUMBER 611420)

1. GLOSSARY OF DEFINITIONS

- a. **“Training Materials”** shall mean the, manuals, handbooks, texts, handouts, etc. normally provided with course offerings.
- b. **“Training Catalog”** shall mean the document setting out a description of the training services and courses offered along with the related policies and procedures in regard to such training.

2. SCOPE

- a. The Contractor through the Manufacturer shall provide training courses normally available to commercial customers, which will permit Ordering Activity users to make full, efficient use of general-purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.
- b. The Contractor shall provide training at the Contractor's or Manufacturer's facility and/or at

the Ordering Activity's location, as agreed to by the Contractor and the Ordering Activity.

3. ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course.

4. TIME OF DELIVERY

The Contractor or its Manufacturer shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the Ordering Activity.

5. CANCELLATION AND RESCHEDULING

- a. Terms and conditions governing a Manufacturer's cancellation and rescheduling policies are as set forth in the applicable Manufacturer's Training Catalog.
- b. The Ordering Activity reserves the right to substitute one student for another up to the first day of class.
- c. In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the Ordering Activity, Contractor must notify the Ordering Activity at least seventy-two (72) hours before the scheduled training date.

6. FOLLOW-UP SUPPORT

Follow-up support to training courses is not available under the scope of this schedule contract unless expressly set forth in an applicable Manufacturer's Training Catalog and, in that case, follow-up support shall be provided as stated therein.

7. PRICE FOR TRAINING

The price that the Ordering Activity will be charged will be the Ordering Activity training price in effect at the time of order placement, or the Ordering Activity price in effect at the time the training course is conducted, whichever is less.

8. INVOICES AND PAYMENT

Invoices for training shall be submitted by the Contractor after Ordering Activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

9. FORMAT AND CONTENT OF TRAINING

- a. The Contractor or its Manufacturer shall provide the Training Materials normally provided with course offerings. Unless stated otherwise in an applicable Manufacturer's Training Catalog, such documentation will become the property of the student upon completion of the training class, provided, however, Contractor and or its Manufacturer shall retain all right, title and interest to the intellectual property rights contained therein (e.g., copyrights) and provided further, however, that such Training Materials

shall be considered the Confidential Information of Manufacturer and subject to the non-disclosure provisions set forth above in the terms applicable to SINS 511210 and 54151.

- b. For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.
- c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course.
- d. The Training Catalog shall provide most of the following information for each training course offered:
 - (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
 - (2) The length of the course;
 - (3) Mandatory and desirable prerequisites for student enrollment;
 - (4) The minimum and maximum number of students per class;
 - (5) The locations where the course is offered;
 - (6) Class schedules; and
 - (7) Price (per student, per class (if applicable)).
- e. For those courses conducted at the Ordering Activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.
- f. For Online Training Courses, a copy of all training material must be available for electronic download by the students.

10. "NO CHARGE" TRAINING

"No charge" training is not available under the scope of this schedule contract.

TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF GENERAL-PURPOSE COMMERCIAL INFORMATION TECHNOLOGY ELECTRONIC COMMERCE SUBCATEGORY, ELECTRONIC COMMERCE AND SUBSCRIPTION SERVICES (SPECIAL ITEM NUMBER 54151ECOM)

1. GLOSSARY OF DEFINITIONS

- a. "Service Provider" shall mean a provider of the Electronic Commerce Services

offered to Contractor through a letter of supply to be sold to Ordering Activities under this contract.

- b. “Statement of Work” shall mean the mutually agreed upon document between Contractor and Ordering Activity setting forth the description of services to be performed including milestones, any specifications and evaluation criteria.

2. SCOPE

- a. The prices, terms and conditions stated under Special Item Number 54151ECOM Electronic Commerce (EC) Services apply exclusively to EC Services within the scope of this Information Technology Schedule.
- b. The Contractor, through Service Provider, shall provide services at a location, as agreed to by the Contractor and the Ordering Activity.

3. PERFORMANCE INCENTIVES I-FSS-60 Performance Incentives (April 2000)

- a. Performance incentives may be agreed upon between the Contractor and the Ordering Activity on individual fixed price orders or Blanket Purchase Agreements under this contract.
- b. The Ordering Activity must establish a maximum performance incentive price for the services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, Ordering Activities shall consider establishing incentives where performance is critical to the Ordering Activity’s mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

4. ORDER

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made, and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.

- b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

5. PERFORMANCE OF SERVICES

- a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the Ordering Activity.
- b. The Ordering Activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.
- c. Any Contractor travel required in the performance of EC Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

6. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)

- a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:
 - i. Cancel the stop-work order; or
 - ii. Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-
- c. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

- d. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- e. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

7. INSPECTION OF SERVICES

The Inspection of Services—Fixed Price (AUG 1996) (Deviation – May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. The Inspection—Time and Materials and Labor-Hour (MAY 2001) (Deviation – May 2003) clause at FAR 52.246-6 applies to time and materials and labor-hour orders placed under this contract.

8. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product (i.e., deliverable) of a Statement of Work is custom developed software, then FAR 52.227-14 (Deviation – May 2003) Rights in Data – General, may apply.

9. RESPONSIBILITIES OF THE ORDERING ACTIVITY

Subject to security regulations, the Ordering Activity shall permit Contractor access to all facilities necessary to perform the requisite EC Services.

10. INDEPENDENT CONTRACTOR

All EC Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the Ordering Activity.

11. ORGANIZATIONAL CONFLICTS OF INTEREST

- a. Definitions.
 - An “Organizational conflict of interest” exists when the nature of the work to be performed under a proposed Ordering Activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor’s or its affiliates’ objectivity in performing contract work.
- b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the Ordering Activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational

conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

12. INVOICES

The Contractor, upon completion of the work ordered, shall submit invoices for EC services. Progress payments may be authorized by the Ordering Activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

13. PAYMENTS

- a. For firm-fixed price orders the Ordering Activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time and materials orders, the Payments under Time and Materials and Labor Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to time and materials orders placed under this contract. For labor hour orders, the Payment under Time and Materials and Labor Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to labor hour orders placed under this contract. 52.216-31 (Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:
 - b. The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.
 - c. The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—
 - i. The offeror;
 - ii. Subcontractors; and/or
 - iii. Divisions, subsidiaries, or affiliates of the offeror under a common control.

14. INCIDENTAL SUPPORT COSTS

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the Ordering Activity in accordance with the guidelines set forth in the FAR.

15. APPROVAL OF SUBCONTRACTS

The Ordering Activity understands that Contractor, as an authorized reseller, will ultimately subcontract or furnish any of the work called for in a task order or Statement of Work through an applicable Service Provider.

16. DESCRIPTION OF ELECTRONIC COMMERCE (EC) SERVICES AND PRICING

- a. A description of each type of EC Service offered under Special Item Numbers 54151ECOM E-Commerce is set forth in Attachment A. Services and rates should be presented in the same manner as the Contractor sells to its commercial customers and other Ordering Activity customers.
- b. Pricing for all EC Services shall be in accordance with the Contractor's customary commercial practices: e.g., hourly rates, monthly rates, term rates, unit prices and/or fixed prices.

TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF GENERAL-PURPOSE COMMERCIAL INFORMATION TECHNOLOGY TELECOMMUNICATIONS SUBCATEGORY, WIRELESS MOBILITY SOLUTIONS (SPECIAL ITEM NUMBER 517312)

1. GLOSSARY OF DEFINITIONS

- a. "Service Provider" shall mean a provider of the Wireless Services offered to Contractor through a letter of supply to be sold to Ordering Activities under this contract.

2. ACCEPTANCE TESTING

The Contractor shall provide acceptance test plans and procedures for ordering activity approval. The Contractor shall perform acceptance testing of the systems for ordering activity approval in accordance with the approved test procedures.

3. EQUIPMENT

The Contractor shall make available cellular voice and data devices. The cellular devices offered shall be compatible with the cellular access standards employed within the geographical scope of contract.

The Contractor shall provide programming of any cellular telephone device, including Contractor-provided and ordering activity-furnished devices, that conforms to the cellular service furnished by the Contractor.

4. WARRANTY

The Contractor shall provide a warranty covering each Contractor-provided device. The minimum duration of the warranty shall be the duration of the manufacturer's commercial warranty.

The warranty shall commence upon the later of the following:

- a. Activation of the user's service
- b. Installation/delivery of the equipment

The Contractor, by repair or replacement of the defective item, shall use reasonable commercial efforts to complete all warranty services promptly upon notification of the defect. Warranty service shall be deemed complete when the user has possession of the repaired or replaced item. If the Contractor renders warranty service by replacement, the user shall return the defective item(s) to the Contractor as soon as possible but not later than ten (10) working days after notification.

5. MANAGEMENT AND OPERATIONS PRICING

The Contractor shall provide management and operations pricing on a uniform basis. All management and operations requirements for which pricing elements are not specified shall be provided as part of the basic service.

6. TRAINING

The Contractor shall provide normal commercial installation, operation, maintenance, and engineering interface training on the system at the prices specified in Attachment B.

7. MONTHLY REPORTS

In accordance with commercial practices, the Contractor may furnish the Ordering Activity/user with a monthly summary Ordering Activity report.

8. WIRELESS SERVICE PLAN

The wireless service plans offered by Contractor hereunder are listed by applicable Service Provider in Attachment A.

USA COMMITMENT TO PROMOTE SMALL BUSINESS PARTICIPATION PROCUREMENT PROGRAMS

PREAMBLE

(Name of Company) provides commercial products and services to ordering activities. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

COMMITMENT

To actively seek and partner with small businesses.

To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.

To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.

To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.

To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.

To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.

To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in ordering activity contracts.

Here is a general outline on how it works:

- The customer identifies their requirements.
- Federal Supply Schedule Contractors may individually meet the customer's needs, or - Federal Supply Schedule Contractors may individually submit a Schedules "Team Solution" to meet the customer's requirement.
- Customers make a best value selection.

ATTACHMENT A - CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

Next Page

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

INSTRUCTIONS: Select the Manufacturer whose supplemental pricelist information and terms you want to view.

