



AGENDA

SPECIAL MEETING OF THE
PUBLIC WORKS AND UTILITIES
COMMITTEE
JULY 26, 2021 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 in excess of those permitted in the current Public Health Order, 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.

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/93414511648?pwd=SVRCWUZsTy9QTVYrZThOSnNQL2tKUT09>

Passcode: 767823

Attendees should use the "Raise Hand" function to be recognized by the Chair to speak at the appropriate time.

Phone: To join the Zoom meeting using a phone, use the following phone numbers and Webinar ID: **US: 1 (346) 248-7799 - Webinar ID: 910 2307 0113 - Passcode: 767823**

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

The agenda and packet for the meeting will be posted at <https://santafe.primegov.com/public/portal>.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF AGENDA**
4. **APPROVAL OF CONSENT AGENDA**



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5. **APPROVAL OF MINUTES**

- a. Approval of Minutes from the July 12, 2021 Public Works and Utilities Committee

6. **ACTION ITEMS: CONSENT**

- a. **CONSIDERATION OF BILL NO 2021-15. (Mayor Webber)**
An Ordinance Authorizing the Issuance and Sale of the City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021 in an Aggregate Principal Amount not to Exceed \$14,745,000 for the Purpose of (1) Refunding, Discharging and Paying the City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2010B and Maturing On and After June 1, 2022; (2) Refunding, Discharging and Paying the City of Santa Fe, New Mexico Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2012A and Maturing On and After June 1, 2022; and (3) Paying Costs of Issuance of the Series 2021 Bonds; Calling for the Redemption of the Outstanding Series 2010B Bonds and Series 2012A Bonds; Providing that the Bonds Will be Payable and Collectible from Certain Gross Receipts Tax Revenues Distributed to the City; Approving the Selection of an Underwriter and Forms of a Preliminary Official Statement and a Paying Agent Registrar and Depository Agent Agreement; Delegating Authority to the Mayor or, in the Mayor's Absence, the City Manager or Finance Director, to Approve the Final Principal Amount, Interest Rates and Other Details of the Bonds Within the Parameters Set Forth in this Authorizing Ordinance, and to Execute and Deliver a Bond Purchase Agreement for the Sale of the Bonds to the Underwriter; Providing for the Collection of Certain Gross Receipts Tax Revenues; Approving Certain Other Agreements and Documents in Connection with the Bonds; Ratifying Action Previously Taken in Connection with the Bonds; Repealing all Ordinances in Conflict Herewith; and Related Matters. (Mayor Webber) (Brad Fluetsch, Planning and Investment Officer: bjfluetsch@santafenm.gov, 955-6885)

Committee Review:

Introduced: 06/30/21

Governing Body (request to publish): 07/14/21

Finance Committee: 07/19/21

Public Works and Utilities Committee: 07/26/21



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Governing Body (public hearing): 08/11/21

- b. Request for approval of amendments to Affordable Housing Trust Fund (AHTF) contracts awarded in response to RFP 19/24/P, RFP 20/15/P and awarded through emergency procurement (April 2020) and CDBG CARES Act funds. The purpose of the amendments is to extend the term of performance through June 30, 2022 and to add compensation (total increase of compensation is \$1,553,040.00; total contract amount is \$2,736,709.00). (Alexandra Ladd, Director of Office of Affordable Housing: agladd@santafenm.gov, 505-303-9868).
 - a. NMCEH – Consuelo’s Place (Midtown Shelter) increasing by \$965,000.00, total contract amount \$1,521,169.00
 - b. NMCEH – Homeless Early Intervention Project increasing by \$250,000.00, total contract amount \$430,000.00
 - c. HOUSING TRUST – Mortgage Reduction Assistance increasing by \$200,000.00, total contract amount \$357,500.00
 - d. SFCHA – Country Club Apartment Rehabilitation term extension, increasing by \$0.00, total contract amount \$140,000.00
 - e. LIFE LINK – Emergency Rental Assistance/Hotel Stays increasing by \$138,040.00, total contract amount \$288,040.00

Committee Review:

Finance Committee: 07/19/21

Quality of Life Committee: 7/21/21

Public Works and Utilities Committee: 7/26/21

Governing Body: 07/28/21

- c. Request for Approval of Amendment No. 1 to the Santa Fe Civic Housing Authority’s Country Club Apartments Rehabilitation Project to Extend the Term of Performance through June 30, 2022. (Alexandra Ladd, Director of Office of Affordable Housing; agladd@santafenm.gov, 505-303-9868).

Committee Review:

Finance Committee: 07/19/2021

Quality of Life Committee: 07/21/2021

Public Works and Utilities Committee: 07/26/2021

Governing Body: 07/28/2021

- d. Request for Approval of Contract Amendment No. 1 to the New Mexico Coalition to End Homelessness – Early Intervention Project Contract to



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Extend the Term of Performance through June 30, 2022 and Increase the Amount of Compensation by \$250,000 for a Total Contract Amount of \$430,000. (Alexandra Ladd, Director of Office of Affordable Housing; agladd@santafenm, 505-303-9868). **Committee Review:**

Finance Committee: 07/19/2021

Quality of Life Committee: 07/21/2021

Public Works and Utilities Committee: 07/26/2021

Governing Body: 07/28/2021

- e. Request for Approval of Emergency Procurement of Consuelo's Place/NMCEH Midtown Shelter in the Amount of \$965,000 to Cover 12 Months of Operations through June 30, 2022. (Alexandra Ladd, Director of Office Of Affordable Housing; agladd@santafenm.gov, 505-303-9868)

Committee Review:

Finance Committee: 07/19/2021

Quality of Life Committee: 07/21/2021

Public Works and Utilities Committee: 07/26/2021

Governing Body: 07/28/2021

- f. CONSIDERATION OF RESOLUTION NO. 2021-___. (Mayor Webber)
A Resolution Requesting Approval of Fourth Quarter Budget Amendments and Associated New Mexico Department of Finance and Administration/Local Government Division (DFA/GD) Schedule for Fiscal Year 2020/2021. (Andy Hopkins, Acting Budget Officer, ajhopkins@santafenm.gov, 955-6177)

Committee Review

Introduced: 07/14/21

Finance Committee: 07/19/21

Public Works Committee: 07/26/21

Governing Body: 07/28/21

- g. Request for Approval of Acceptance of FAA Grant SAF 3-35-0037-054-2021 in the Amount of \$607,296 for the Runway 2 Safety Area Grading Improvement Project. (Mark Baca, Airport Manager, mdbaca@santafenm.gov, 955-2901)

1. Request for Approval of BAR to Budget Grant Funding of \$607,296.

Committee Review:



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Finance Committee: 07/19/21
Public Works and Utilities Committee: 07/26/21
Governing Body: 07/28/21

- h. Request for the Approval of Amendment No. 2 to On-Call Service Contract with American Fire Protection Group, Increasing Compensation in the Amount of \$1,000,000 to a New Total of \$1,418,742.81 Plus NMGRT that will Expire on June 30, 2025 for Fire Safety, Monitoring and Improvement Services throughout City Facilities, American Fire Protection Group, Inc. (Sam Burnett, Facilities Division Director, jsburnett@santafenm.gov, 955-5933)

Committee Review:

Public Works and Utilities Committee: 07/26/21
Governing Body: 07/28/21

- i. Request for Approval of Amendment No. 2 to On-Call Service Contract with Davenport Construction Management, Increasing Compensation in the Amount of \$1,000,000 to a New Total of \$1,250,000 Plus NMGRT that will Expire on June 30, 2023 for Fire Safety, Monitoring and Improvement Services throughout City Facilities, Davenport Construction Management, Inc. (Sam Burnett, Facilities Division Director, jsburnett@santafenm.gov, 955-5933)

Committee Review:

Public Works and Utilities Committee: 07/26/21
Governing Body: 07/28/21

- j. Request for the Approval of an On-Call Service Contract with National Roofing, with Total Compensation in the Amount of \$1,000,000 Plus NMGRT that will Expire on June 30, 2023 for Miscellaneous Roofing Services throughout City Facilities, National Roofing, Inc. (Sam Burnett, Facilities Division Director, jsburnett@santafenm.gov, 505-955-5933)

Committee Review:

Public Works and Utilities Committee: 07/26/21
Governing Body: 07/28/21

- k. Request for approval of a Budget Amendment Request in the amount of \$2,990,000 to Address Critical Road Rehabilitation Needs Throughout the



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City of Santa Fe. (Mark Brooks, Streets Public Works Administrator, mebrooks@santafenm.gov, 955-0000)

Committee Review:

Public Works and Utilities Committee: 07/26/2021

Finance Committee: 08/02/2021

Governing Body: 08/11/2021

- I. Request for Approval of Amendment No. 1 to the Global Management Performance Contract (Munis Contract No. 3202498) with Dalkia Energy Solutions LLC, for the City of Santa Fe Streetlight Conversion and Maintenance to Incorporate the Specifications of the Community Guided Lighting Design. (Regina Wheeler, Public Works Department Director, rawheeler@santafenm.gov, 955-6622)

Committee Review:

Public Works & Utility Committee: 07/26/21

Governing Body: 07/28/21

7. **MATTERS FROM STAFF**
8. **MATTERS FROM THE COMMITTEE**
9. **MATTERS FROM THE CHAIR**
10. **NEXT MEETING: Monday, August 9, 2021**
11. **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.



MINUTES

REGULAR MEETING OF
THE PUBLIC WORKS AND
UTILITIES COMMITTEE
JULY 12, 2021 AT 5:00 PM
VIRTUAL MEETING

1. **CALL TO ORDER**

Meeting started at 5:02pm

2. **ROLL CALL**

Members Present:

Councilor Chris Rivera
Councilor Michael Garcia
Councilor Roman Abeyta
Councilor Signe Lindell
Councilor JoAnne Vigil Coppler

Members Excused:

None

Others Attending:

Jamie-Rae Diaz, Administrative Manager
Regina Wheeler, Public Works Department Director
Shannon Jones, Public Utilities Department Director
Emily Pisula, Fiscal Administrator, PW
Erin McSherry, Attendee
Javier Rosado, Attendee
Pauline Kamiyama, Attendee
Rich Brown, Attendee
Sam Burnett, Attendee
Caryn Grosse, Attendee
Kristine Mihelcic, Attendee

Facilitator Monica Romero was in attendance
Facilitator Andrew Wilkins was in attendance
Facilitator Jenice Gharib was in attendance
Facilitator Valerie Martinez was in attendance

3. **APPROVAL OF AGENDA**

MOTION: Councilor Vigil Coppler moved, seconded by Councilor Abeyta, to approve the as presented.