Manufacturer Name	
Anakam, Inc.	Micro Focus
BeyondTrust Software, Inc.	MSC.Software Corporation
Bivio Networks, Inc.	Napatech, Inc.
BT Federal	Nehemiah Security
Cambium Networks	Oracle America, Inc.
Carbon Black (FKA Bit9, Inc.)	Oversight Systems, Inc.
Citrix Online, LLC (GetGo, Inc.)	The Paciello Group
Convergys Customer Management Group, Inc	Parasoft Corporation
Dataguise, Inc.	Pegasystems, Inc.
Decision Lens, Inc.	Pitney Bowes Software, Inc.
DS Government Solutions Corp.	Planview, Inc.
Dynatrace, LLC	Pragma Systems, Inc.
Egenera, Inc.	PTC, Inc.
Entco Government Software, LLC.	QlikTech
FireMon, LLC	Qualys, Inc.
Flexera Software, Inc.	RedSeal Systems, Inc.
ForeScout Technologies, Inc.	RES Software, Inc.
Freedom Scientific	SailPoint Technologies, Inc.
Gigamon	SecureLogix Corporation
Hewlett-Packard Company	Serena Software, Inc.
IBM	Silver Peak Systems, Inc.
Infor, Inc.	Thunderhead, Inc.
Information Builders, Inc.	Upland Software
Kaseva	Verint Americas, Inc.
Klas Telecom, Inc.	Worksoft
Kronos Incorporated	ZyLab North America, LLC
MarkLogic Corporation	

Anakam, Inc.
11710 Plaza America Drive
Suite 500
Reston, VA 20193

immixTechnology Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

1. **Scope.** This Rider and the attached **Anakam, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling immixTechnology ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under immixTechnology's GSA MAS IT70 contract number GS-35F-0265X (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and immixTechnology agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that ImmixTechnology as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** immixTechnology agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
 - v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

ANAKAM, INC.

ANAKAM LICENSE, WARRANTY AND SUPPORT TERMS

Section 1 - SOFTWARE LICENSE AND SERVICES AGREEMENT

1. DEFINITIONS

- **"Affiliate(s)"** shall mean, with respect to the Ordering Activity: (1) all business units and divisions of Ordering Activity, and (2) any entity controlled by, controlling, or under common control with Ordering Activity. Such entity shall be deemed to be an "Affiliate" only so long as such control exists. Upon request, Ordering Activity agrees to confirm the Affiliate status of a particular entity.
- **"Anakam Materials"** shall mean any materials provided to Ordering Activity by Anakam in the course of performing Services other than Maintenance Services.
- **"Ancillary Program(s)"** shall mean the third party materials delivered with the Programs as specified in one or more Order Forms or the Documentation.
- **"Commencement Date"** shall mean the date on which the Program(s) specified in an Order Form is first delivered to

Ordering Activity.

- **"Documentation"** shall mean Anakam's then current on-line help, guides, and manuals published by Anakam and made generally available by Anakam for the Programs. Documentation shall include any updated Documentation that Anakam provides with Updates.
 - **"Maintenance Services"** shall mean the services provided by Anakam pursuant to its then current Maintenance Services Policy.
- **"Order Form(s)"** shall mean a document by which Ordering Activity orders Program licenses and related Services and which is executed by the parties. Each Order Form shall incorporate this Agreement by reference.
- **"Program(s)"** shall mean (i) the version of the Anakam software identified as Program(s) specified in an Order Form, and (ii) Updates to such Programs. Programs shall not include Ancillary Programs.
- **"Services"** shall mean all services provided by Anakam under this Agreement, including Maintenance Services, Training Services, the Programs, Ancillary Programs, Documentation and Anakam Materials.
- **"Supported Platform"** shall mean the hardware and software platforms (e.g., database server systems, application server systems, and client systems) that operate with the Programs as expressly set forth in the Documentation.
- **"Update(s)"** shall mean (a) subsequent releases of the Programs that Anakam makes generally available to its Ordering Activities, and that (i) add new features, functionality, and/or improved performance, (ii) operate on new or other databases, operating systems, or client or server platforms, or (iii) add new foreign language capabilities; (b) bug or error fixes, patches,



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
07/30/2020

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 Aon Risk Services Northeast, Inc. New York NY Office One Liberty Plaza 165 Broadway, Suite 3201 New York NY 10006 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105		
	E-MAIL ADDRESS:		
INSURED Arrow Electronics, Inc. and Subsidiaries immixGroup, Inc.; immixTechnology Inc.; EC America 9201 East Dry Creek Road Centennial CO 80112 USA	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: ACE Fire Underwriters Insurance Co.		20702
	INSURER B: Indemnity Insurance Co of North America		43575
	INSURER C: ACE American Insurance Company		22667
	INSURER D: Federal Insurance Company		20281
	INSURER E: Allianz Global Risks US Insurance Co.		35300
INSURER F:			

COVERAGES **CERTIFICATE NUMBER:** 570083375031 **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. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			XSLG71451616 SIR applies per policy terms & conditions	06/15/2020	06/15/2021	EACH OCCURRENCE	\$2,000,000
		DAMAGE TO RENTED PREMISES (Ea occurrence)	\$2,000,000					
		PERSONAL & ADV INJURY	\$1,000,000					
		GENERAL AGGREGATE	\$4,000,000					
							PRODUCTS - COMP/OP AGG	\$4,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			CAL H25306545	06/15/2020	06/15/2021	COMBINED SINGLE LIMIT (Ea accident)	\$2,000,000
		BODILY INJURY (Per person)						
		BODILY INJURY (Per accident)						
		PROPERTY DAMAGE (Per accident)						
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION			79656842	06/15/2020	06/15/2021	EACH OCCURRENCE	\$10,000,000
		AGGREGATE	\$10,000,000					
B A B C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N <input type="checkbox"/> Y	N/A	WLR C66921980 C66926709 C66922029 C66921943	01/01/2020 01/01/2020 01/01/2020 01/01/2020	01/01/2021 01/01/2021 01/01/2021 01/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE-EA EMPLOYEE	\$1,000,000
							E.L. DISEASE-POLICY LIMIT	\$1,000,000

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

CERTIFICATE HOLDER Arrow Electronics, Inc. and Subsidiaries ; Immix Technology Inc.; EC America 9201 E. Dry Creek Road Centennial CO 80112 USA	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

Holder Identifier :

570083375031

Certificate No :



Item# _____
Munis Contract# _____

**City of Santa Fe Contract
Between IMMIX Technology and the City of Santa Fe**

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and IMMIXTECHNOLOGY, INC. herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

- 1. **Definitions**
 - A. "Under the terms of the Agreement, Contractor has agreed to provide Kronos Time and Attendance software and services.
 - B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.
 - C. "You" and "your" refers to (Immix Technology). "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

- 2. **Scope of Services**
 - A. Kronos Software as a Service (SaaS) and Software Subscription Services 7/1/2020 – 6/30/2023 as described in Exhibit "I" attached hereto and incorporated herein. The relevant portions of GSA Contract #GS-35F-0265X, Terms and Conditions, and State Price Agreement are also attached hereto.

- 3. **Compensation**

The City shall pay to the Contractor based upon fixed prices for each Deliverable item as listed here.

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
01 Subscription Services 7/1/2020 – 6/30/2023		\$383,516.62

The total compensation under this Agreement shall not exceed three hundred eighty three thousand five hundred sixteen dollars and fifty two cents (\$383,516.52) including applicable gross receipts taxes as described in quote number (QUO-1109691-G4M3P3) attached hereto and incorporated herein.

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 on 06/30/2023 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**

Aside from Kronos software and subscription services, the Contractor shall not subcontract any other 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, § 38-3-1 (G). 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**

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) the terms and conditions of GSA Contract number GS-35F-0265X; (2) the NM state price agreement; (3) this Agreement; (4) the Quote attached to this agreement.

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

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

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

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

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 or 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:

City of Santa Fe/IT Department
P.O. Box 909
Santa Fe, NM 87504-0909

To the Contractor:

IMMIX Technology, Inc.
8444 Westpark Drive, Ste. 200
McLean, VA 22102

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:

IMMIX Technology, Inc.
8444 Westpark Drive, Ste. 200
McLean, VA 22102


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. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

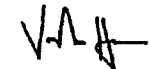
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:


ALAN WEBBER, MAYOR

DATE: July 1, 2020

CONTRACTOR:
IMMIXTECHNOLOGY, INC.

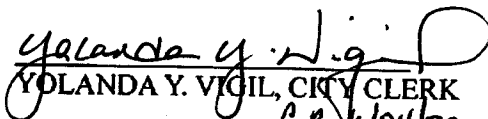
Vaughn Harman 
NAME

Sr. Director
TITLE

DATE: June 4, 2020
CRS# 03140957001

Registration # 20-227362

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK
BIB 6/24/20

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jun 5, 2020 12:31 PM)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:



MARY MCCOY, FINANCE DIRECTOR

620, 6203600, 530710
Org.Name/Org.#









GB ITT A1 to IMMIX to add TeleStaff

Final Audit Report

2020-08-25

Created:	2020-08-25
By:	YODEL CATANACH (yocatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAgfCbKFvJ7taCIYd2QITuPyPaK6cQ6KRd

"GB ITT A1 to IMMIX to add TeleStaff" History

-  Document created by YODEL CATANACH (yocatanach@ci.santa-fe.nm.us)
2020-08-25 - 8:36:08 PM GMT- IP address: 63.232.20.2
-  Document emailed to Alexis Lotero (aclotero@santafenm.gov) for signature
2020-08-25 - 8:46:41 PM GMT
-  Email viewed by Alexis Lotero (aclotero@santafenm.gov)
2020-08-25 - 9:20:28 PM GMT- IP address: 104.47.65.254
-  Document e-signed by Alexis Lotero (aclotero@santafenm.gov)
Signature Date: 2020-08-25 - 9:22:08 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to Fran Dunaway (fadunaway@santafenm.gov) for signature
2020-08-25 - 9:22:10 PM GMT
-  Email viewed by Fran Dunaway (fadunaway@santafenm.gov)
2020-08-25 - 9:35:06 PM GMT- IP address: 104.47.64.254
-  Document e-signed by Fran Dunaway (fadunaway@santafenm.gov)
Signature Date: 2020-08-25 - 9:38:50 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Signed document emailed to Fran Dunaway (fadunaway@santafenm.gov), Alexis Lotero (aclotero@santafenm.gov), YODEL CATANACH (yocatanach@ci.santa-fe.nm.us), and dctapia@santafenm.gov
2020-08-25 - 9:38:50 PM GMT

City of Santa Fe, New Mexico

memo

DATE: August 26, 2020

TO: Finance Committee and Governing Body

VIA: John Romero, Acting Public Works Department Director *JR*

FROM: Emily Pisula, Public Works, Fiscal Administrator *EP*

SUBJECT: Capital Reallocation BAR

Item and Issue

Capital reallocation BAR in the amount of \$6,500,400, and 2018 GRT Bond reallocation project listing.

Background and Summary

During the June 24, 2020 Governing Body meeting it was presented by John Romero a listing of 2018 GRT Bond projects, the amount of project savings, and a request to reallocate this savings to other capital expenses that are normally paid from City operating budgets. At the time that this item was presented, there was not a project/capital item listing of where the reallocated amount would be applied.

The Public Works Department in conjunction with the Finance Department has defined a listing of where the \$6,500,400 reallocation amount is to be applied, please see attached list of capital items.

This BAR allocates the reappropriation amount from the Fire Station Project of \$6,000,000 as well as reallocates the project savings from the South Side Library Water Harvesting of \$25,000, New CRM system of \$100,000, and City Hall Improvements of \$375,400.

Action Requested

Approval of Capital Reallocation BAR in the amount of \$6,500,400. MUNIS Org 3359980 Object 572970, and Approval of reallocation projects.