MINUTES

REGULAR MEETING OF
THE PUBLIC WORKS AND
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VIRTUAL MEETING

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Rivera, Councilor Garcia, Councilor Abeyta, Councilor Lindell,
Councilor Vigil Coppler

Against: None

Abstain: None

Chairmen Rivera moved item 8a to be after 8c.

4. APPROVAL OF CONSENT AGENDA

MOTION: moved, seconded by , to approve the as presented.

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Rivera, Councilor Garcia, Councilor Abeyta, Councilor Lindell,
Councilor Vigil Coppler

Against: None

Abstain: None

Councilor Lindell pulled item 8b for discussion.

Councilor Vigil Coppler pulled items 8a and 8c for discussion.

5. APPROVAL OF MINUTES

- a. Approval of minutes from the June 28, 2021 Public Works and Utilities Committee.

MOTION: Councilor Lindell moved, seconded by Councilor Garcia,
to approve the minutes as presented.

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Rivera, Councilor Garcia, Councilor Abeyta, Councilor
Lindell



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Against: None

Abstain: Councilor Vigil Coppler

6. PUBLIC COMMENT

- a. To provide a live comment you must join the Zoom meeting by internet or phone, please e-mail or call Jamie-Rae Diaz, Administrative Manager, Public Utilities, jldiaz@santafenm.gov, 955-4233 by 1 :00 p.m. the day of the meeting for the meeting link and/or call in number

7. PRESENTATION

- a. Golf Course Presentation. (Melissa McDonald, Acting Parks Division Director, mamcdonald@santafenm.gov, 955-6480)

8. ACTION ITEMS: CONSENT

- a. Request for Approval of a Professional Services Contract in the Total Amount of \$254,000 for CHART Consultant Team; Artful Life, LLC. (Pauline Kanako Kamiyama, Arts and Culture Department Director: pkkamiyama@santafenm.gov, 955-470-8482; Kristine Mihelcic, City Clerk and Community Engagement Department Director: kmmihelcic@santafenm.gov, 955-6846)

Committee Review:

Finance Committee: 07/06/21

Quality of Life Committee: 07/07/21

Public Works and Utilities Committee: 07/12/21

Governing Body: 07/14/21

MOTION: Councilor Vigil Coppler moved, seconded by Councilor Garcia, to approve the contract as presented forward to Governing Body and to be pulled from consent to go into executive session.

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Rivera, Councilor Garcia, Councilor Abeyta, Councilor Lindell, Councilor Vigil Coppler



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Against: None

Abstain: None

Pulled by Councilor Vigil Coppler for discussion. Approved to forward to Governing Body with the Motion that this item be pulled from consent and go into executive session.

- b. Request for Approval of Service Agreement in the Total Amount of \$1,444,526.87 to Replace Ft Marcy Roof and Skylights; First Mesa Construction, Inc.; Caryn Grosse, clgrosse@santafenm.gov, 505-955-5938

COMMITTEE REVIEW:

Public Works and Utilities Committee: July 12, 2021

Finance Committee: July 19, 2021

Governing Body: July 28, 2021

MOTION: Councilor Lindell moved, seconded by Councilor Garcia, to approve the contract as presented.

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Rivera, Councilor Garcia, Councilor Abeyta, Councilor Lindell, Councilor Vigil Coppler

Against: None

Abstain: None

Pulled by Councilor Lindell for discussion. Approved to forward to 7/19/2021 Finance Committee.

- c. Request for Approval for Award of Bid '21/37/B for the City Wide Water Utility Construction & Repair Price Agreement CIP # 3057 with Sub Surface Contracting, Inc. and A.A.C Construction, LLC for \$250,000.00 exclusive of NMGR to each contractor, per Fiscal Year. (Bill Huey, Engineer, bchuey@santafenm.gov, 955-4273) 1) Request for Approval of a Budget



MINUTES

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JULY 12, 2021 AT 5:00 PM
VIRTUAL MEETING

Adjustment Resolution (BAR) in the amount of \$542,188 from the Water Enterprise Fund cash balance to the Water CIP fund for FY 2022.

Committee Review:

Public Works and Utilities Committee: 07/12/2021

Finance Committee: 07/19/2021

Governing Body: 07/28/2021

MOTION: Councilor Vigil Coppler moved, seconded by Councilor Garcia, to approve the contract as presented.

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Rivera, Councilor Garcia, Councilor Abeyta, Councilor Lindell, Councilor Vigil Coppler

Against: None

Abstain: None

Pulled by Councilor Vigil Coppler for discussion. Approved to forward to 7/19/2021 Finance Committee.

9. **ACTION ITEMS: DISCUSSION**

10. **EXECUTIVE SESSION**

11. **MATTERS FROM STAFF**

Director Rosado will be leaving the Public Works Department.

12. **MATTERS FROM THE COMMITTEE**

13. **MATTERS FROM THE CHAIR**

14. **NEXT MEETING: July 26 2021**

15. **ADJOURN**



MINUTES

REGULAR MEETING OF
THE PUBLIC WORKS AND
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JULY 12, 2021 AT 5:00 PM
VIRTUAL MEETING

Liaison

Chair



City of Santa Fe New Mexico

Memorandum



Date: July 1, 2021

To: Finance Committee, Public Works Committee, and Governing Body

Via: Alexis Lotero, Acting Finance Director AL

From: Bradley Fluetsch, CFA, Planning and Investment Officer BF

RE: \$14,745,000 CITY OF SANTA FE, NEW MEXICO
Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021

EXECUTIVE SUMMARY:

The proposed Bill refunds two of the City's outstanding bonds, a Senior Lien GRT Bond and a Subordinate Lien GRT bond into a single Subordinate Lien GRT Revenue Bond at much lower interest rates, saving the City an estimated \$1.35 million in interest expense over the next five years.

BACKGROUND:

Municipal bonds typically have a call option allowing a municipal government to refund bonds if it is advantageous to the entity. The 2010B and the 2012A became eligible for the City to refund in the past year. According to the City's Debt Policy, Section IX. C the City may issue current refunding bonds when advantageous, legally permissible and prudent and when net present value of savings equal three percent. According to the City's Municipal Advisor, the estimated savings is \$1,347,067 or a net present value of savings of \$1,014,398, easily exceeding the three percent policy requirement.

ACTION REQUESTED:

Staff request that the committees and Governing Body approve the bill authorizing the issuance of the 2021 Subordinate Lien Gross Receipts Tax Refunding Revenue Bond in the amount of \$14,745,000 subject to market conditions, which may alter the amount of the issuance or actual savings.

ATTACHMENTS:

Bill
Fiscal Impact Report
Financing Schedule
Preliminary Official Statement
Savings Estimate

1 AN ABSTRACT OF PROCEEDINGS

2 STATE OF NEW MEXICO)

3 COUNTY OF SANTA FE) ss.

4 CITY OF SANTA FE)

5 The Governing Body (the "Governing Body") of the City of Santa Fe (the "City") in the
6 County of Santa Fe, State of New Mexico, met in regular session in full conformity with law and
7 ordinances and rules of the City, at City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico, being
8 the regular meeting place of the Governing Body, at the hour of 5:00 p.m., on Wednesday, the ___
9 day of _____, 2021.

10 Upon roll call the following were found to be present, constituting a quorum of the
11 Governing Body:

12	PRESENT:	Mayor:	_____
13		Councilor:	_____
14		Councilor:	_____
15		Councilor:	_____
16		Councilor:	_____
17		Councilor:	_____
18		Councilor:	_____
19		Councilor:	_____
20		Councilor:	_____

21 ABSENT:
22 _____

23 Thereupon the following proceedings, among others, were had and taken:

24 PUBLIC HEARINGS

25 ***

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CONSIDERATION OF BILL NO. 2021-15
ADOPTION OF ORDINANCE NO. 2021-____
Issuance of Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021.

underscored material = new
[bracketed material] = delete

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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2021-15

INTRODUCED BY:

Mayor Alan Webber

AN ORDINANCE

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF SANTA FE, NEW MEXICO SUBORDINATE LIEN GROSS RECEIPTS TAX REFUNDING REVENUE BONDS, SERIES 2021 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$14,745,000 FOR THE PURPOSE OF (1) REFUNDING, DISCHARGING AND PAYING THE CITY OF SANTA FE, NEW MEXICO SUBORDINATE LIEN GROSS RECEIPTS TAX REFUNDING REVENUE BONDS, SERIES 2010B AND MATURING ON AND AFTER JUNE 1, 2022; (2) REFUNDING, DISCHARGING AND PAYING THE CITY OF SANTA FE, NEW MEXICO GROSS RECEIPTS TAX IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 2012A AND MATURING ON AND AFTER JUNE 1, 2022; AND (3) PAYING COSTS OF ISSUANCE OF THE SERIES 2021 BONDS; CALLING FOR THE REDEMPTION OF THE OUTSTANDING SERIES 2010B BONDS AND SERIES 2012A BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE FROM CERTAIN GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY; APPROVING THE SELECTION OF AN UNDERWRITER AND FORMS OF A PRELIMINARY OFFICIAL STATEMENT AND A

1 **PAYING AGENT REGISTAR AND DEPOSITARY AGENT AGREEMENT;**
2 **DELEGATING AUTHORITY TO THE MAYOR OR, IN THE MAYOR’S ABSENCE, THE**
3 **CITY MANAGER OR FINANCE DIRECTOR, TO APPROVE THE FINAL PRINCIPAL**
4 **AMOUNT, INTEREST RATES AND OTHER DETAILS OF THE BONDS WITHIN THE**
5 **PARAMETERS SET FORTH IN THIS AUTHORIZING ORDINANCE, AND TO**
6 **EXECUTE AND DELIVER A BOND PURCHASE AGREEMENT FOR THE SALE OF**
7 **THE BONDS TO THE UNDERWRITER; PROVIDING FOR THE COLLECTION OF**
8 **CERTAIN GROSS RECEIPTS TAX REVENUES; APPROVING CERTAIN OTHER**
9 **AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE BONDS;**
10 **RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION WITH THE BONDS;**
11 **REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND RELATED**
12 **MATTERS.**

13
14 Capitalized terms used in the following preambles have the same meaning as set forth in
15 Section 1 of this Ordinance unless the context requires otherwise.

16 **WHEREAS**, the City of Santa Fe, New Mexico (the “City”) is a legally created,
17 established, organized and existing incorporated charter municipality with home-rule powers under
18 the constitution and laws of the State of New Mexico; and

19 **WHEREAS**, pursuant to Section 7-1-6.4 NMSA 1978 the City receives monthly State-
20 Shared Gross Receipts Tax Revenues from the New Mexico Department of Taxation and Revenue
21 equal to one and two hundred and twenty-five thousandths percent (1.225%) of the gross receipts
22 of persons engaging in business within the City, as determined and adjusted under the Gross
23 Receipts and Compensating Tax Act, Chapter 7, Article 9 NMSA 1978; and

24 **WHEREAS**, pursuant to the Municipal Local Option Gross Receipts Taxes Act, Sections
25 7-19D-1 through 7-19D-18, NMSA 1978, and the One-Half Percent Municipal Gross Receipts Tax

1 Ordinance, the City has imposed a municipal gross receipts tax on persons engaging in business in
2 the City in the amount of one-half of one percent (0.50%) and receives monthly One-Half Percent
3 Municipal Gross Receipts Tax Revenues from the New Mexico Department of Taxation and
4 Revenue, as determined and adjusted under the Municipal Local Option Gross Receipts Taxes Act.
5 The One-Half Percent Municipal Gross Receipts Tax was imposed by City Ordinance No. 1981-
6 45 and is dedicated for capital improvements to City facilities and street and road construction and
7 reconstruction as authorized by the Municipal Local Option Gross Receipts Taxes Act. Other
8 increments of Municipal Local Option Gross Receipts Tax are imposed by the City which are not
9 pledged for payment of Parity Superior Obligations, Subordinate Lien Obligations or Super
10 Subordinate Obligations; and

11 **WHEREAS**, pursuant to Section 7-19D-11 NMSA 1978 and City Ordinance No. 1993-
12 21, the City has imposed an infrastructure gross receipts tax on persons engaging in business in the
13 City and receives monthly distributions of Infrastructure Gross Receipts Tax Revenues from the
14 New Mexico Department of Taxation and Revenue equal to 1/16th of one percent (0.0625%) of the
15 gross receipts of persons engaging in business within the City, as determined and adjusted under
16 the Municipal Local Option Gross Receipts Taxes Act and the Tax Administration Act. The
17 Infrastructure Gross Receipts Tax is dedicated for purposes authorized by Section 7-19D-11 NMSA
18 1978; and

19 **WHEREAS**, pursuant to Section 7-19D-10 NMSA 1978, and City Ordinance No. 1993-
20 20, the City has imposed an environmental services gross receipts tax on persons engaging in
21 business in the City and receives monthly distributions of Environmental Services Gross Receipts
22 Tax Revenues from the New Mexico Department of Taxation and Revenue equal to 1/16th of one
23 percent (0.0625%) of the gross receipts of persons engaging in business within the City, as
24 determined and adjusted under the Municipal Local Option Gross Receipts Taxes Act and the Tax
25 Administration Act. The Environmental Services Gross Receipts Tax is dedicated for purposes

1 authorized by Section 7-19D-10 NMSA 1978; and

2 **WHEREAS**, the Environmental Services Gross Receipts Tax Revenues are not pledged to
3 the repayment of the Bonds; and

4 **WHEREAS**, pursuant to Ordinance No. 2010-26, passed and adopted by the Governing
5 Body on November 10, 2010, the City issued its “City of Santa Fe, New Mexico Subordinate Lien
6 Gross Receipts Tax Refunding Revenue Bonds, Series 2010B” (herein the “Series 2010B Bonds”)
7 in an aggregate principal amount of \$10,490,000, payable from and constituting a subordinate (but
8 not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half
9 Percent Municipal Gross Receipts Tax Revenues, and the Infrastructure Gross Receipts Tax
10 Revenues (of which \$4,860,000 of such Series 2010B Bonds remains outstanding); and

11 **WHEREAS**, pursuant to Ordinance No. 2012-7, passed and adopted by the Governing
12 Body on January 25, 2012, the City issued its “City of Santa Fe, New Mexico Gross Receipts Tax
13 Improvement and Refunding Revenue Bonds, Series 2012A” (herein the “Series 2012A Bonds”)
14 in an aggregate principal amount of \$32,725,000, payable from and constituting a first (but not an
15 exclusive first) lien on the State-Shared Gross Receipts Tax update Revenues, the One-Half Percent
16 Municipal Gross Receipts Tax Revenues, and the Infrastructure Gross Receipts Tax Revenues (of
17 which \$10,735,000 of such Series 2012A Bonds remain outstanding); and

18 **WHEREAS**, pursuant to Ordinance No. 2012-6, passed and adopted by the Governing
19 Body on January 25, 2012, the City issued its “City of Santa Fe, New Mexico Gross Receipts Tax
20 (Subordinate Lien)/Wastewater Systems Refunding Revenue Bonds, Series 2012B” (herein the
21 “Series 2012B Bonds”) in an aggregate principal amount of \$14,280,000 , payable from and
22 constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross
23 Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues, the
24 Environmental Services Gross Receipts Tax Revenues, and the Infrastructure Gross Receipts Tax
25 Revenues and a first (but not an exclusive first) lien on the Wastewater System Revenues (of which

1 \$1,960,000 of such Series 2012B Bonds remain outstanding); and

2 **WHEREAS**, pursuant to Ordinance No. 2013-19, passed and adopted by the Governing
3 Body on May 8, 2013, the City issued its “City of Santa Fe, New Mexico Subordinate Lien Gross
4 Receipts Tax Refunding Revenue Bonds, Series 2013B” (herein the “Series 2013B Bonds”) in an
5 aggregate principal amount of \$13,780,000, payable from and constituting a subordinate (but not
6 an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half
7 Percent Municipal Gross Receipts Tax Revenues, and the Infrastructure Gross Receipts Tax
8 Revenues (of which \$11,245,000 of such Series 2013B Bonds remain outstanding); and

9 **WHEREAS**, pursuant to Ordinance No. 2014-27, passed and adopted by the Governing
10 Body on August 27, 2014, the City issued its “City of Santa Fe, New Mexico Gross Receipts Tax
11 Improvement Revenue Bonds, Series 2014” (herein the “Series 2014 Bonds”) in an aggregate
12 principal amount of \$15,460,000, payable from and constituting a first (but not an exclusive first)
13 lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross
14 Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues (of which \$14,615,000
15 of such Series 2014 Bonds remain outstanding); and

16 **WHEREAS**, pursuant to Ordinance No. 2016-21, passed and adopted by the Governing
17 Body on May 25, 2016, as supplemented by Resolution No. 2016-50 passed and adopted by the
18 Governing Body on June 23, 2016, the City issued its “City of Santa Fe, New Mexico Senior Lien
19 Gross Receipts Tax Refunding Revenue Bonds, Series 2016A” (herein the “Series 2016A Bonds”)
20 in an aggregate principal amount of \$6,700,000, payable from and constituting a first (but not an
21 exclusive first) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent
22 Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues (of
23 which \$2,140,000 of such Series 2016A Bonds remain outstanding); and

24 **WHEREAS**, pursuant to Ordinance No. 2016-21, passed and adopted by the Governing
25 Body on May 25, 2016, as supplemented by Resolution No. 2016-50 passed and adopted by the

1 Governing Body on June 23, 2016, the City issued its “City of Santa Fe, New Mexico Senior Lien
2 Gross Receipts Tax Refunding Revenue Bonds, Series 2016B” (herein the “Series 2016B Bonds)
3 in an aggregate principal amount of \$21,900,000, payable from and constituting a first (but not an
4 exclusive first) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent
5 Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues (of
6 which \$10,225,000 of such Series 2016B Bonds remain outstanding); and

7 **WHEREAS**, pursuant to Ordinance No. 2016-21, passed and adopted by the Governing
8 Body on May 25, 2016, as supplemented by Resolution No. 2016-50 passed and adopted by the
9 Governing Body on June 23, 2016, the City issued its “City of Santa Fe, New Mexico Subordinate
10 Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016C” (herein the “Series 2016C
11 Bonds) in an original aggregate principal amount of \$9,480,000, payable from and constituting a
12 subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax
13 Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure
14 Gross Receipts Tax Revenues (of which \$475,000 of such Series 2016C Bonds remain
15 outstanding); and

16 **WHEREAS**, pursuant to Ordinance No. 2016-21, passed and adopted by the Governing
17 Body on May 25, 2016, as supplemented by Resolution No. 2016-50 passed and adopted by the
18 Governing Body on June 23, 2016, the City issued its “City of Santa Fe, New Mexico Subordinate
19 Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016D” (herein the “Series 2016D
20 Bonds”) in an original aggregate principal amount of \$2,020,000, payable from and constituting a
21 subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax
22 Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure
23 Gross Receipts Tax Revenues (of which \$1,510,000 of such Series 2016D Bonds remain
24 outstanding); and

25 **WHEREAS**, pursuant to Ordinance No. 2017-8, passed and adopted by the Governing

1 Body on April 26, 2017, the City issued its “City of Santa Fe, New Mexico Taxable Subordinate
2 Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2017” (herein the “Series 2017 Taxable
3 Bonds”) in an original aggregate principal amount of \$4,530,000, payable from and constituting a
4 subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax
5 Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure
6 Gross Receipts Tax Revenues (of which \$3,555,000 of such Series 2017 Taxable Bonds remain
7 outstanding); and

8 **WHEREAS**, pursuant to Ordinance No. 2017-23, passed and adopted by the Governing
9 Body on November 8, 2017, the City issued its “City of Santa Fe, New Mexico Gasoline
10 Tax/Subordinate Lien Gross Receipts Tax Improvement Revenue Bonds, Series 2018” (herein the
11 “Series 2018 Gasoline Tax/Subordinate Lien GRT Bonds”) in an original aggregate principal
12 amount of \$10,290,000, payable from and constituting a subordinate (but not an exclusive
13 subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent
14 Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues (of
15 which \$7,745,000 of such Series 2018 Gasoline Tax/Subordinate Lien GRT Bonds remain
16 outstanding); and

17 **WHEREAS**, pursuant to Ordinance No. 2018-25, passed and adopted by the Governing
18 Body on October 31, 2018, the City issued its “City of Santa Fe, New Mexico Senior Lien Gross
19 Receipts Tax Improvement Revenue Bonds, Series 2018A in an original aggregate principal
20 amount of \$20,000,000, payable from and constituting a first (but not an exclusive first) lien on the
21 State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax
22 Revenues and the Infrastructure Gross Receipts Tax Revenues (of which \$18,975,000 of such
23 Series 2018A Bonds remain outstanding); and

24 **WHEREAS**, pursuant to Ordinance No. 2019-7, passed and adopted by the by the
25 Governing Body on May 29, 2019 the City authorized the execution and delivery of a Taxable