Log # {Finance use only}:	
Batch # {Finance use only}:	

City of Santa Fe, New Mexico

BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME Public Works/CIP	DATE 8/26/2020
--	-------------------

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
<u>EXPENDITURES</u>				<i>{enter as positive #}</i>	<i>{enter as negative #}</i>
WIP Construction	3359980	572970		6,000,000	
WIP Construction	3359980	572970		100,000	
WIP Construction	3359980	572970	GRT18355C		(100,000)
WIP Construction	3359980	572970	GRT18355A1		(175,000)
WIP Construction	3359980	572970	GRT18355H2		(25,000)
WIP Construction	3359980	572970	GRT18355A2		(200,400)
WIP Construction	3359980	572970		175,000	
WIP Construction	3359980	572970		25,000	
WIP Construction	3359980	572970		200,400	
<u>REVENUES</u>				<i>{enter as negative #}</i>	<i>{enter as positive #}</i>

JUSTIFICATION: *(use additional page if needed)*
 --Attach supporting documentation/memo

	\$ 6,500,400	\$ (500,400)
--	--------------	--------------

<i>{Complete section below if BAR results in a net change to ANY Fund}</i>	
	Fund Balance
Fund(s) Affected	Increase/(Decrease)
335	(6,000,000)
TOTAL:	(6,000,000)

Emily Pisula Prepared By <i>{print name}</i>	8/26/2020 Date	<i>{Use this form for Finance Committee/ City Council agenda items ONLY}</i>	<i>Alexis Lotero</i> Budget Officer	8/26/20 Date	
<i>John Romero</i> Division Director Signature <i>{optional}</i>		CITY COUNCIL APPROVAL City Council	Finance Director <i>{≤ \$5,000}</i>		
<i>John Romero</i> Department Director Signature		Approval Date Agenda Item #:	City Manager <i>{≤ \$60,000}</i>		
08-26-20 Date			Date		
08-26-20 Date			Date		

Division	Org	Org Title	Object	Object Title	Dpt Request	Justification	Expected Life Span (Years)
Streets	1000471	Streets & Drainage Maint	530200	Operating Supplies	\$40,000	Asphalt and Concrete	3-5 years
Streets	1000471	Streets & Drainage Admin	571000	Vehicles > 1.5	\$340,000	dump truck, 2 support vehicles, including snow plow and dump body	15 years
Streets	1000471	Streets & Drainage Admin	570500	Equipment & Machinery	\$50,000	asphalt trailer	15 years
Streets	3306250	Streets & Drainage - Gas Tax	570500	Equipment & Machinery	\$5,000	large flat bed trailer for hauling equipment	15 years
Streets	3306250	Streets & Drainage - Gas Tax	570500	Equipment & Machinery	\$35,000	wheel lift	15 years
Facilities	3650432	Custodial Van	5709050	Vehicles <1.5	\$30,000	Replacement of Van recommended by Fleet	15 Years
Facilities	1000435	Maintenance Truck	5709050	Vehicles <1.5	\$45,000	Replacement of Truck recommended by Fleet	
Facilities	3650432	Roof & Clerestory Replaceme	520100	Rep and Maint Building/Struc	\$2,000,000	Ft. Marcy Roof & Clerestory Replacement, City Hall Roof Coating, and other roofs, needed because current roofs and clerestories are beyond their useful life	20 Years
Facilities	1000435	Fire System Inspection & Rep	520100	Rep and Maint Building/Struc	\$300,000	Contract to survey City's fire protection systems, develop upgrade design, and construct upgrades.	20 Years
Facilities	1000435	La Familia Maintenance	520100	Rep and Maint Building/Struc	\$50,000	Facility upgrades at La Familia Medical Center	5 Years
Facilities	3650432	Citywide HVAC Repairs	520400	Rep & Maint Machince/Equip	\$150,000	GCCC Domestic Hot Water Heater, Southside Library Boilers, and HVAC upgrades.	
Facilities	3650432	Ft. Marcy Mechanical Room	520100	Rep and Maint Building/Struc	\$100,000	Ft. Marcy Mechanical Room Electric Repair and related work needed because equipment is unsafe	20 Years
Facilities	1000435	GCCC Mezzanine	520100	Rep and Maint Building/Struc	\$700,000	GCCC Mezzanine upgrades.	20 Years
Facilities	3650432	Siler Sewer Line	520400	Rep & Maint Machince/Equip	\$80,000	Upgrade and replace Siler Sewer Line.	20 Years
Facilities	3650432	Miscellaneous Capital Improv	520100	Rep and Maint Building/Struc	\$100,000	Miscellaneous Capital Improvements	20 Years
Engineering	1000412	Paint/Sign Operations/Maint	530200	Operating Supplies	\$200,000	Pavement marking tape and roadway sign material to be installed by City staff.	5 Years
Engineering	1000412	Paint/Sign Operations/Maint	572500	Remodeling & Replacement	\$200,000	Installation of pavement marking and roadway signs.	5 Years
Engineering	1000415	Signals Operations/Maintena	530200	Operating Supplies	\$450,000	Signal equipment replacement and upgrades.	25 Years
Engineering	1000415	Signals Operations/Maintena	571000	Vehicles >1.5	\$405,000	Replacement of 2 bucket trucks and 1 pickup truck as recommended by Fleet.	15 Years
Engineering	1000416	Traffic Engineering	520150	Rep and Maint System Equip	\$100,000	Street light repair and replacement.	20 Years
Parking	5350453	Parking/Collections	570500	Inventory Exempt Equipment	\$30,000	License Plate Recognition Equip/Software	10 years min.
Parking	5350454	Parking/Parking Collections	570500	Equipment & Machinery	\$195,000	Current mechanical locks are worn out. New locks are needed to ensure that coins are collected.	12 years
Parking	5350455	Parking/Off-Street	572500	Remodeling & Replacement	\$68,000	Refurbish Sandoval Elevator	10 - 15 years
Parking	5350455	Parking/Off-Street	572500	Remodeling & Replacement	\$102,000	Refurbish (2) SFCCC Elevators	10 - 15 years
Parking	5350456	Parking/Maintenance	570950	Vehicles <1.5	\$75,000	Replacement of Flat bed truck as recommended by fleet. Flat bed truck is required to spread snow melt and distribute barricades etc. for traffic control	15 years
Parks	1004150	Parks/Trails & Open space	571000	Vehicles > 1.5	\$35,500	(1) support vehicles to replace non-functioning red-tagged city units & necessary to transport staff & equipment safely (8) needed but requesting (1) x \$35,500 = \$35,500	15 years
Parks	1004150	Parks/Trails & Open space	570500	Equipment & Machinery	\$35,500	Toro Rake-O-Vac needed to replace on-working obsolete Toro Rake-O-Vac. to pick up grass clippings & debris in parks after mowing; not having this machinery causes in adequate penetratoin of water into the turf;	10 years
Parks	1004150	Parks/Trails & Open space	570500	Equipment & Machinery	\$115,000	(1) Small Dumptruck with Plow & Spreader; needed to replace old/non operating Unit #632 Ford & #633 Kodiak bobtail 6 yd. dump trucks (need 2 but requesting) (\$115,000 ea)	10 years
Parks	1004150	Parks/Trails & Open space	570500	Equipment & Machinery	\$245,000	Motor Grader needed to replace 1980 model in parks inventory	10 years
Parks	1004150	Parks/Trails & Open space	570500	Equipment & Machinery	\$137,400	Back hoe to replace old John Deere Unit #634 back-hoe in parks inventory	10 years
MRC	5300271	MRC Golf Course	570500	Equipment & Machinery	\$82,000	John Deere 8700A Precision Cut Fairway Mower needed to replace old/non-functioning Jacobsen Turf King Mower FA#2795; Unit #F-06	10 years
TOTAL					\$6,500,400		

- a. Request for Review and Approval of Re-Prioritization of City Capital Projects for the Purpose of Utilizing Capital Funds on Capital Expenses Normally Paid from City Operating Budgets. (John Romero, Acting Public Works Director, jjromero1@santafenm.gov, 955-6638)

ACTION SHEET
ITEM FROM FINANCE COMMITTEE MEETING OF 06/29/2020
FOR CITY COUNCIL MEETING OF 0708/20

ISSUE:

- a. Request for Review and Approval of Re-prioritization of City Capital Projects for the Purpose of Utilizing Capital funds on Capital Expenses Normally Paid from City Operating Budgets (John Romero, Acting Public Works Director, jjromero1@santafenm.gov 955-6638)

FINANCE COMMITTEE ACTION:

Approved on Consent

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON ABEYTA	X		
COUNCILOR LINDELL	X		
COUNCILOR ROMERO-WIRTH	X		
COUNCILOR VILLARREAL	X		
COUNCILOR CASSUTT-SANCHEZ	X		

ACTION SHEET	
PUBLIC WORKS AND PUBLIC UTILITES COMMITTEE MEETING OF	
06/08/2020	
ISSUE NO. 7C	
Review and Recommendations of Re-prioritization of City Capital Projects for the Purpose of Utilizing Capital funds on Capital Expenses Normally Paid from City Operating Budgets (John Romero, Traffic Engineering Division Director, jjromero1@santafenm.gov 955-6638)	
<u>COMMITTEE REVIEW</u>	
Finance Committee (Scheduled)	06/15/2020
Governing Body (Scheduled)	06/24/2020
PUBLIC UTILITIES COMMITTEE ACTION: Pulled by Councilor Lindell for further information. Unanimously approved on Consent Agenda to forward to 06/15/2020 Finance Committee	
SPECIAL CONDITIONS OR AMENDMENTS:	
STAFF FOLLOW UP:	

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR RIVERA, CHAIR	X		
COUNCILOR GARCIA	X		
COUNCILOR ABEYTA	X		
COUNCILOR LINDELL	X		
COUNCILOR VIGIL COPPLER	X		

ACTION SHEET
ITEM FROM FINANCE COMMITTEE MEETING OF 06/15/2020
FOR CITY COUNCIL MEETING OF 06/24/20

ISSUE:

c. Request for Review and Approval of Re-prioritization of City Capital Projects for the Purpose of Utilizing Capital funds on Capital Expenses Normally Paid from City Operating Budgets (John Romero, Acting Public Works Director, jjromero1@santafenm.gov 955-6638)

COMMITTEE REVIEW

Finance Committee (Scheduled)	06/15/2020
Governing Body (Scheduled)	06/24/2020

FINANCE COMMITTEE ACTION:

Postponed- to go back to PUC/PWC on 6-22-20 and to FCM 6-29-20

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON ABEYTA	X		
COUNCILOR LINDELL	X		
COUNCILOR ROMERO-WIRTH	X		
COUNCILOR VILLARREAL	X		
COUNCILOR CASSUTT-SANCHEZ	X		

3-19-18

City of Santa Fe, New Mexico

memo

DATE: June 16, 2020

TO: Public Works Committee

FROM: John J. Romero, Acting Public Works Department Director *JR*

SUBJECT: Review and Approval of Re-prioritization of City Capital Projects for the Purpose of Utilizing Capital Funds on Capital Expenses Normally Paid from City Operating Budgets

BACKGROUND:

During this unprecedented time staff is looking for creative solutions towards closing a roughly \$100M funding gap in next fiscal year's operating budget, brought on by the current COVID-19 pandemic. Potential funds that can aid in closing this gap are existing capital funds.

The Public Works Department has been working with other city departments to evaluate all existing capital projects, looking at what projects can be placed on hold for the purpose of freeing up funds. These funds are primarily bond proceeds backed by ½% of the City's GRT earmarked for capital improvements. Capital project fund saving will then be applied towards capital expenses that are typically paid out of the City's operating funds.

A capitalizable expense is a fixed asset that has a useful life greater than 1 year and costs more than \$5k. In order to utilize bond proceeds, the average life of all capital expenditures must exceed the average life of the bond (10 years). This criteria will be utilized when determining what operation related capital expenses we apply these funds towards. The list of expenses staff will be looking to apply these funds towards, will be presented by the Finance Department during our upcoming FY20/21 budget proposals.

The re-prioritization was approved by the Public Works Committee on June 8, 2020 with a recommendation that it go before the Finance Committee. At the June 15, 2020 Finance Committee, an amendment was presented to add \$556,000 of additional funding to the Public Safety Radio System Replacement project in order to add a Computer Aided Dispatch (CAD) system to the project. The Finance committee recommended that the item be tabled so that the Public Works Committee can review the amendment.

At this time, the Public Works Department is asking the Public Works Committee to review and approve the revised re-prioritization of capital projects. The attached spreadsheet summarizes all active capital projects including staff recommendations for amendments to certain project budgets including the above mentioned revision. These amendments to project budgets now generates \$6,500,410 in project savings. The amendments are as follows:

- City Hall Improvements—Amend budget from \$600,000 to \$163,001 (\$436,999 savings)
 - Reduction in project scope including removal of renovations to Land Use’s office space and removal of under budgeted HVAC improvements.
- GCCC Improvements—Amend budget from \$4,934,243 to \$4,577,556 (\$356,687 savings)
 - Reduction in project scope including removal of pool room & window painting, removal of structural painting, and removal of pool tile repairs.
- Southside Library—Amend budget from \$88,998 to \$63,998 (\$25,00 savings)
 - Reduction in project scope including removal of rainwater harvesting system repair.
- New Fire Station #2—Amend budget from \$6,535,000 to \$399,688 (\$6,135,312 savings)
 - Design has been completed for this project. Postponement of construction is proposed.
 - Emergency service coverage lost due to postponement of this project will be coordinated between the City’s Fire Department and Santa Fe County Fire Department.
- Public Safety Radio System Replacement—Amend budget from \$2,000,000 to \$2,556,000 (\$556,000 increase)
 - Addition of Computer Aided Dispatch (CAD) system to project.
- MEG Cafeteria—Amend budget from \$413,664 to \$411,252 (\$2,412 project savings)
 - Remaining balance of completed project
- CRM Upgrade—Amend budget from \$100,000 to \$0 (\$100,000 project savings)
 - The Constituent and Council Services Department created a new CRM system in-house with City resources.
- SWAN Park—Amend budget from \$599,000 to \$349,000 (\$250,000 savings)
 - Amendment of scope to only include design and construction of Water Tank Plant Screen, Horse Shoe Pits/Huachas, BMX Pump Track, Dog Park, Hiker/Biker Trail Head & Park Overlook, and Jersey Barrier Perimeter Control.
 - Project Saving to be utilized for MRC Soccer Valley Improvements.
- MRC Soccer Valley—Amend budget from \$1.25M to \$1.5M (\$250,000 increase)
 - Revised Scope:
 - GIS Irrigation Assessment + Water Budgets
 - Complete Irrigation System Rehabilitation
 - Field Improvements & Drainage mitigation Via Irrigation Rehabilitation
 - Pump House Assessment and Rehabilitation
 - Edge Turf Reduction and Reduced Water Requirements
 - Removed from Scope:
 - Field Lighting
 - Parking and Circulation Design
 - Field Specific Rehabilitation

RECOMMENDED ACTION:

Approval of above mentioned project budget adjustments further explained in the attached spreadsheet.

2018 GRT Funded Project
 1/2% GRT Revenue Funded Projects
 GO Bonds
 Special Revenue
 Grant Funded Projects

Department	Project	Project Start Date/Projected	Project Projected Complete Date	Project Budget	Revised Project Budget	Project Savings	Justification	Comments	Funding Source
Facilities	City Hall	March-20	June-21	600,000.00	165,000.00	435,000.00	Land the work on essential HVAC facility hall is essential. The current budget is not sufficient.	Continue roof repair. Place on hold last use work. Place on hold HVAC work as existing budget not sufficient.	2018 GRT Bond \$600,000
Facilities	1st floor renovation			10,278.95	10,278.95				
Facilities	1st floor electrical equipment			4,662.81	4,662.81				
Facilities	LUP file and new carpet installation			4,902.41	4,902.41				
Facilities	Fort Mary	March-19	May-21	693,961.00	693,361			Project complete with no remaining balance.	2018 GRT Bond \$700,000
Facilities	Genevieve Chavez Community Center	April-19	October-21	4,334,243.00	4,337,556.00	336,687.00	Non-essential items that can be placed on hold \$40,000. Post item and window painting \$250,000. Electrical painting and SCLART. Pool tile repairs.		2018 GRT Bond \$4,300,000
Facilities	Main Library	March-19	June-20	175,000.00	175,000			Roof repair to the Main Library. Work to commence in May 2020.	2018 GRT Bond \$150,000
Facilities	Southside Library	April-19	August-20	88,894.00	88,298	595.00	Non-essential items that can be placed on hold. \$25,000 for bridge for entry walkway. Replacing electrical panels.	Continue HVAC repair. Place on hold \$25,000. Harvesting system. Drain.	2018 GRT Bond \$100,000
Facilities	Shawnee Plaza	November-19	June-20	1,174,866.00	1,024,895	149,971.00		Network upgrade underway and close to completion.	2018 GRT Bond \$2,450,000
Facilities	S&P Pool Filter	May-20	May-20	5,000.00	5,000.00		This is required to maintain the pool filtration system.		
Facilities	S&P Structural Envelope Repairs	May-20	May-20	115,000.00	115,000.00				
Facilities	Shingo Complex	February-20	August-20	1,171,115.00	1,171,115			Continue HVAC upgrade. 100% installation of LEED Platinum. 4 work includes: P&L, Records.	2018 GRT Bond \$150,000
Facilities	Star Building C	April-19	June-20	423,886.00	423,886			Continue HVAC and roof repair.	2018 GRT Bond \$500,000
Facilities	Titus Road & Power Repair	October-19	May-20	60,000.00	60,000			Checking on ADA compliance, safety barriers, the upgrade in the City Commission Center.	2018 GRT Bond \$60,000
Facilities	New Fire Station #2	May-20	December-21	6,000,000.00		6,000,000.00		\$350,000 for design is funded by Fire 1/2% GRT funds. new facility.	2018 GRT Bond \$6,000,000
Facilities	New Fire Station #2 - Design			350,000.00	398,688	48,688.00			
Facilities	MEG Cafeteria Addition - \$115M GRT Bond (14-18) State Aging Grant	April-19	September-20	413,664.00	413,664		Project completion remaining balance.	Project complete, remaining balance. Complete essential budget work needed for safety.	2018 GRT Bond \$750,000
Facilities	Rezone Bldg at Urban Trails	March-20	October-20	240,000.00	240,000				2018 GRT Bond \$200,000
Facilities	Midtown Planning and SPA Preparation	July-19	April-21	1,100,000.00	1,100,000				2018 GRT Bond \$1,100,000
IT	Public Safety Wireless	February-20	December-22	152,000.00	152,000				2018 GRT Bond \$100,000
IT	Public Safety Radio System Replacement	December-19	December-20	2,000,000.00	2,554,000	554,000.00		\$813,957 received from the County. Setting Computer Aided Dispatch (CAD) system. Project being performed through.	2018 GRT Bond \$1,000,000 & County
Government Ser	Continuity/Relationship Manager (CRM)	6 Weeks after contract awarded	June-20	100,000.00		100,000.00			2018 GRT Bond \$100,000
	TOTAL			19,895,873.57	13,355,463.54	6,540,410.03			
SAWA/P&S									
Facilities	Shawnee Plaza	January-21	January-22	395,000.00	395,000		Shawnee Plaza #11 issue. Project allowed to be added to MMC Project.		2018 GRT Bond & CA allocation
Engineering	Titus Corridor Trail	August-20	June-21	462,750.00	462,750			\$420,498 funded from 13/14 GO Bonds 2013 & 2018 GO Bonds	
Engineering	Rail Trail - All Segments	April-20	December-21	1,075,200.00	1,075,025			Completion of the Rail Trail from Per Building to Urban Trails.	2018 GRT Bond & CA allocation
	TOTAL			2,086,520.00	1,878,520.00	208,000.00			
Facilities	GCOC Mechanical Measurements	February-20	December-20	263,908.00	263,909			Renovation project in compliance with design temperature to addressing the associated	GCOC CP System
Planning	Parking Revenue Access & Revenue Control System (PARCS)	December-20	June-21	1,580,000.00	1,580,000			Planning is in progress. Planning is in progress. Access & Revenue Control.	Parking CP System & H&E Unit
Engineering	Henry (Chemical) Cracking Study	May-20	July-20	275,000.00	275,000			Planning is in progress. Public Meeting 7/20/20.	City Road Impact Fee
Engineering	Daniels Drive Road Rehabilitation	December-20	November-21	1,241,000.00	1,241,000			\$242,000 for design has already been needed. The remaining \$999,000 is for construction. Requesting Traffic Admittance Study.	Traffic Impact Fee
	TOTAL			5,781,000.00	5,781,000.00				