1 Refunding Loan Agreement with the New Mexico Finance Authority (the “2019 Finance Authority
2 Refunding Loan”) in an original principal amount of \$23,705,000, payable from and constituting a
3 subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax
4 Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure
5 Gross Receipts Tax Revenues (of which \$21,905,000 of such 2019 Finance Authority Loan remains
6 outstanding); and

7 **WHEREAS**, pursuant to Ordinance No. 2019-17, passed and adopted by the by the
8 Governing Body on August 28, 2019 the City authorized the execution and delivery of a Taxable
9 Loan Agreement with the New Mexico Finance Authority (the “2019 Finance Authority Parking
10 Improvements Loan”) in an original principal amount of \$1,575,000, payable from and constituting
11 a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax
12 Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure
13 Gross Receipts Tax Revenues (of which \$1,195,000 of such 2019 Finance Authority Parking
14 Improvements Loan remains outstanding); and

15 **WHEREAS**, except for the outstanding the Series 2010B Bonds, the Series 2012A Bonds,
16 the Series 2012B Bonds, the Series 2013A Bonds, the Series 2013B Bonds, the Series 2014 Bonds,
17 the Series 2016A Bonds, the Series 2016B Bonds, the Series 2016C Bonds, the 2016D Bonds, the
18 Series 2017 Taxable Bonds, the Series 2018 Gasoline Tax/Subordinate Lien GRT Bonds, the Series
19 2018A Bonds, the 2019 Finance Authority Refunding Loan and the 2019 Finance Authority
20 Parking Improvements Loan, there are no obligations presently outstanding to which the State-
21 Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax
22 Revenues, or the Infrastructure Gross Receipts Tax Revenues have been pledged by the City; and

23 **WHEREAS**, the Governing Body hereby determines that issuance of the “City of Santa
24 Fe, New Mexico Senior Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021” (the
25 “Bonds”), to (1) to refund, discharge and pay the Series 2010B Bonds maturing on and after June

1 1, 2022, (2) to refund, discharge and pay the Series 2012A Bonds maturing on and after June 1,
2 2022, and (3) to pay the Costs of Issuance of the Bonds, will provide for the public health, peace
3 and safety of the City and its citizens; and

4 **WHEREAS**, the Bonds shall be issued pursuant to Sections 3-31-1 through 3-31-12
5 NMSA 1978, with a first (but not an exclusive first) lien on the Pledged Gross Receipts Tax
6 Revenues (the Pledged Revenues”); and

7 **WHEREAS**, the Governing Body expects to offer the Bonds pursuant to the Preliminary
8 Official Statement, in a negotiated sale as and to sell the Bonds to the Underwriter pursuant to a
9 Bond Purchase Agreement , the forms of which Preliminary Official Statement and Bond Purchase
10 Agreement have been presented to the Governing Body in connection with this Bond Ordinance,
11 to be executed by the Mayor or, the absence of the Mayor, another Authorized Officer pursuant to
12 Section 6-14-10.2 NMSA 1978, all within the parameters set forth in this Bond Ordinance; and

13 **WHEREAS**, Section 3-31-6(C) NMSA 1978, provides:

14 “C. Any law which authorizes the pledge of any or all of the pledged
15 revenues to the payment of any revenue bonds issued pursuant to Sections 3-31-1
16 through 3-31-12 NMSA 1978, or which affects the pledged revenues, or any law
17 supplemental thereto or otherwise appertaining thereto, shall not be repealed or
18 amended or otherwise directly or indirectly modified in such a manner as to impair
19 adversely any such outstanding revenue bonds, unless such outstanding revenue
20 bonds have been discharged in full or provision has been fully made therefor;” and

21 **WHEREAS**, the Exchange Act permits a municipality, including the City, that has issued
22 or proposes to issue bonds to enter into an agreement for an exchange of interest rates as provided
23 therein; and

24 **WHEREAS**, in connection with the Bonds, Parity Superior Lien Gross Receipts Tax
25 Obligations or Subordinate Lien Gross Receipts Tax Obligations which may be issued in the future

1 by the City, the Governing Body may determine to enter into a Qualified Exchange Agreement for
2 all or a portion of the Bonds, Parity Superior Lien Gross Receipts Tax Obligations or Subordinate
3 Lien Gross Receipts Tax Obligations which may provide for the payment by the City of a Variable
4 Exchange Rate or a Fixed Exchange Rate and the payment by the Qualified Counterparty of a Fixed
5 Exchange Rate or Variable Exchange Rate; and

6 **WHEREAS**, all required authorizations, consents or approvals of any State, governmental
7 body, agency or authority in connection with the authorization, execution and delivery of the Bonds
8 (i) which are required to have been obtained by the date of the adoption of the Bond Ordinance
9 have been obtained, and (ii) which will be required to be obtained prior to any Closing Date, will
10 have been obtained by that date.

11 **NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE**
12 **CITY OF SANTA FE, NEW MEXICO:**

13 **Section 1. Definitions.** The terms in this section are defined for all purposes of this
14 Ordinance and of any ordinance amendatory hereof or supplemental hereto, or relating hereto, and
15 of any instrument or document appertaining hereto, except where the context by clear implication
16 herein otherwise requires, shall have the following meanings:

17 “Act” means the general laws of the State, including Sections 3-31-1 through 3-31-12
18 NMSA 1978, as amended, and enactments of the Governing Body relating to the issuance of the
19 Bonds, including this Bond Ordinance.

20 “Authorized Officer” means the following officers of the City: Mayor, City Manager, City
21 Finance Director, or other officer of the City when designated by a certificate signed by the Mayor
22 of the City from time to time, a certified copy of which shall be delivered to the Paying Agent and
23 the Registrar.

24 “Bond Counsel” means an attorney or firm of attorneys nationally recognized for expertise
25 in the area of municipal bonds and the exemption of interest on municipal bonds from federal

1 income taxation.

2 “Bond Purchase Agreement” means the bond purchase agreement between the City and
3 the Purchaser in connection with the negotiated sale of the Bonds, the form of which has been
4 presented to the Governing Body in connection with this Bond Ordinance. been presented to the
5 Governing Body in connection with this Bond Ordinance.

6 “Bonds,” “2021 Bonds” or “Series 2021 Bonds” means the “City of Santa Fe, New Mexico
7 Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021”, which are
8 authorized by this Bond Ordinance.

9 “Business Day” means any day other than (i) a Saturday or Sunday, (ii) any day on which
10 the following offices are authorized or required to remain closed: offices of the City and of banks
11 located in the cities in which the principal offices of the Paying Agent and Registrar are located or
12 (iii) a day on which the New York Stock Exchange is closed.

13 “City,” “Municipal,” or “Municipality” means the municipal corporation and body
14 corporate and politic known as the City of Santa Fe, Santa Fe County, New Mexico.

15 “Continuing Disclosure Undertaking” means the continuing disclosure undertaking with
16 respect to the Bonds to be executed on the date of issuance and delivery of the Bonds to the
17 Purchaser, the form of which in included in the Preliminary Official Statement approved pursuant
18 to this Bond Ordinance.

19 “Costs of Issuance” means all costs relating to issuance of the Bonds, including, without
20 limitation, costs of advertising and publication, costs of preparing the Bonds, fees and expenses of
21 the financial advisor, bond counsel, the Paying Agent, the Registrar, the rating fees and other
22 reasonable and necessary fees and costs, including applicable gross receipts taxes, related to the
23 issuance of the Bonds.

24 “Credit Facility” means a letter of credit, standby bond purchase agreement, line of credit,
25 bond insurance policy or reserve account insurance policy, guaranty or similar agreement provided

1 by a bank, insurer or other provider of a Credit Facility rated, at the time the Credit Facility is
2 provided, “A” or better by Fitch and S&P (if such rating agencies are then rating the Bonds),
3 including any substitute therefor, to provide support to pay the purchase price of, or the payment
4 of the principal of and interest on, Obligations.

5 “Cross-over Refunding Bonds” means bonds or obligations issued for the purpose of
6 refunding Obligations if the proceeds thereof are irrevocably deposited in escrow to secure
7 repayment on an applicable redemption date or maturity date of the principal of and redemption
8 premium on the related Obligations being refunded and the earnings on such escrow are required
9 to be used to pay interest on the Cross-over Refunding Bonds.

10 “Debt Service Requirements” for any period means the sum of: (i) the amount required to
11 pay the interest, or to make reimbursements for payments of interest, becoming due on the
12 applicable Obligations during such period; plus (ii) the amount required to pay the principal or
13 accreted value, or to make reimbursements for the payment of principal or accreted value,
14 becoming due on the applicable Obligations during that period, whether at maturity, an accretion
15 term date or upon mandatory sinking fund redemption dates, plus (iii) any net periodic payments
16 on a notional amount required to be made by the City pursuant to a Qualified Exchange Agreement
17 minus (iv) any net periodic payments on a notional amount to be received by the City pursuant to
18 a Qualified Exchange Agreement.

19 (a) No payments required on the applicable Obligations shall be included in
20 any computation of Debt Service Requirements for any computation period prior to the maturity or
21 otherwise certain due dates thereof which may occur because of the exercise of an option by the
22 City, or which may otherwise become due by reason of any other circumstance or contingency,
23 including acceleration, which constitute other than regularly scheduled payments of principal,
24 accreted value, interest or other regularly scheduled payments on the applicable Obligations.

25 (b) Debt Service Requirements required to be made pursuant to a Qualified

1 Exchange Agreement shall be based upon the actual amount required to be paid by the City, if any,
2 to the Qualified Counterparty. In determining that amount, any payments required to be made by
3 either party to the Qualified Exchange Agreement at a Variable Exchange Rate shall be computed,
4 in determining the obligation of the City under the Qualified Exchange Agreement, using the
5 procedures set forth in the applicable sections of this Ordinance.

6 (c) The computation of interest for the purposes of this definition shall be
7 made without considering the interest rate payable pursuant to a Credit Facility, unless, at the time
8 of computation of Debt Service Requirements, payments on Obligations are owed to, or Obligations
9 are owned or held by, the provider of a Credit Facility pursuant to the provisions of that Credit
10 Facility.

11 (d) The accreted value of capital appreciation bonds shall be included in the
12 calculation of interest and principal only for the applicable year during which the accreted value
13 becomes payable.

14 (e) In any computation of Debt Service Requirements relating to the issuance
15 of additional Parity Obligations:

16 (1) There shall be deducted from that computation (i) amounts on
17 deposit in an escrow account related to an issue of Cross-over Refunding Bonds and (ii) proceeds
18 of a series of Obligations deposited to the credit of an account for the payment of capitalized interest
19 on Obligations included as part of the computation during the applicable period.

20 (2) There may be made the adjustment to the Debt Service
21 Requirements applicable to Bond Anticipation Notes described in Paragraph E of Sections 21 and
22 23 of this Ordinance.