ORG	OBJECT	DESCRIPTION	EFF DATE	REF1	PO/REF2	REFERENCE
3209980	572960	WIP Design	1/7/2020	008182	22001303	LIQ/INV
3209980	572960	WIP Design	10/10/2019	008182	22001303	LIQ/INV
3209980	572960	WIP Design	9/17/2019	008182	22001303	PO ENT/PRF
3209980	572960	WIP Design	4/20/2020	008273	22001590	PO MAINT
3209980	572960	WIP Design	3/3/2020	008273	22001590	LIQ/INV
3209980	572960	WIP Design	12/12/2019	008273	22001590	LIQ/INV
3209980	572960	WIP Design	11/21/2019	008273	22001590	LIQ/INV
3209980	572960	WIP Design	10/10/2019	008273	22001590	LIQ/INV
3209980	572960	WIP Design	10/2/2019	008273	22001590	PO ENT/PRF
3209980	572960	WIP Design	1/27/2020	003097	22001611	LIQ/INV
3209980	572960	WIP Design	12/24/2019	003097	22001611	LIQ/INV
3209980	572960	WIP Design	12/24/2019	003097	22001611	LIQ/INV
3209980	572960	WIP Design	11/19/2019	003097	22001611	LIQ/INV
3209980	572960	WIP Design	10/17/2019	003097	22001611	LIQ/INV
3209980	572960	WIP Design	10/17/2019	003097	22001611	LIQ/INV
3209980	572960	WIP Design	10/4/2019	003097	22001611	LIQ/INV
3209980	572960	WIP Design	10/4/2019	003097	22001611	LIQ/INV
3209980	572960	WIP Design	10/2/2019	003097	22001611	PO ENT/PRF
3209980	572960	WIP Design	12/12/2019	005730	22001615	LIQ/INV
3209980	572960	WIP Design	10/28/2019	005730	22001615	LIQ/INV
3209980	572960	WIP Design	10/28/2019	005730	22001615	LIQ/INV
3209980	572960	WIP Design	10/28/2019	005730	22001615	LIQ/INV
3209980	572960	WIP Design	10/3/2019	005730	22001615	PO ENT/PRF
3209980	572960	WIP Design	3/16/2020	003069	22001675	PO MAINT
3209980	572960	WIP Design	10/4/2019	003069	22001675	PO ENT/PRF
3209980	572960	WIP Design	10/10/2019	007567	22001788	PO ENT/PRF
3209980	572960	WIP Design	11/12/2019	008273	22002247	PO ENT/PRF
3209980	572960	WIP Design	3/13/2020	007856	22002449	LIQ/INV
3209980	572960	WIP Design	11/20/2019	007856	22002449	PO ENT/PRF
3209980	572960	WIP Design	2/6/2020	001834	22003428	PO ENT/PRF
3209980	572960	WIP Design	3/12/2020	001005	22003621	LIQ/INV
3209980	572960	WIP Design	2/20/2020	001005	22003621	PO ENT/PRF
3209980	572960	WIP Design	3/13/2020	008249	22003643	LIQ/INV
3209980	572960	WIP Design	3/13/2020	008249	22003643	PO MAINT
3209980	572960	WIP Design	3/3/2020	008249	22003643	PO MAINT

3209980	572960	WIP Design	2/21/2020 008249	22003643	PO ENT/PRF
3209980	572960	WIP Design	2/24/2020 008279	22003644	LIQ/INV
3209980	572960	WIP Design	2/21/2020 008279	22003644	PO ENT/PRF
3209980	572960	WIP Design	3/5/2020 001322	22003803	PO ENT/PRF
3209980	572960	WIP Design	3/5/2020 001954	22003865	PO ENT/PRF
3209980	572960	WIP Design	4/3/2020 003553	22003973	LIQ/INV
3209980	572960	WIP Design	3/10/2020 003553	22003973	PO ENT/PRF
3209980	572960	WIP Design	4/17/2020 002574	22004527	PO ENT/PRF
3209980	572960	WIP Design	4/17/2020 002574	22004527	PO ENT/PRF

FS#2 Design PO 22001611
 Conceptual design to building & parking lot at MEG PO 22001615
 Solarization of City Facilities PO 22001675
 Snow melt system for dock area - MEG PO 22001788
 City Hall - Depart reorg, Re-arrange departments and Haz Mat Report PO 22002247
 Ft. Marcy Equipment Room PO 22002449
 DFA Grant - design behavior & substance abuse facility PO 22003428
 LU office reconstruction PO 22003803
 LU Maint/reconstruction of new office PO 22003865
 Sal P Structural Envelope Rehab PO 22003973
 Southside Teen Center PO 22004527

AMOUNT VDR NAME/ITEM DESC

-14,457.61 EARTH CARE INTERNATIONAL
 -7,228.81 EARTH CARE INTERNATIONAL
 21,686.42 EARTH CARE INTERNATIONAL

-0.99 SPEARS HORN ARCHITECTS
 -201.51 SPEARS HORN ARCHITECTS
 -1,112.42 SPEARS HORN ARCHITECTS
 -9,715.89 SPEARS HORN ARCHITECTS
 -10,624.16 SPEARS HORN ARCHITECTS
 21,654.97 SPEARS HORN ARCHITECTS

~~5,818.26~~ ATKIN OLSHIN SCHADE ARCHITECTS
~~30,969.57~~ ATKIN OLSHIN SCHADE ARCHITECTS
~~8,223.87~~ ATKIN OLSHIN SCHADE ARCHITECTS
~~35,287.93~~ ATKIN OLSHIN SCHADE ARCHITECTS
~~6,633.12~~ ATKIN OLSHIN SCHADE ARCHITECTS
~~33,100.12~~ ATKIN OLSHIN SCHADE ARCHITECTS
~~4,876.96~~ ATKIN OLSHIN SCHADE ARCHITECTS
~~91,931.48~~ ATKIN OLSHIN SCHADE ARCHITECTS
~~383,752.89~~ ATKIN OLSHIN SCHADE ARCHITECTS

~~447.30~~ MIFSUD ASSOCIATES ARCHITECTS LLC
~~520.50~~ MIFSUD ASSOCIATES ARCHITECTS LLC
~~650.63~~ MIFSUD ASSOCIATES ARCHITECTS LLC
~~780.75~~ MIFSUD ASSOCIATES ARCHITECTS LLC
~~17,000.00~~ MIFSUD ASSOCIATES ARCHITECTS LLC

~~183,981.75~~ YEAROUT SERVICE LLC
~~113,480.00~~ YEAROUT SERVICE LLC

~~5,567.45~~ TOEPPER BRANDON DBA TEPPICS ENGINEERING

~~20,223.59~~ SPEARS HORN ARCHITECTS

~~12,234.84~~ B&D INDUSTRIES INC
~~13,594.27~~ B&D INDUSTRIES INC

~~50,000.00~~ ST VINCENT HOSPITAL

-54.00 STATE OF NEW MEXICO REGULATION &
 54.00 STATE OF NEW MEXICO REGULATION &

-650.63 EONS DE SANTA FE, LLC
 600.00 EONS DE SANTA FE, LLC
 -549.37 EONS DE SANTA FE, LLC

600.00 EONS DE SANTA FE, LLC

-988.95 PNM

988.95 PNM

~~2,382.63~~ CHAPARRAL MATERIALS INC

~~7,895.72~~ HOME DEPOT CREDIT SERVICE

~~22,695.35~~ COOPERATIVE EDUCATIONAL SERVICES

~~38,896.12~~ COOPERATIVE EDUCATIONAL SERVICES

~~448,630.72~~ WILSON AND COMPANY INC (ALQ)

~~37,853.22~~ WILSON AND COMPANY INC (ALQ)

1,069,087.68

166,911.58 ATKIN OLSHIN SCHADE ARCHITECTS

~~14,600.82~~ MIFSUD ASSOCIATES ARCHITECTS LLC

~~297,461.75~~ YEAROUT SERVICE LLC

~~5,567.45~~ TOEPPER BRANDON DBA TEPPICS ENGINEERING

~~20,223.59~~ SPEARS HORN ARCHITECTS

~~1,359.43~~ B&D INDUSTRIES INC

~~50,000.00~~ ST VINCENT HOSPITAL

~~2,382.63~~ CHAPARRAL MATERIALS INC

~~7,895.72~~ HOME DEPOT CREDIT SERVICE

~~16,200.77~~ COOPERATIVE EDUCATIONAL SERVICES

~~486,483.94~~ WILSON AND COMPANY INC (ALQ)

1,069,087.68

0.00

COMMENTS

CONSULTING SERVICES 2020
CONSULTING SERVICES 2020
CONSULTING SERVICES

Professional srvc s complet2020
ARCHITECTURAL SERVICES, PR2020
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CONSULTING SERVICES 2020
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CONSULTING SERVICES

Increase PO per contract a2020
ENERGY COLLECTING EQUIPMENT AN

ENGINEERING SERVICES, PROFESSI

ARCHITECTURAL SERVICES, PROFES

ENGINEERING AND ARCHITECTU2020
ENGINEERING AND ARCHITECTURAL

Christus St. Vincent Project

MISCELLANEOUS FEES, DUES, 2020
MISCELLANEOUS FEES, DUES, PERM

ENGINEERING SERVICES, PROF2020
correct PO 2020
increase to include NMGRT 2020

ENGINEERING SERVICES, PROFESSI

MISCELLANEOUS FEES, DUES, 2020
MISCELLANEOUS FEES, DUES, PERM

BUILDING CONSTRUCTION SERVICES

BUILDING CONSTRUCTION SERVICES

ENGINEERING SERVICES, PROF2020
ENGINEERING SERVICES, PROF CES

On-Call - Southside Teen Cente
On-Call - Southside Teen Cente

ARCHITECTURAL SERVICES, PROFES
CONSULTING SERVICES
ENERGY COLLECTING EQUIPMENT AN
ENGINEERING SERVICES, PROFESSI
ARCHITECTURAL SERVICES, PROFES
ENGINEERING AND ARCHITECTURAL
Christus St. Vincent Project
BUILDING CONSTRUCTION SERVICES
BUILDING CONSTRUCTION SERVICES
ENGINEERING SERVICES, PROF2020

ORG	OBJECT	DESCRIPTION	EFF DATE	REF1	PO/REF2	REF3	REFERENCE
3209980	572970	WIP Construction	4/21/2020	001448	22000872	CAN 1	PO MAINT
3209980	572970	WIP Construction	8/30/2019	001448	22000872		PO ENT/PRF
3209980	572970	WIP Construction	4/21/2020	001265	22000992	CAN 1	PO MAINT
3209980	572970	WIP Construction	8/30/2019	001265	22000992		PO ENT/PRF
3209980	572970	WIP Construction	10/23/2019	001349	22001015	5166	LIQ/INV
3209980	572970	WIP Construction	10/23/2019	001349	22001015	5166	LIQ/INV
3209980	572970	WIP Construction	9/4/2019	001349	22001015		PO ENT/PRF
3209980	572970	WIP Construction	10/21/2019	001954	22001016	CAN 1	PO MAINT
3209980	572970	WIP Construction	9/4/2019	001954	22001016		PO ENT/PRF
3209980	572970	WIP Construction	1/28/2020	008212	22001099	11294	LIQ/INV
3209980	572970	WIP Construction	1/3/2020	008212	22001099	9469	LIQ/INV
3209980	572970	WIP Construction	12/12/2019	008212	22001099	8440	LIQ/INV
3209980	572970	WIP Construction	10/30/2019	008212	22001099	5901	LIQ/INV
3209980	572970	WIP Construction	9/6/2019	008212	22001099		PO ENT/PRF
3209980	572970	WIP Construction	4/15/2020	003553	22001249	16730	LIQ/INV
3209980	572970	WIP Construction	2/26/2020	003553	22001249	13645	LIQ/INV
3209980	572970	WIP Construction	1/17/2020	003553	22001249	10889	LIQ/INV
3209980	572970	WIP Construction	12/27/2019	003553	22001249	9241	LIQ/INV
3209980	572970	WIP Construction	12/19/2019	003553	22001249	8877	LIQ/INV
3209980	572970	WIP Construction	10/11/2019	003553	22001249	4551	LIQ/INV
3209980	572970	WIP Construction	9/26/2019	003553	22001249	3700	LIQ/INV
3209980	572970	WIP Construction	9/13/2019	003553	22001249		PO ENT/PRF
3209980	572970	WIP Construction	4/20/2020	006681	22001388	CAN 1	PO MAINT
3209980	572970	WIP Construction	10/4/2019	006681	22001388	3895	LIQ/INV
3209980	572970	WIP Construction	10/4/2019	006681	22001388	3898	LIQ/INV
3209980	572970	WIP Construction	9/20/2019	006681	22001388		PO ENT/PRF
3209980	572970	WIP Construction	4/20/2020	001954	22001958	CAN 1	PO MAINT
3209980	572970	WIP Construction	11/25/2019	001954	22001958	7488	LIQ/INV
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3209980	572970	WIP Construction	11/13/2019	001954	22001958	6748	LIQ/INV
3209980	572970	WIP Construction	11/13/2019	001954	22001958	6749	LIQ/INV
3209980	572970	WIP Construction	11/13/2019	001954	22001958	6752	LIQ/INV
3209980	572970	WIP Construction	11/13/2019	001954	22001958	6747	LIQ/INV
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3209980	572970	WIP Construction	10/22/2019	001954	22001958		PO ENT/PRF
3209980	572970	WIP Construction	12/19/2019	005996	22002855		PO ENT/PRF