23 (f) Except as provided in Paragraph F of Section 21, the purchase or tender
24 price of Put Obligations resulting from the optional or mandatory tender or presentment for
25 purchase of those Put Obligations shall not be included in any computation of Debt Service

1 Requirements.

2 “Depository” means The Depository Trust Company, New York, New York, or such other
3 securities depository as may be designated by an officer of the City.

4 “Environmental Services Gross Receipts Tax” means the environmental services gross
5 receipts tax imposed pursuant to Section 7-19D-10 NMSA 1978 by the Environmental Services
6 Gross Receipts Tax Ordinance on persons engaging in business in the City in the amount of 1/16th
7 of one percent (0.0625%) of the gross receipts of such persons.

8 “Environmental Services Gross Receipts Tax Ordinance” means City Ordinance No. 1993-
9 20 imposing the Environmental Services Gross Receipts Tax, as amended.

10 “Environmental Services Gross Receipts Tax Revenue Fund” means the “City of Santa Fe,
11 New Mexico Environmental Services Gross Receipts Tax Revenue Fund,” maintained by the City
12 and continued in Section 17 of this Ordinance, into which the City shall deposit the Environmental
13 Services Gross Receipts Tax Revenues.

14 “Environmental Services Gross Receipts Tax Revenues” means the environmental services
15 gross receipts tax revenues received by the City pursuant to Section 7-19D-10 NMSA 1978 and the
16 Environmental Services Gross Receipt Tax Ordinance.

17 “Exchange Act” means Section 6-18-8.1 NMSA 1978, as amended and supplemented.

18 “Exchange Termination Payment” means the net amount payable pursuant to a Qualified
19 Exchange Agreement by the City or a Qualified Counterparty to compensate the other party for any
20 losses and costs that such other party may incur as a result of the early termination of the
21 obligations, in whole or in part, of the parties under such Qualified Exchange Agreement.

22 “Federal Securities” means direct obligations of, or obligations the principal of and interest
23 on which are unconditionally guaranteed by the United States of America.

24 “Fiscal Year” for the purposes of this Ordinance means the twelve months commencing on
25 the first day of July of any calendar year and ending on the last day of June of the next calendar

1 year; but it may mean any other 12-month period which the City hereafter may establish.

2 “Fitch” means Fitch Ratings Group, its successors and their assigns, and, if such
3 corporation is dissolved or liquidated or no longer performs the functions of a securities rating
4 agency, any other nationally recognized securities rating agency designated by the City.

5 “Fixed Exchange Rate” means a fixed rate of interest payable by the City or a Qualified
6 Counterparty pursuant to a Qualified Exchange Agreement.

7 “Governing Body” means the members of the governing body designated as councilors
8 who, together with the mayor, are the governing body of the City.

9 “Government Obligations” means direct obligations of, or obligations the principal of and
10 interest on which are unconditionally guaranteed by, the United States of America or certificates
11 or receipts established by the United States Government or its agencies or instrumentalities
12 representing direct ownership of future interests or principal payments on direct obligations of, or
13 obligations fully guaranteed by, the United States of America or any of its agencies or
14 instrumentalities the obligations of which are backed by the full faith and credit of the United States.

15 “Historic Test Period” means any twelve consecutive calendar months designated by an
16 Authorized Officer from time to time out of the eighteen-calendar months next preceding the date
17 of adoption of the City ordinance authorizing the issuance of additional Obligations without regard
18 to any resolution or ordinance supplementing or amending the authorizing ordinance.

19 “Independent Accountant” means (A) an accountant employed by the State of New Mexico
20 and under supervision of the State Auditor of the State of New Mexico, or (B) any registered or
21 certified public accountant or firm of such accountants duly licensed to practice and practicing as
22 such under the laws of the State of New Mexico, appointed and paid by the City, who (1) is, in fact,
23 independent and not under the domination of the City, (2) does not have any substantial interest,
24 direct or indirect, with the City, and (3) is not connected with the City as an officer or employee of
25 the City, but who may be regularly retained to make annual or similar audits of the books or records

1 of the City.

2 “Infrastructure Gross Receipts Tax” means the infrastructure gross receipts tax imposed
3 pursuant to Section 7-19D-11 NMSA 1978 by the Infrastructure Gross Receipts Tax Ordinance on
4 persons engaged in business in the City in an amount of 1/16th of one percent (0.0625%) of the
5 gross receipts of such persons.

6 “Infrastructure Gross Receipts Tax Ordinance” means City Ordinance No. 1993-21
7 imposing the Infrastructure Gross Receipts Tax, as amended.

8 “Infrastructure Gross Receipts Tax Revenue Fund” means the “City of Santa Fe
9 Infrastructure Gross Receipts Tax Revenue Fund” maintained by the City and continued in Section
10 17 of this Ordinance, into which the City shall deposit the Infrastructure Gross Receipts Tax
11 Revenues.

12 “Infrastructure Gross Receipts Tax Revenues” means the infrastructure gross receipts tax
13 revenues received by the City pursuant to Section 7-19D-11 NMSA 1978 and the Infrastructure
14 Gross Receipts Tax Ordinance.

15 “Insured Bank” means any federally or state-chartered savings and loan association or
16 federally or state-chartered commercial bank, the deposits of which are insured by the Federal
17 Deposit Insurance Corporation and which has, or is the lead bank of a parent holding company
18 which has (i) unsecured, uninsured and unguaranteed obligations which are rated AA or better by
19 Fitch and S&P or (ii) combined capital, surplus and undivided profits of not less than \$10,000,000.

20 “Moody’s” means Moody’s Investors Service, its successors and their assigns, and, if such
21 corporation is dissolved or liquidated or no longer performs the functions of a securities rating
22 agency, any other nationally recognized securities rating agency designated by the City.

23 “Obligations” means bonds, notes or any other instrument which evidences a borrowing or
24 other obligation of the City, including Qualified Exchange Agreements, secured by Pledged Gross
25 Receipts Tax Revenues, issued or incurred for any purpose permitted by the Act or the Exchange

1 Act, as amended from time to time.

2 “One-Half Percent Municipal Gross Receipts Tax Ordinance” means City of Santa Fe
3 Ordinance No. 1981-45 imposing a one-half of one percent municipal gross receipts tax.

4 “One-Half Percent Municipal Gross Receipts Tax Revenue Fund” means the “City of Santa
5 Fe, New Mexico One-Half Percent Municipal Gross Receipts Tax Revenue Fund” maintained by
6 the City and continued in Section 17 of this Ordinance, into which the City shall deposit the One-
7 Half Percent Municipal Gross Receipts Tax Revenues.

8 “One-Half Percent Municipal Gross Receipts Tax Revenues” means those revenues
9 received by the City pursuant to the Municipal Local Option Gross Receipts Taxes Act, Sections
10 7-19D-1 through 7-19D-12 NMSA 1978, and the One-Half Percent Municipal Gross Receipts Tax
11 Ordinance.

12 “Ordinance” means this City Ordinance as amended or supplemented from time to time.

13 “Parity Subordinate Lien Gross Receipts Tax Obligations” or “Parity Subordinate
14 Obligations” means the Bonds, the Series 2012B Bonds, the Series 2013B Bonds, the Series 2016C
15 Bonds, and the Series 2016D Bonds, the Series 2017 Taxable Bonds, The Series 2018 Gasoline
16 Tax/Subordinate Lien GRT Bonds, the 2019 Finance Authority Refunding Loan, the 2019 Finance
17 Authority Parking Improvements Loan, any scheduled periodic payments (but not Exchange
18 Termination Payments) required to be made by the City pursuant to a Qualified Exchange
19 Agreement, and any other Obligations hereafter issued or incurred payable from the Pledged Gross
20 Receipts Tax Revenues and issued with a lien on the Pledged Gross Receipts Tax Revenues on
21 parity with the lien thereon of the Bonds.

22 “Paying Agent” means BOKF, NA, as agent for the City for the payment of the Bonds, the
23 interest thereon, and any successor.

24 “Permitted Investments” means any of the following which at the time of such investment
25 are legal investments for the City pursuant to adopted City investment policies and the laws of the

1 State:

2 (a) Government Obligations;

3 (b) Obligations of, or obligations guaranteed as to principal and interest by
4 any agency or instrumentality of the United States which are backed by the full faith and credit of
5 the United States, including, but not limited to: General Services Administration--participation
6 certificates; Government National Mortgage Association (GNMA)--GNMA guaranteed mortgage-
7 backed securities and GNMA guaranteed participation certificates; U.S. Department of Housing &
8 Urban Development--local authority bonds; and U.S. Export-Import Bank--all fully guaranteed
9 obligations;

10 (c) Obligations of the following government-sponsored agencies: Federal
11 Home Loan Mortgage Corporation--participation certificates and senior debt obligations; Farm
12 Credit System--consolidated system-wide bonds and notes; Federal Home Loan Banks--
13 consolidated debt obligations; Federal National Mortgage Association--senior debt obligations and
14 mortgage-backed securities (excluding stripped mortgage securities which are valued greater than
15 par on the portion of unpaid principal); Student Loan Marketing Association--senior debt
16 obligations (excluding securities that do not have a fixed par value and/or whose terms do not
17 promise a fixed dollar amount at maturity or call date) and letter of credit backed issues; Financing
18 Corporation--debt obligations; and Resolution Funding Corporation--debt obligations;

19 (d) Bank time deposits evidenced by certificates of deposit and bankers
20 acceptances issued by an Insured Bank, provided that such time deposits and bankers' acceptances
21 (1) do not exceed at any one time in the aggregate five percent (5%) of the combined total of the
22 capital, surplus and undivided profits of such Insured Bank, or (2) are secured by obligations
23 described in paragraphs (a), (b), (c) and (h) of this definition which obligations at all times have a
24 market value (exclusive of accrued interest) at least equal to 102% of such time deposits so secured;

25 (e) Obligations, other than specified private activity bonds (as defined in

1 Section 57(a)(5)(C) of the Internal Revenue Code, as amended (the “Tax Code”), the interest on
2 which is excluded from gross income of the recipient for federal income tax purposes and any other
3 instrument which does not constitute “investment property” under Section 148 of the Tax Code
4 (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed
5 dollar amount at maturity or call date), as amended from time to time, which is rated in the highest
6 major Rating Category by S&P and Fitch (if such rating agency is then rating the Bonds);

7 (f) Money market instruments and other securities of commercial banks,
8 broker-dealers or recognized financial institutions, which securities or instruments are rated in the
9 highest Rating Category by S&P and Fitch, (if such rating agency is then rating the Bonds), or
10 which securities are guaranteed by a person or entity whose long-term debt obligations are rated in
11 the highest Rating Category by S&P and Fitch (if such rating agency is then rating the Bonds)
12 including, without limitation, securities of, or other interests in, any open-end or closed-end
13 management type investment company or investment trust registered under the provisions or 15
14 U.S.C. Sections 80(a)-1 et. seq., which invest only in, or whose securities are secured only by,
15 obligations of the type set forth in paragraphs (a), (b), (c) and (h) of this definition;

16 (g) Stripped Securities: (1) U.S. Treasury STRIPS and (2) REFCORP
17 STRIPS (stripped by Federal Reserve Bank of New York);

18 (h) Repurchase agreements involving the purchase and sale of, and guaranteed
19 investment contracts, the par value of which is collateralized by a perfected first pledge of, or
20 security interest in, or the payments of which are unconditionally guaranteed by, securities
21 described in parts (a), (b), (c) and (h) of this definition, which collateral is held by the City, or for
22 the benefit of the City, by a party other than the provider of the guaranteed investment contract or
23 repurchase agreement, with a collateralized value of at least 102% of the par value of such
24 repurchase agreement or guaranteed investment contract or 102% of the market value thereof,
25 valued at intervals of no less than monthly and which collateral is not subject to any other pledge

1 or security interest; and

2 (i) Such other investments as are now or may be hereafter authorized as legal
3 investments for the City by the legislature of the State under Section 6-10-10 NMSA 1978, or a
4 similar statutory provision applicable to the City, provided that such investment is rated, at the time
5 of purchase, “A” or better by Fitch and “A” or better by S&P (if such rating agency is then rating
6 the Bonds).

7 “Pledged Gross Receipts Tax Revenues” means, collectively, (1) the State-Shared Gross
8 Receipts Tax Revenues; (2) the One-Half Percent Municipal Gross Receipts Tax Revenues; (3) the
9 Infrastructure Gross Receipts Tax Revenues; (4) the portion of the gross receipts tax distribution to
10 the City made pursuant to Section 7-1-6.46 NMSA 1978, which represents the amount of State-
11 Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues,
12 and Infrastructure Gross Receipts Tax Revenues that would have been remitted to the City but for
13 the deductions provided by Section 7-9-92 and 7-9-93 NMSA 1978 and any similar distributions
14 made to the City in lieu of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal
15 Gross Receipts Tax Revenues and Infrastructure Gross Receipts Tax Revenues pursuant to law;
16 and (5) any other gross receipts tax revenues received by the City, whether from distribution by the
17 State or pursuant to gross receipts taxes imposed by the City, and hereafter (i.e. after the adoption
18 of this Ordinance) pledged to the payment of the Bonds by affirmative act of the Governing Body.

19 “Pledged Revenues” means the Pledged Gross Receipts Tax Revenues.

20 “Preliminary Official Statement” and “Official Statement” means the disclosure
21 documents utilized by the Purchaser in connection with the offer and sale of the Bonds to investors.

22 “Pricing Certificate” means the certificate setting forth the maturity dates, principal
23 amounts, prices, redemption features and other final terms of the Bonds.

24 “Purchaser” means the Underwriter.

25 “Put Obligations” means any Obligations which have put or similar features requiring the

1 City to purchase such Obligations upon notice from the owners thereof.

2 “Qualified Counterparty” means, with respect to a Qualified Exchange Agreement, any
3 party whose senior long term debt obligations, or whose obligations under a Qualified Exchange
4 Agreement are guaranteed by a party whose senior long term debt obligations, are rated (at the time
5 of execution of the Qualified Exchange Agreement) in one of the top two Rating Categories by
6 Fitch and S&P.

7 “Qualified Exchange Agreement” means any financial arrangement between the City and
8 a Qualified Counterparty which satisfies the requirements of the Exchange Act at the time the
9 agreement is entered into.

10 “Rating Category” means a generic securities rating category, without regard, in the case
11 of a long-term rating category, to any refinement or gradation of such long-term rating category by
12 a numerical modifier or otherwise.

13 “Refunded Bonds” means the Refunded Series 2010B Bonds and the Refunded Series
14 2012A Bonds.

15 “Refunded Series 2010B Bonds” means the Series 2010B Bonds maturing on and after
16 June 1, 2022.

17 “Refunded Series 2012A Bonds” means the Series 2010A Bonds maturing on and after
18 June 1, 2022.

19 “Refunding Account” means the “City of Santa Fe, New Mexico Senior Lien Gross
20 Receipts Tax Refunding Revenue Bonds, Series 2021, Refunding Project Account” established in
21 Section 17 hereof and to be maintained by the City.

22 “Refunding Project” means (1) refunding, discharging and paying the Refunded Series
23 2010B Bonds, including interest accrued to the date on which the Refunded Series 2010B Bonds
24 are refunded, (2) refunding, discharging and paying the Refunded Series 2012A Bonds, including
25 interest accrued to the date on which the Refunded Series 2012A Bonds are refunded, and (3)

1 paying the Costs of Issuance allocable to the Refunding Project.

2 “Registrar” means BOKF, N.A., as registrar and transfer agent for the Bonds, and any
3 successor.

4 “Regular Record Date” means the 15th day of the calendar month (whether or not a business
5 day) preceding each regularly scheduled interest payment date on the Bonds.

6 “Related Documents” means the Bond Purchase Agreement, the Pricing Certificate, the
7 Continuing Disclosure Undertaking, the Preliminary Official Statement, the Official Statement, and
8 any other document or agreement containing an obligation of the City as may be required in
9 connection with the issuance of the Bonds.

10 “S&P” means S&P Global, its successors and their assigns, and, if such entity is dissolved
11 or liquidated or no longer performs the functions of a securities rating agency, any other nationally
12 recognized securities rating agency designated by the City.

13 “Sale Price” means the amount paid by the Purchaser for its purchase of the Bonds, set
14 forth in the Pricing Certificate and the Bond Purchase Agreement.

15 “Series 2021 Bond Fund” means the “City of Santa Fe Subordinate Lien Gross Receipts
16 Tax Refunding Revenue Bonds, Series 2021, Bond Fund,” established in Section 17 of this
17 Ordinance.

18 “Series Date” means the date of issuance and delivery of the Bonds to the Purchaser.

19 “Special Record Date” means a special date fixed to determine the names and addresses of
20 registered owners of the Bonds for purposes of paying interest on a special interest payment date
21 for the payment of defaulted interest thereon, all as further provided in Section 5B hereof.

22 “State-Shared Gross Receipts Tax Revenues” means the revenues distributed to the City
23 monthly by the New Mexico Department of Taxation and Revenue pursuant to Sections 7-1-6 and
24 7-1-6.4 NMSA 1978, at the rate authorized (currently 1.225% of the gross receipts of persons doing
25 business within the City) from the proceeds of a state-wide gross receipts tax imposed pursuant to

1 Chapter 7, Article 9, NMSA 1978.

2 “State-Shared Gross Receipts Tax Revenue Fund” means the “City of Santa Fe, New
3 Mexico State-Shared Gross Receipts Tax Revenue Fund” maintained by the City and continued in
4 Section 17 of this Ordinance, into which the City shall deposit the State-Shared Gross Receipts Tax
5 Revenues.

6 “Superior Lien Gross Receipts Tax Obligations”, “Superior Tax Obligations” or “Superior
7 Obligations” means the Series 2013A Bonds, the Series 2014 Bonds, the Series 2016A Bonds, and
8 the Series 2016B Bonds, the Series 2018A Bonds and any other Obligations hereafter issued or
9 incurred payable from the Pledged Gross Receipts Tax Revenues and issued with a lien on the
10 Pledged Gross Receipts Tax Revenues superior to the lien thereon of the Bonds.

11 “Underwriter” means _____, as senior manager, and
12 _____, as co-manager, the original purchasers of the Bonds, and their
13 successors and assigns.

14 “Variable Exchange Rate” means a Variable Interest Rate payable by the City or a
15 Qualified Counterparty pursuant to a Qualified Exchange Agreement.

16 “Variable Interest Rate” means an interest rate which varies or fluctuates from time to time.

17 Any provision of this Ordinance regarding a Qualified Counterparty shall be deemed to be
18 of no effect if no Qualified Exchange Agreement is in effect or if a Qualified Counterparty is in
19 default in its obligations under a Qualified Exchange Agreement and no amount is due and owing
20 under a Qualified Exchange Agreement.

21 **Section 2. Ratification.** All action heretofore taken (not inconsistent with the
22 express provisions of this Ordinance) by the Governing Body and officers of the City directed
23 toward the Refunding Project, and toward the authorization, sale and issuance of the Bonds to the
24 Purchaser herein authorized, including, without limitation, the publication of a notice of public
25 meeting and intent to adopt this Ordinance authorizing issuance of the Bonds in an aggregate

1 principal amount not to exceed \$14,745,000 (exclusive of premium which may be paid in
2 connection with the original issuance of the Bonds) be, and the same hereby is ratified, approved
3 and confirmed, notwithstanding any inconsistent prior action.

4 **Section 3. Authorization of the Refunding Project; Call for Redemption of**
5 **Series 2010B and 2012A Bonds.**

6 A. The Refunding Project are hereby authorized at a total cost not to exceed the
7 proceeds of the Bonds, excluding any such cost defrayed or to be defrayed by any source other than
8 proceeds of the Bonds and the necessity thereof is hereby so declared. The Refunding Project will
9 reduce interest costs and effect other economies, and is necessary and in the best interest of the City
10 and its residents.

11 B. The City has elected and does hereby declare its intent to exercise on the behalf
12 and in the name of the City its option to redeem the Refunded Bonds at a redemption price equal
13 to 100% of the principal amount of the Refunded Bonds to be redeemed, plus accrued interest to
14 the redemption date.

15 The City is hereby obligated so to exercise such option, which option shall be deemed to
16 have been exercised upon adoption of this Bond Ordinance and delivery of the Bonds. Forthwith
17 upon delivery of the Bonds, a notice of prior redemption of the Refunded Bonds shall be mailed or
18 delivered to the registered owners of the Refunded Bonds by BOKF, NA, as paying agent and
19 registrar for the Refunded Bonds.