3209980	572970	WIP Construction	3/12/2020	008046	22003996	PO ENT/PRF
3209980	572970	WIP Construction	3/13/2020	007926	22004041	PO ENT/PRF

Sal P Pool PO 22001099
Sal P Struc PO 22001249
muni cour PO 22002855
LU-Misc El PO 22003996
LU - tile an PO 22004041

AMOUNT	VDR NAME/ITEM DESC	COMMENTS
-64.13	NEW MEXICAN	fees paid with PCARD 2020
64.13	NEW MEXICAN	COMMUNICATIONS AND MEDIA RELAT
-70.21	ALBUQUERQUE PUBLISHING COMPANY	paid fees with PCARD 2020
70.21	ALBUQUERQUE PUBLISHING COMPANY	COMMUNICATIONS AND MEDIA RELAT
-148.12	EMPIRE BUILDERS	FASTENERS: BOLTS, NUTS, PI2020
-3.10	EMPIRE BUILDERS	FASTENERS: BOLTS, NUTS, PI2020
151.22	EMPIRE BUILDERS	FASTENERS: BOLTS, NUTS, PINS,
-1,874.90	HOME DEPOT CREDIT SERVICE	quantity not amount 2020
1,874.90	HOME DEPOT CREDIT SERVICE	BUILDER'S SUPPLIES
-1,270.89	GEO-TEST, INC.	ENGINEERING SERVICES, PROF2020
-843.64	GEO-TEST, INC.	ENGINEERING SERVICES, PROF2020
-422.91	GEO-TEST, INC.	ENGINEERING SERVICES, PROF2020
-1,131.00	GEO-TEST, INC.	Job No. 2-91012 Salvador P2020
4,901.38	GEO-TEST, INC.	ENGINEERING SERVICES, PROFESSI
-13,935.12	COOPERATIVE EDUCATIONAL SERVICES	BUILDINGS AND STRUCTURES: 2020
-18,489.94	COOPERATIVE EDUCATIONAL SERVICES	BUILDINGS AND STRUCTURES: 2020
-36,243.79	COOPERATIVE EDUCATIONAL SERVICES	BUILDINGS AND STRUCTURES: 2020
-13,713.11	COOPERATIVE EDUCATIONAL SERVICES	BUILDINGS AND STRUCTURES: 2020
-15,609.35	COOPERATIVE EDUCATIONAL SERVICES	BUILDINGS AND STRUCTURES: 2020
-27,386.06	COOPERATIVE EDUCATIONAL SERVICES	BUILDINGS AND STRUCTURES: 2020
-4,175.74	COOPERATIVE EDUCATIONAL SERVICES	BUILDINGS AND STRUCTURES: 2020
141,500.00	COOPERATIVE EDUCATIONAL SERVICES	BUILDINGS AND STRUCTURES: FABR
-74.08	FACILITYBUILD INC	project complete and paid 2020
-2,352.30	FACILITYBUILD INC	BUILDING MAINTENANCE, INST2020
-5,020.62	FACILITYBUILD INC	BUILDING MAINTENANCE, INST2020
7,447.00	FACILITYBUILD INC	BUILDING MAINTENANCE, INSTALLA
-4.07	HOME DEPOT CREDIT SERVICE	Invoices paid; ok to close2020
-204.68	HOME DEPOT CREDIT SERVICE	BUILDER'S SUPPLIES 2020
-43.88	HOME DEPOT CREDIT SERVICE	BUILDER'S SUPPLIES 2020
-87.85	HOME DEPOT CREDIT SERVICE	BUILDER'S SUPPLIES 2020
-86.93	HOME DEPOT CREDIT SERVICE	BUILDER'S SUPPLIES 2020
-184.36	HOME DEPOT CREDIT SERVICE	BUILDER'S SUPPLIES 2020
-863.23	HOME DEPOT CREDIT SERVICE	BUILDER'S SUPPLIES 2020
-330.42	HOME DEPOT CREDIT SERVICE	BUILDER'S SUPPLIES 2020
-69.48	HOME DEPOT CREDIT SERVICE	BUILDER'S SUPPLIES 2020
1,874.90	HOME DEPOT CREDIT SERVICE	BUILDER'S SUPPLIES
107,612.42	CONSTRUCTION DAVENPORT	GLASS AND GLAZING SUPPLIES

<p>4,662.81 ALIVE ELECTRIC, INC.</p> <p>4,902.41 CORONADO PAINT & DECORATING CENTER</p> <p>130,357.47</p> <p>1,232.94 GEO-TEST, INC.</p> <p>11,946.89 COOPERATIVE EDUCATIONAL SERVICES</p> <p>107,612.42 CONSTRUCTION DAVENPORT</p> <p>4,662.81 ALIVE ELECTRIC, INC.</p> <p><u>4,902.41</u> CORONADO PAINT & DECORATING CENTER</p> <p>130,357.47</p>	<p>ELECTRICAL EQUIPMENT AND SUPPL</p> <p>FLOOR COVERING, FLOOR COVERING</p> <p>ENGINEERING SERVICES, PROFESSI</p> <p>BUILDINGS AND STRUCTURES: FABR</p> <p>GLASS AND GLAZING SUPPLIES</p> <p>ELECTRICAL EQUIPMENT AND SUPPL</p> <p>FLOOR COVERING, FLOOR COVERING</p>
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Signature: *Carolynn Koibal*

Email: clroibal@ci.santa-fe.nm.us

Signature:

Email: mtmccoy@santafenm.gov

Division	Org	Org Title	Object	Object Title	Dpt Request	Justification	Expected Life Span (Years)
Streets	1000471	Streets & Drainage Maint	530200	Operating Supplies	\$40,000	Asphalt and Concrete	3-5 years
Streets	1000471	Streets & Drainage Admin	571000	Vehicles > 1.5	\$340,000	dump truck, 2 support vehicles, including snow plow and dump body	15 years
Streets	1000471	Streets & Drainage Admin	570500	Equipment & Machinery	\$50,000	asphalt trailer	15 years
Streets	3306250	Streets & Drainage - Gas Tax	570500	Equipment & Machinery	\$5,000	large flat bed trailer for hauling equipment	15 years
Streets	3306250	Streets & Drainage - Gas Tax	570500	Equipment & Machinery	\$35,000	wheel lift	15 years
Facilities	3650432	Custodial Van	5709050	Vehicles <1.5	\$30,000	Replacement of Van recommended by Fleet	15 Years
Facilities	1000435	Maintenance Truck	5709050	Vehicles <1.5	\$45,000	Replacement of Truck recommended by Fleet	
Facilities	3650432	Roof & Clerestory Replacement	520100	Rep and Maint Building/Stru	\$1,628,000	Ft. Marcy Roof & Clerestory Replacement, City Hall Roof Coating, and other roofs, needed because current roofs and clerestories are beyond their useful life	20 Years
Facilities	1000435	Fire System Inspection & Repair Citywide	520100	Rep and Maint Building/Stru	\$300,000	Contract to survey City's fire protection systems, develop upgrade design, and construct upgrades.	20 Years
Facilities	1000435	La Familia Maintenance	520100	Rep and Maint Building/Stru	\$50,000	Facility upgrades at La Familia Medical Center	5 Years
Facilities	3650432	Citywide HVAC Repairs	520400	Rep & Maint Machine/Equip	\$150,000	GCCC Domestic Hot Water Heater, Southside Library Boilers, and HVAC upgrades.	
Facilities	3650432	Ft. Marcy Mechanical Room Electric Repair	520100	Rep and Maint Building/Stru	\$100,000	Ft. Marcy Mechanical Room Electric Repair and related work needed because equipment is unsafe	20 Years
Facilities	1000435	GCCC Mezzanine	520100	Rep and Maint Building/Stru	\$700,000	GCCC Mezzanine upgrades.	20 Years
Facilities	3650432	Siler Sewer Line	520400	Rep & Maint Machine/Equip	\$80,000	Upgrade and replace Siler Sewer Line.	20 Years
Facilities	3650432	Miscellaneous Capital Improvements	520100	Rep and Maint Building/Stru	\$100,000	Miscellaneous Capital Improvements	20 Years
Fire		Public Safety Radio	572970	WIP Construction	\$200,000	Additional funding needed to purchase radios	5 years
Engineering	1000412	Paint/Sign Operations/Maintenance	530200	Operating Supplies	\$200,000	Pavement marking tape and roadway sign material to be installed by City staff.	5 Years
Engineering	1000412	Paint/Sign Operations/Maintenance	572500	Remodeling & Replacement	\$200,000	Installation of pavement marking and roadway signs.	5 Years
Engineering	1000415	Signals Operations/Maintenance	530200	Operating Supplies	\$450,000	Signal equipment replacement and upgrades.	25 Years
Engineering	1000415	Signals Operations/Maintenance	571000	Vehicles >1.5	\$405,000	Replacement of 2 bucket trucks and 1 pickup truck as recommended by Fleet.	15 Years
Engineering	1000416	Traffic Engineering	520150	Rep and Maint System Equip	\$100,000	Street light repair and replacement.	20 Years
Engineering		Harrison Road Sidewalk and lighting	571700	Improvements other than bl	\$172,000	plan, design ROW acquisition and construct lighting and sidewalk improvements along Harrison Road from Cerrillos Rd to Agua Fria Rd	20 Years
Parking	5350453	Parking/Collections	570500	Inventory Exempt Equipment	\$30,000	License Plate Recognition Equip/Software	10 years min.
Parking	5350454	Parking/Parking Collections	570500	Equipment & Machinery	\$195,000	Current mechanical locks are worn out. New locks are needed to ensure that coins are collected.	12 years
Parking	5350455	Parking/Off-Street	572500	Remodeling & Replacement	\$68,000	Refurbish Sandoval Elevator	10 - 15 years
Parking	5350455	Parking/Off-Street	572500	Remodeling & Replacement	\$102,000	Refurbish (2) SFCCC Elevators	10 - 15 years
Parking	5350456	Parking/Maintenance	570950	Vehicles <1.5	\$75,000	Replacement of Flat bed truck as recommended by fleet. Flat bed truck is required to spread snow melt and distribute barricades etc. for traffic control	15 years
Parks	1004150	Parks/Trails & Open space	571000	Vehicles > 1.5	\$35,500	(1) support vehicles to replace non-functioning red-tagged city units & necessary to transport staff & equipment safely (8) needed but requesting (1) x \$35,500 = \$35,500	15 years
Parks	1004150	Parks/Trails & Open space	570500	Equipment & Machinery	\$35,500	Toro Rake-O-Vac needed to replace on-working obsolete Toro Rake-O-Vac. to pick up grass clippings & debris in parks after mowing; not having this machinery causes in adequate penetratoin of water into the turf;	10 years
Parks	1004150	Parks/Trails & Open space	570500	Equipment & Machinery	\$115,000	(1) Small Dumptruck with Plow & Spreader; needed to replace old/non operating Unit #632 Ford & #633 Kodiak bobtail 6 yd. dump trucks (need 2 but requesting) (\$115,000 ea)	10 years
Parks	1004150	Parks/Trails & Open space	570500	Equipment & Machinery	\$245,000	Motor Grader needed to replace 1980 model in parks inventory	10 years
Parks	1004150	Parks/Trails & Open space	570500	Equipment & Machinery	\$137,400	Back hoe to replace old John Deere Unit #634 back-hoe in parks inventory	10 years
MRC	5300271	MRC Golf Course	570500	Equipment & Machinery	\$82,000	John Deere 8700A Precision Cut Fairway Mower needed to replace old/non-functioning Jacobsen Turf King Mower FA#2795; Unit #-06	10 years
TOTAL					\$6,500,400		