20 **Section 4. Authorization of Bonds; Sale to Underwriter pursuant to Bond**
21 **Purchase Agreement.**

22 A. For the purpose of protecting the public health, conserving the property
23 and advancing the general welfare of the citizens of the City, and for the purpose of
24 defraying the cost of the Refunding Project, it is hereby declared that the interest and
25 necessity of the City and the inhabitants of the City require the issuance by the City of its

1 fully registered (i.e., registered as to payment of both principal and interest) revenue bonds
2 without coupons to be designated “City of Santa Fe Subordinate Lien Gross Receipts Tax
3 Refunding Revenue Bonds, Series 2021,” in an aggregate principal amount not to exceed
4 Fourteen Million Seven Hundred Forty-Five Thousand Dollars (\$14,745,000), exclusive
5 of premium which may be paid in connection with the original purchase of the Bonds. The
6 Bonds shall be payable and collectible, both as to principal and interest, solely from the
7 Pledged Revenues. The Bonds shall be sold pursuant to a negotiated sale to the
8 Underwriter, the selection of which is hereby approved, at a sale price and upon the terms
9 set forth in the Pricing Certificate and the Bond Purchase Agreement, and shall be within
10 the parameters set forth below:

11 (1) The Bonds shall be issued for the Refunding Project.

12 (2) The maximum par amount of the Bonds shall not be more than
13 \$14,745,000 (excluding any premium paid in connection with the original purchase of the
14 Bonds).

15 (3) The final maturity of the Bonds shall be no later than June 1, 2041.

16 (4) The maximum interest rate on the Bonds shall be no greater than 12% per
17 annum.

18 (5) The Bond shall be payable solely from the Pledged Revenues.

19 (6) The Bonds shall be sold to the Underwriter pursuant to a negotiated sale,
20 the final terms of which shall be within the parameters established in this Section, and shall
21 be as set forth in the Pricing Certificate and the Bond Purchase Agreement.

22 (7) The maximum sale price of the Bonds shall be not more than \$14,745,000,
23 exclusive of premium payable in connection with the issuance of the Bonds.

24 (8) The Purchasers’ discount shall not exceed 1% of the aggregate principal
25 amount of the Bonds.

1 (9) The Bonds shall be in substantially the form set forth in this Ordinance.

2 (10) The City hereby appoints BOKF, NA as the paying agent and registrar for
3 the Bonds.

4 B. The Mayor or, in the Mayor's absence, the City Manager or City Finance Director,
5 is hereby authorized pursuant to this Ordinance to approve the final terms of the Bonds as permitted
6 by Section 6-14-10.2 NMSA 1978, and to execute and deliver the Bond Purchase Agreement and
7 Pricing Certificate.

8 **Section 5. Bond Details.**

9 A. Basic Details. The Bonds shall be dated the date of their issuance and delivery to
10 the Purchaser (herein "Series Date"), and are issuable in the denomination of \$5,000 each or any
11 integral multiple thereof (provided that no Bond may be in a denomination which exceeds the
12 principal coming due on any maturity date and no individual Bond will be issued for more than one
13 maturity). The Bonds shall be numbered consecutively from 1 upwards.

14 The Bonds shall bear interest from the Series Date, payable semi-annually on June 1 and
15 December 1 each year, commencing on June 1, 2022 or such other date as permitted by law and
16 determined in the Bond Purchase Agreement executed and delivered as provided in Section 4B
17 hereof, until their respective maturities and shall bear the rates of interest and shall mature on June
18 1 in each of the designated amounts and years as set forth in the Bond Purchase Agreement and
19 Pricing Certificate.

20 B. Payment-Regular Record Date. The principal of any Bond shall be payable to the
21 registered owner thereof as shown on the registration books kept by the Registrar which is hereby
22 appointed as registrar (and transfer agent) for the Bonds, upon maturity or prior redemption thereof
23 and upon presentation and surrender at the Paying Agent which also is hereby appointed as the
24 paying agent for the Bonds. If any Bond shall not be paid upon such presentation and surrender at
25 or after maturity or on a designated prior redemption date on which the City may have exercised

1 its right to redeem any Bond prior to its stated maturity pursuant to Section 6 of this Ordinance, it
2 shall continue to draw interest at the rate borne by the Bond until the principal thereof is paid in
3 full. Payment of interest on any Bond shall be made to the registered owner of the Bond as of the
4 Regular Record Date by check or draft mailed by the Paying Agent, on or before each interest
5 payment date (or, if such interest payment date is not a Business Day, on or before the next
6 succeeding Business Day), to the registered owner thereof on the Regular Record Date at his
7 address as it last appears on the registration books kept by the Registrar on the Regular Record
8 Date (or by such other arrangements as may be mutually agreed to by the Paying Agent and any
9 registered owner on such Regular Record Date). All such payments shall be made in lawful money
10 of the United States of America. The person in whose name any Bond is registered at the close of
11 business on any Regular Record Date with respect to any interest payment date shall be entitled to
12 receive the interest payable thereon on such interest payment date notwithstanding any transfer or
13 exchange thereof subsequent to such Regular Record Date and prior to such interest payment date;
14 but any such interest not so timely paid or duly provided for shall cease to be payable as provided
15 above and shall be payable to the person in whose name any Bond is registered at the close of
16 business on a Special Record Date fixed by the Registrar for the payment of any such defaulted
17 interest. Such Special Record Date shall be fixed by the Registrar whenever moneys become
18 available for defaulted interest, and notice of any such Special Record Date shall be given not less
19 than ten days prior thereto in the manner required by the Depository or by first-class mail, to the
20 registered owners of the Bonds as of a date selected by the Registrar, stating the Special Record
21 Date and the date fixed for the payment of such defaulted interest.

22 C. Book-Entry. The Bonds may be issued or registered, in whole or in part, in book-
23 entry form from time to time with no physical distribution of bond certificates made to the public,
24 with a Depository acting as securities depository for the Bonds. A single certificate for each
25 maturity date of the Bonds issued in book-entry form will be delivered to the Depository and

1 immobilized in its custody. The book-entry system will evidence ownership of the Bonds in
2 authorized denominations, with transfer of ownership effected on the books of the Depository and
3 its participants (“Participants”). As a condition to delivery of the Bonds in book-entry form, the
4 Purchaser will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited,
5 the Bond certificates with the Depository, registered in the name of the Depository or its nominee.
6 Principal and interest will be paid to the Depository or its nominee as the registered owner of the
7 Bonds. The transfer of principal and interest payments to Participants will be the responsibility of
8 the Depository; the transfer of principal and interest payments to the beneficial owners of the Bonds
9 (the “Beneficial Owners”) will be the responsibility of Participants and other nominees of
10 Beneficial Owners maintaining a relationship with Participants (the “Indirect Participants”). The
11 City will not be responsible or liable for maintaining, supervising or reviewing the records
12 maintained by the Depository, Participants or Indirect Participants.

13 If (i) the Bonds are not eligible for the services of the Depository, (ii) the Depository
14 determines to discontinue providing its services with respect to the Bonds or (iii) the City
15 determines that a continuation of the system of book-entry transfers through the Depository ceases
16 to be beneficial to the City or the Beneficial Owners, the City will either identify another Depository
17 or certificates for the Bonds will be delivered to the Beneficial Owners or their nominees, and the
18 Beneficial Owners or their nominees, upon authentication of Bonds and registration of those Bonds
19 in the Beneficial Owners’ or nominees’ names, will become the owners of the Bonds for all
20 purposes. In that event, the City shall mail an appropriate notice to the Depository for notification
21 to Participants, Indirect Participants and Beneficial Owners of the substitute Depository or the
22 issuance of bond certificates to Beneficial Owners or their nominees, as applicable.

23 Authorized Officers of the City are authorized to sign agreements with Depositories
24 relating to the matters set forth in this Section.

25 Notwithstanding any other provision of this Ordinance, so long as all of the Bonds are

1 registered in the name of the Depository or its nominee, all payments of principal and interest on
2 the Bonds, and all notices with respect to the Bonds, shall be made and given by the Paying Agent,
3 Registrar or the City to the Depository as provided in this Ordinance and by the Depository to its
4 Participants or Indirect Participants and notices to the Beneficial Owners of the Bonds in the
5 manner provided in an agreement or letter of the City to the Depository.

6 **Section 6. Redemption.**

7 A. Optional Redemption. The Bonds may be subject to redemption prior to their
8 stated maturities at the City's option in one or more units of principal of \$5,000 on at the price and
9 on the dates established in the Pricing Certificate and the Bond Purchase Agreement. Redemption
10 shall be made upon prior notice mailed to each registered owner of each bond selected for
11 redemption as shown on the registration books kept by the Registrar in the manner and upon the
12 conditions provided in the Bond Ordinance.

13 B. Notice by City. At least 45 days prior to any date selected by the City for optional
14 redemption of any of the Bonds, the City shall give written instructions to the Registrar with respect
15 to the optional redemption. The Registrar shall not be required to give notice of any optional
16 redemption unless the Registrar has received written instructions from the City in regard thereto at
17 least 45 days prior to such redemption date (unless such deadline is waived by the Registrar).
18 Additionally, notice of optional redemption shall be given by the City by sending a copy of such
19 notice by first-class, postage prepaid mail, not less than thirty days prior to the optional redemption
20 date to the Paying Agent, if the Registrar is not the Paying Agent.

21 C. Notice by Registrar. Additionally, notice of redemption shall be given by the
22 Registrar by sending a copy of such notice in the manner required by the Depository or by first-
23 class, postage prepaid mail, not more than 60 days and not less than 30 days prior to the redemption
24 date to each registered owner of each Bond selected for redemption as shown on the registration
25 books kept by the Registrar as of the date of mailing of notice. Failure to give such notice by

1 mailing to the registered owner of any Bond, or any defect therein, shall not affect the validity of
2 the proceedings for the redemption of any of the Bonds.

3 D. Other Redemption Details. The notice required by paragraph C of this Section
4 shall specify the number or numbers of the Bond or Bonds or portions thereof to be so redeemed
5 (if less than all are to be redeemed); and all notices required by this Section shall specify the date
6 fixed for redemption, and shall further state that on such redemption date there will become and be
7 due and payable upon each \$5,000 unit of principal so to be redeemed at the Paying Agent the
8 principal thereof, accrued interest, if any, to the redemption date, and the applicable prior
9 redemption premium thereon (if any), and that from and after such date interest will cease to accrue.
10 Accrued interest to the redemption date will be paid by check or draft mailed to the registered
11 owner (or by alternative means if so agreed to by the Paying Agent and the registered owner). Notice
12 having been given in the manner hereinbefore provided, the Bond or Bonds so called for
13 redemption shall become due and payable on the redemption date so designated; and upon
14 presentation thereof at the Paying Agent, the City will pay the Bond or Bonds so called for
15 redemption and the applicable prior redemption premium (if any). In the event that only a portion
16 of the principal amount of a Bond is so redeemed, a new Bond representing the unredeemed
17 principal shall be duly completed, authenticated and delivered by the Registrar to the registered
18 owner pursuant to Section 9 of this Ordinance and without charge to the registered owner thereof.
19 The Registrar and Paying Agent shall comply with any other terms regarding redemption and notice
20 of redemption as required by any applicable agreement with a Depository.