City of Santa Fe, New Mexico

memo

DATE: September 1, 2020

TO: Public Works Committee

FROM: John Romero, Acting Public Works Department Director *JR*

SUBJECT: **Maintenance Agreement for Roadway Lighting at NM 599 –US 84/285 Interchange**

ISSUE

The New Mexico Department of Transportation (NMDOT) is currently in the design phase of a project which will improve the ramp geometry at the NM 599 - US 84/285 interchange. As part of their design process, the NMDOT looks to executing and/or update roadway lighting maintenance agreements where applicable.

In this particular case, the proposed maintenance agreement updates an agreement the City already has with the NMDOT, although it does not change the terms. The City entered into a Road Exchange Agreement with NMDOT in 1989, which was amended in 1997 (attached). Under the terms of this Road Exchange Agreement the City agreed to maintain a all NMDOT street lights within the City limits. Section 2.1.1 of Exhibit A (page 12) of the original 1989 road exchange agreement explains that the City is responsible for the maintenance of “-Street Lighting (operating, repair, utilities, etc.)” on roadways identified under Section 3 of that agreement. This segment of roadway is identified under section 3.1.6 of the agreement. Section 2 of the proposed maintenance agreement assigns these same responsibilities to the City.

Approval of the proposed maintenance agreement will not increase any responsibility the City has with regards to the street lights at the NM 599-US 84/285 interchange. Execution of this agreement will not require any additional funding and/or City resources.

RECOMMENDED ACTION:

Approve the attached Maintenance Agreement for roadway lighting at the NM 599-US84/285 interchange, with the NMDOT.

If you have any questions or need any more information, feel free to contact me at 955-6638. Thank you.

N:\Traffic Engineering\Traffic Engineering Section\05-Street Lighting\NMDOT Lighting Agreements\NM 599\NM599-US 84-285\PWC 08-26-20.doc

Contract No.: _____

MAINTENANCE AGREEMENT

ROADWAY LIGHTING

This Agreement is between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** (Department), and the, **CITY OF SANTA FE** (Public Entity). This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

Whereas, the Department contemplates the construction of a highway project within the boundaries of the Public Entity, identified as [fill in title of project], PN: S100430 CN: S100430 (Project);

Whereas, the Department and Public Entity agree with the need for installation of roadway lighting at the following location(s): NM599 to US84/285 interchange and ramps;

Whereas, the installation of the roadway lighting will promote traffic safety;

Whereas, the parties want to set forth their responsibilities on operation and maintenance of the roadway lighting.

Now therefore, pursuant to NMSA 1978, Section 67-3-28, the parties agree as follows:

1. The Department Shall:

- a. Provide the necessary plans, designs and estimates and other documents required for the construction of the Project and cause the Project to be constructed in the manner provided by law.
- b. Determine the design, provide and install new roadway lighting equipment with cabinet, concrete foundations, poles, luminaires, underground conduit, and conductor for complete roadway lighting.
- c. Provide and install approximately 18, LED luminaires with full cutoff fixtures, on type V standards at NM599 to US84/285 interchange and ramps for a fully operational lighting system.
- d. After construction is completed, provide the Public Entity as built drawings of the repairs to the roadway lights and a complete list of all parts and components, used including the brands and specifications.
- e. After completion of the Project, allow the Public Entity to enter into the Department's right of way to perform maintenance as detailed in Section 2 below.

2. The Public Entity Shall:

After the roadway lighting system has been constructed:

- a. Provide at its sole cost and expense all electrical energy.
- b. Perform at its sole cost and expense any and all maintenance to keep the system operating, which includes luminaire replacement as well as replacement of all parts and components as a result of equipment failure, accidental damage and intentional damage, which includes vandalism.
- c. Perform maintenance as detailed in this Section 2, to all parts and components, which includes and is not limited to poles or fixtures, conduits and wiring, and as provided by as-built drawings.
- d. Replace all parts and components with the same kind, brand or performance for continued satisfactory operation of said roadway lighting system.

3. Term.

This Agreement becomes effective upon signature of all parties. The effective date is the date when the last party signed the Agreement on the signature page below.

4. Third Party Beneficiaries.

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

5. New Mexico Tort Claims Act.

As between the Department and Public Entity, 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 the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.* This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

6. Scope of Agreement.

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. 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.

7. Terms of this Agreement.

The terms of this Agreement are lawful; performance of all duties and obligations shall conform with and do not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

8. Equal Opportunity Compliance.

The parties agree 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 and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

9. Appropriations and Authorizations.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Public Entity, Legislature or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given by one party to the other. The Department and Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

10. Severability.

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

11. Contingent on Project Being Let.

In the event that the Project is not let for any reason, this Agreement shall become null and void and shall create no obligation on any of the parties.

12. 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, Section 38-3-1(G).

13. Principal Contacts and Notices.

The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed below.

Name: Paul Brasher, P.E.

Title District Engineer

Public Entity: New Mexico Department of Transportation

Address: P.O. Box 4127, Santa Fe, NM 87502

Office: 505-469-2194

E-mail: Paul.Brasher@state.nm.us

Name: John Romero
Title: Public Works Director
Public Entity: City of Santa Fe
Address: PO Box 909, Santa Fe, NM 87504-0909
Office: 505-955-6638
E-mail: jjromero1@santafenm.gov

14. Amendment

This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties.

In witness whereof, each party is signing this Agreement on the date stated opposite that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Cabinet Secretary or Designee

Date: _____

Recommended by:

By: _____
State Traffic Engineer

Date: _____

By: _____
District Engineer

Date: _____

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: _____
Assistant General Counsel

Date: _____

CITY OF SANTA FE

By: _____
Alan M. Webber, Mayor

Date: _____

Attest:

Yolanda Y. Vigil, City Clerk

Date: _____

City Attorney's Office:

Marcos Martinez
Marcos Martinez (Sep 1, 2020 14:28 MDT)

Senior Assistant City Attorney

Date: Sep 1, 2020

Approved for Finances:

Mary T. McCoy, Finance Director






2020 09 01 S100430 NM599 to US84-285 Interchange

Final Audit Report

2020-09-01

Created:	2020-09-01
By:	Irene Romero (ikromero@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAaES1MRybWgrdGVxZBlqfQSuXNI1-IRwH

"2020 09 01 S100430 NM599 to US84-285 Interchange" History

-  Document created by Irene Romero (ikromero@ci.santa-fe.nm.us)
2020-09-01 - 8:16:58 PM GMT- IP address: 63.232.20.2
-  Document emailed to Marcos Martinez (mdmartinez@santafenm.gov) for signature
2020-09-01 - 8:17:35 PM GMT
-  Email viewed by Marcos Martinez (mdmartinez@santafenm.gov)
2020-09-01 - 8:24:57 PM GMT- IP address: 97.123.6.58
-  Document e-signed by Marcos Martinez (mdmartinez@santafenm.gov)
Signature Date: 2020-09-01 - 8:28:11 PM GMT - Time Source: server- IP address: 97.123.6.58
-  Signed document emailed to jjromero1@santafenm.gov, Marcos Martinez (mdmartinez@santafenm.gov) and Irene Romero (ikromero@ci.santa-fe.nm.us)
2020-09-01 - 8:28:11 PM GMT



POWERED BY
Adobe Sign



City of Santa Fe

Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT or CONTRACT AMENDMENT

2 Name of Contractor NMDOT Municipal Arterial Program Cooperative Project Agreement (CN L500429)

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: _____ \$0.00

Termination Date: No termination

Approved by Council Date: Pending

or by City Manager Date: _____

Contract is for: Lighting Maintenance Agreement with the NMDOT for street lights at the NM 599-US 84/285 interchange

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for:

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) Plus GRT
 Inclusive of GRT

Amount \$ 0.00 of original Contract# _____ Termination Date: No termination
Reason: _____

Amount \$ _____ Amendment # _____ Termination Date: _____
Reason: _____

Amount \$ _____ Amendment # _____ Termination Date: _____
Reason: _____

Amount \$ _____ Amendment # _____ Termination Date: _____
Reason: _____

Total of Original Contract plus all amendments: \$ _____ 0.00



City of Santa Fe Summary of Contracts, Agreements, & Amendments

5 Procurement Method of Original Contract: (complete one of the lines)

RFB# N/A Date: _____

RFQ _____ Date: _____

Sole Source _____ Date: _____

Other Municipal Arterial Program funding

6 Procurement History: N/A

example: (First year of 4 year contract)

Purchasing Officer Review

Comments or Exception: N/A

7 Funding Source: _____ 1000416 **BU/Line Item:** _____ 1000416.514050

Budget Officer Approval

Comments or Exceptions: _____

8 Any out-of-the ordinary or unusual issues or concerns:

(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: John Romero

Phone # 955-66638

10 Certificate of Insurance attached. (if original Contract)

Funding agreement with NMDOT. No COI needed.

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature

Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:



City of Santa Fe New Mexico

Memorandum



Date: September 2, 2020

To: Quality of Life Committee, Public Utilities/Public Works Committee, and Governing Body

From: Randy Randall, TOURISM Santa Fe Director ^{RR}
John Romero, Acting Public Works Director ^{JR}

Subject: Revision to Temporary Sale of Alcohol on City Property

ITEM AND ISSUE

As a result of the COVID 19 pandemic and the New Mexico Health orders, the City of Santa Fe approved the sale of alcohol on City property to facilitate the expansion of outdoor dining and providing restaurants the opportunity to expand their revenues and occupancy while the health order limits their available dining. This approval expires on October 31, 2020, at the same time the emergency expansion granted by the State Alcohol Beverage Control (ABC) currently expires.

BACKGROUND AND SUMMARY

The opportunity to expand dining and alcohol service on City-owned properties has assisted at least 10 restaurants in expanding their outdoor dining capacity. The outdoor dining has also proven to be very popular with residents and visitors as they enjoy the wonderful weather Santa Fe is blessed to have and feel safer dining in today's unique environment. As we move into the late fall and winter months, there are still many days when continuation of outdoor dining will be desired.

Because of the popularity of outdoor dining that has been experienced by this action of the Governing Body, there is a desire on the part of the current restaurant users and other restaurants that have not expanded their outdoor space using city owned property to continue outdoor dining next season, even if the current health restrictions are further revised or eliminated.

We have contacted the ABC Director and determined there is a willingness to consider an extension of the expansion for alcohol service granted by that organization, depending on any change to the health order in September. The length of the extension has not yet been determined.

The amendment to the previous ordinance will extend the use of City-owned property for restaurant expansion including the service of alcohol for an additional year or until the temporary expansion of alcohol service is terminated by ABC, whichever occurs first.

ACTION REQUESTED

Staff requests adoption of the bill as presented.

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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2020-__

Mayor Alan Webber

Councilor Signe I. Lindell

AN ORDINANCE

AMENDING SECTION 23-6.2 SFCC 1987 TO EXTEND THE TIME PERIOD FOR WHICH ESTABLISHMENTS THAT HAVE OBTAINED AN OBSTRUCTION PERMIT FROM THE CITY AND A TEMPORARY CHANGE/EXPANSION OF LIQUOR LICENSE PREMISES FROM THE NEW MEXICO ALCOHOLIC BEVERAGE CONTROL DIVISION MAY SERVE ALCOHOL ON CITY SIDEWALKS, STREETS, RIGHTS-OF-WAY, OR OTHER PROPERTY THAT HAS BEEN SPECIFICALLY AUTHORIZED FOR TEMPORARY USE DUE TO THE COVID-19 PUBLIC HEALTH EMERGENCY AND ITS EFFECTS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Section 23-6.2 of SFCC 1987 (being Ord. No. 2012-20, as amended) is amended to read:

23-6.2 Permitted locations for the sale and consumption of alcohol on city property.

A. The sale or consumption of alcoholic beverages is permitted at the following locations on city property:

1 (1) The Santa Fe community convention center and adjacent outdoor
2 spaces under the center's control;

3 (2) That area of the Santa Fe regional airport main terminal building and
4 adjacent areas operated as a restaurant;

5 (3) The Marty Sanchez links de Santa Fe (golf course);

6 (4) Buildings owned by another party located on land owned by the city;

7 (5) On land or buildings owned by the city, located within the Santa Fe
8 Railyard, as described in the Railyard Master Plan, for which the city has entered into
9 a lease with another party for six (6) months or more except for the Railyard park, Plaza
10 and Alameda (as defined in the Deed of Conservation Easement dated October 1, 2004)
11 where alcohol is prohibited, unless specifically permitted under subsection 23-
12 6.2 SFCC 1987;

13 (6) On land or buildings owned by the city for which the city has entered
14 into a lease with another party for six (6) months or more;

15 (7) In or on railroad cars located on railroad tracks except as prohibited by
16 state or federal law; and

17 (8) During professional baseball games, the area of Fort Marcy ballpark
18 designated for concessions and seating.

19 B. The only alcohol sales and consumption permitted at Fort Marcy ballpark are
20 beer and wine.

21 C. The governing body may approve by resolution the sale and consumption of
22 alcohol at all other locations on city property, except within the Plaza as defined by
23 subsection 23-5.1(S). The resolution specifying the event, date, hours, location, number of
24 expected attendees, type of alcohol to be served, required permits, and insurance shall be
25 adopted at least thirty (30) days in advance of the event. The resolution shall be limited to

1 authorization for a single event, unless otherwise stated in the resolution.

2 D. All other applicable approvals required by state or city laws and regulations
3 shall be obtained prior to the sale or consumption of alcoholic beverages on the property
4 described in this subsection 23-6.2.

5 E. As a response to the May 27, 2020, public health order issued by the New Mexico
6 department of health allowing limited outdoor dining service for qualified restaurants, and to
7 enhance physical distancing restrictions due to the COVID-19 pandemic, sale and consumption of
8 alcohol on any city sidewalk, street, right-of-way, or other specified property that has been
9 designated and approved for temporary use by a current liquor licensee may ~~[serve alcohol]~~ occur
10 pursuant to the following limitations:

11 1. A licensed establishment shall obtain and maintain a general liability
12 policy in the amount of one million dollars (\$1,000,000.00) and a liquor liability policy in
13 the amount of two million dollars (\$2,000,000.00) and must name the city, officers,
14 employees, and agents as additional insureds.

15 2. The licensed establishment must apply for and receive an obstruction
16 permit from the city that includes the requirement to indemnify the city.

17 3. The licensed establishment must also obtain a temporary
18 change/expansion of liquor license premises issued by the alcoholic beverage control
19 division of the New Mexico regulation and licensing department. Proof of the approved
20 temporary change/expansion of liquor license premises must be produced upon request of
21 police, fire, or other authorized city official.

22 4. The sale and consumption of alcoholic beverages on any city property
23 allowed under this subsection shall be subject to the regulations concerning alcoholic
24 beverages contained in SFCC Section 4-2, 1987.

25 5. Unless extended by ordinance or resolution, any license or permit issued

1 pursuant to this subsection shall expire on October 31, [~~2020~~] 2021.

2 APPROVED AS TO FORM:

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4  _____

5 ERIN K. McSHERRY, CITY ATTORNEY

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25 *Legislation/2020/Bills/Sale of Alcohol on City Property Extension*

FISCAL IMPACT REPORT**General Information:**(Check) Bill: X Resolution: _____Short Title(s): Sale of Alcohol on City Property ExtensionSponsor(s): Mayor WebberReviewing Department(s): City Attorney's Office, City Clerk's Office, Economic Development Department, Public Works Department, Land Use DepartmentStaff Completing FIR: Randy Randall/John Romero Date: 6/11/20 Phone: 955-6209/955-6638Reviewed by City Attorney:  Date: Sep 2, 2020Reviewed by Finance Director:  Date: Sep 3, 2020**Summary:**

Eligible establishments that are currently taking advantage of the opportunity to expand seating to outdoor areas on City sidewalks, rights-of-way, and in some cases streets, or wish to do so in the future, will be permitted to do so through October 31, 2021. The program has proven popular with area restaurants and given the unknown effects of COVID-19, an extension of the program will allow restaurants to know the ability to provide expanded outdoor dining is available for a longer period of time. The space allowed by the New Mexico Alcoholic Beverage Control Division for a temporary floor plan modification is 25% of the current licensed floor plan.

Departments Affected:

City Clerk's Office, Economic Development Department, Public Works Department, Land Use Department, and TOURISM Santa Fe

Consequences of Not Enacting Legislation:

Eligible establishments will not be able to continue their outdoor service area onto City property to accommodate social distancing and other COVID safe practices required by the State and the City after October 31, 2020.

Conflict, Duplication, Companionship, or Relationship to Other Legislation:

This legislation relates to the New Mexico Alcohol Beverage Control Division's temporary authorization for liquor licenses to expand their outdoor service area to a maximum of 25% of their current licensed floor plan. If the Alcohol Beverage Control Division does not extend the time period for _____ the temporary floor plan modification for the same time frame as the City, restaurants will not be permitted to continue the expanded outdoor dining space beyond the Division's own time period.

Performance and Administrative Implications:

Obstruction permits will be issued by Public Works Department to allow for the use of City property. Approval from the City for the expanded alcohol service will be issued by the City Clerk in consultation with the Public Works Department and the Land Use Department.

Fiscal Implications:

The obstruction permits issued by the City are available to eligible liquor licenses for \$100. The City has permitted 12 establishments under the current program It is unclear at this time how many additional establishments will apply for the temporary permits based on an extended timeline.

Fiscal Impact

_____ Check here if no fiscal impact

Expenditures

Expenditure Type	FYE __	FYE __	FYE __	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
Personnel and Benefits*	\$ _____	\$ _____	\$ _____	_____	_____	_____	
Capital Outlay	\$ _____	\$ _____	\$ _____	_____	_____	_____	
Contractual/ Professional Services	\$ _____	\$ _____	\$ _____				
Operating	\$ _____	\$ _____	\$ _____		_____	_____	\$ _____
Total:	\$ _____	\$ _____	\$ _____				\$ _____

* This includes all staff time associated with executing the job functions of the proposed legislation.

Expenditure Narrative:

Revenue

Revenue Type	FYE 21	FYE 22	FYE 23	Recurring (R) or Non-recurring (NR)	Fund
General Fund	\$ 1000	\$ _____	\$ _____	NR	100
Special Revenue	\$ _____	\$ _____	\$ _____	_____	_____
CIP	\$ _____	\$ _____	\$ _____	_____	_____
Enterprise	\$ _____	\$ _____	\$ _____	_____	_____
Internal Service	\$ _____	\$ _____	\$ _____	_____	_____
Trust and Agency	\$ _____	\$ _____	\$ _____	_____	_____
Federal	\$ _____	\$ _____	\$ _____	_____	_____
Other	\$ _____	\$ _____	\$ _____	_____	_____
Total	\$ 1000	\$ _____	\$ _____		

Revenue Narrative:

An estimated 10 additional temporary permits may be issued at a cost of \$100 per permits equaling a total estimated revenue of \$1000.

Signature: *Randy Randall*

Email: rrandall@santafenm.gov

Signature: *John Romero*
John Romero (Sep 3, 2020 13:39 MDT)

Email: jjromero1@santafenm.gov












Sale of Alcohol on City Property Extension


Final Audit Report

2020-09-03


Created:	2020-09-02
By:	Jesse Guillen (jbguillen@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAgFYagKIA0alHXYIVfojf5UD5ZNPxgq6M

"Sale of Alcohol on City Property Extension" History


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