21 E. Conditional Redemption. If money or Government Obligations sufficient to pay
22 the redemption price of the Bonds to be called for redemption are not on deposit with the Paying
23 Agent prior to the giving of notice of redemption pursuant to Paragraph D of this Section 6, such
24 notice shall state such Bonds will be redeemed in whole or in part on the redemption date in a
25 principal amount equal to that part of the redemption price received by the Paying Agent on the

1 applicable redemption date. If the full amount of the redemption price is not received as set forth
2 in the preceding sentence, the notice shall be effective only for those Bonds for which the
3 redemption price is on deposit with the Paying Agent. If all Bonds called for redemption cannot
4 be redeemed, the Bonds to be redeemed shall be selected in a manner deemed reasonable and fair
5 by the City and the Registrar shall give notice, in the manner in which the original notice of
6 redemption was given, that such money was not received and the information required by paragraph
7 E of this Section. In that event, the Registrar shall promptly return to the Owners thereof the Bonds
8 or certificates which it has received evidencing the part thereof which have not been redeemed.

9 **Section 7. Negotiability.** Subject to the provisions specifically made or necessarily
10 implied herein, the Bonds shall be fully negotiable, and shall have all the qualities of negotiable
11 paper, and the registered owner or owners thereof shall possess all rights enjoyed by the holders of
12 negotiable instruments under the provisions of the Uniform Commercial Code.

13 **Section 8. Execution.**

14 A. **Filing Manual Signatures.** Prior to the execution and authentication of any Bond
15 pursuant to Sections 6-9-1 through 6-9-6, NMSA 1978, the Mayor and City Clerk may each
16 forthwith file with the Secretary of State of New Mexico, his or her manual signature certified by
17 him or her under oath; provided, that such filing shall not be necessary for any officer where any
18 previous such filing may have legal application to the Bonds.

19 B. **Method of Execution.** Each Bond of the issue shall be signed and executed by the
20 facsimile or manual signature of the Mayor under facsimile or manual imprint of the seal of the
21 City, which shall be printed, stamped, engraved or otherwise placed thereon; each Bond shall be
22 executed and attested with the facsimile or manual signature of the City Clerk; and each Bond shall
23 be authenticated by the manual signature by an Authorized Officer of the Registrar as hereafter
24 provided. The Bonds bearing the facsimile or manual signature of the officers in office at the time
25 of the authorization thereof shall be the valid and binding obligations of the City (subject to the

1 requirement of authentication by the Registrar as hereinafter provided) notwithstanding that before
2 the delivery thereof and payment therefor, or before the issuance thereof upon transfer or exchange,
3 any or all of the persons whose facsimile signatures appear thereon shall have ceased to fill their
4 respective offices. The Mayor and City Clerk of the City shall, by the execution of a signature
5 certificate pertaining to the Bonds, adopt as and for their respective signatures the facsimiles thereof
6 appearing on the Bonds; and, at the time of the execution of the signature certificate, the Mayor
7 and City Clerk may each adopt as and for his or her facsimile signature the facsimile signature of
8 his or her predecessor in office in the event that such facsimile signature appears upon any of the
9 Bonds.

10 C. Certificate of Authentication. No Bond shall be valid or obligatory for any purpose
11 unless the certificate of authentication, substantially in the form hereinafter provided, has been duly
12 executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have
13 been duly executed by it if manually signed by an Authorized Officer of the Registrar, but it shall
14 not be necessary that the same officer sign the certificate of authentication on all of the Bonds
15 issued under this Ordinance.

16 **Section 9. Provisions Relating to Registration, Transfer, Replacement and**
17 **Cancellation of and Registration Records for the Bonds.**

18 A. Registration Books -- Transfer and Exchange -- Authentication. Books for the
19 registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer
20 of any Bonds at the Registrar, duly endorsed for transfer or accompanied by an assignment duly
21 executed by the registered owner or his attorney duly authorized in writing, the Registrar shall
22 authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of a like
23 aggregate principal amount and of the same maturity, bearing a number or numbers not
24 contemporaneously outstanding. Bonds may be exchanged at the Registrar for an equal aggregate
25 principal amount of Bonds of the same maturity of other authorized denominations. The Registrar

1 shall authenticate and deliver a Bond or Bonds which the registered owner making the exchange is
2 entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges
3 and transfers of Bonds as provided in this Ordinance shall be without charge to the owner or any
4 transferee, but the Registrar may require the payment by the owner of any Bond requesting
5 exchange or transfer of any tax or other governmental charge required to be paid with respect to
6 such exchange or transfer.

7 B. Times When Transfer or Exchange Not Required. The Registrar shall not be
8 required (1) to transfer or exchange all or a portion of any Bond subject to prior redemption during
9 the period of fifteen days next preceding the mailing of notice to the registered owners calling any
10 Bonds for prior redemption pursuant to Section 6 of this Ordinance or (2) to transfer or exchange
11 all or a portion of a Bond after the mailing to registered owners of notice calling such Bond or
12 portion thereof for prior redemption.

13 C. Payment - Registered Owners. The person in whose name any Bond is registered
14 on the registration books kept by the Registrar shall be deemed and regarded as the absolute owner
15 thereof for the purpose of making payment thereof and for all other purposes except as may
16 otherwise be provided with respect to payment of defaulted interest as provided in Section 5B of
17 this Ordinance; and payment of or on account of either principal or interest on any Bond shall be
18 made only to or upon the written order of the registered owner thereof or his legal representative,
19 but such registration may be changed upon transfer of such Bond in the manner and subject to the
20 conditions and limitations provided in this Ordinance. All such payments shall be valid and
21 effectual to discharge the liability upon the Bond to the extent of the sum or sums so paid.

22 D. Replacement Bonds. If any Bond shall be lost, stolen, destroyed or mutilated, the
23 Registrar shall, upon receipt of such evidence, information or indemnity relating thereto as it may
24 reasonably require, authenticate and deliver a replacement Bond or Bonds of a like aggregate
25 principal amount and of the same subseries and maturity, bearing a number or numbers not

1 contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have
2 matured, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

3 . Delivery of Bond Certificates to Registrar. The officers of the City are authorized
4 to deliver to the Registrar fully executed but unauthenticated Bonds in such quantities as may be
5 convenient to be held in custody by the Registrar pending use as provided in this Ordinance.

6 F. Cancellation of Bonds. Whenever any Bond shall be surrendered to the Paying
7 Agent upon payment of the Bond, or to the Registrar for transfer, exchange or replacement as
8 provided in this Ordinance, the Bond shall be promptly canceled by the Paying Agent or Registrar,
9 and counterparts of a certificate of such cancellation shall be furnished by the Paying Agent or
10 Registrar to the City.

11 **Section 10. Successor Registrar or Paying Agent.** If the Registrar or Paying Agent
12 initially appointed under this Ordinance shall resign or is prohibited by law from continuing as
13 Registrar or Paying Agent, or if the City shall reasonably determine that the Registrar or Paying
14 Agent has become incapable of fulfilling its duties under this Ordinance, the City may, upon notice
15 mailed to each registered owner of Bonds at the address last shown on the registration books,
16 appoint a successor Registrar or Paying Agent, or both. Every such successor Registrar or Paying
17 Agent shall be a bank or trust company located in and in good standing in the United States and
18 having a shareholder's equity (e.g., capital stock, surplus and undivided profits), however
19 denominated, not less than \$50,000,000. It shall not be required that the same institution serve as
20 both Registrar and Paying Agent hereunder, but the City shall have the right to have the same
21 institution serve as both Registrar and Paying Agent hereunder.

22 **Section 11. Special Limited Obligations.** The Bonds and all payments of principal
23 and interest thereon, (whether at maturity or on a redemption date) and the obligations of the City
24 for all other payments, fees, costs, interest and expenses of the City under this Ordinance and under
25 the Related Documents, including all payments due from the City under a Qualified Exchange

1 Agreement, shall be special limited obligations of the City. The principal of and interest on the
2 Bonds and all obligations of the City under the Related Documents shall be payable solely from
3 the Pledged Revenues after payment of any Superior Tax Obligations (and in the case of Exchange
4 Termination Payments, after payment of the Bonds and any Parity Subordinate Obligations), which
5 revenues are hereby pledged.

6 Owners of the Bonds and other parties to the Related Documents, including a Qualified
7 Counterparty, may not look to any general or other fund of the City for the payment of the principal
8 of or interest on, or the fees, costs and expenses relating to, such obligations, except the designated
9 special funds pledged therefor. Neither the Bonds nor the obligations of the City under the Related
10 Documents shall constitute an indebtedness of the City within the meaning of any constitutional,
11 charter or statutory prohibition or limitation, nor shall they be considered or held to be general
12 obligations of the City, and the Bonds, any Related Document and any Qualified Exchange
13 Agreement shall recite that they are payable and collectable solely out of the Pledged Revenues
14 (and in the case of Exchange Termination Payments, after payment of Parity Subordinate
15 Obligations and Subordinate Obligations), and from the other sources stated in this Section, and
16 that the Owners of the Bonds, any other party or a Qualified Counterparty may not look to any
17 general or other municipal fund for the payment of the principal or interest, as applicable, on the
18 Bonds or for the payment of any amounts owed under the Related Documents.

19 Nothing herein shall prevent or prohibit the City from applying other funds of the City
20 legally available therefor to the payment or redemption of the Bonds or to the payment of any
21 amounts owed under a Related Document, in its sole discretion.

22 **Section 12. Form of Bonds, Certificate of Authentication and Assignment.**

23 The Bonds, Registrar's Certificate of Authentication and Form of Assignment shall be in
24 substantially the form set forth in this Section, with such changes therein as are not inconsistent
25 with this ordinance.

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(Form of Series 2021 Bond)

UNITED STATES OF AMERICA

COUNTY OF SANTA FE

STATE OF NEW MEXICO

No. _____

\$ _____

CITY OF SANTA FE

SUBORDINATE LIEN GROSS RECEIPTS TAX

REFUNDING REVENUE BOND,

SERIES 2021

INTEREST RATE

MATURITY DATE

SERIES DATE

CUSIP

____% per annum

June 1, ____

____, 2021

REGISTERED OWNER:

PRINCIPAL AMOUNT:

DOLLARS

The City of Santa Fe (herein "City"), in the County of Santa Fe and State of New Mexico, for value received, hereby promises to pay upon presentation and surrender of this bond, solely from the special funds provided therefor as hereinafter set forth, to the registered owner named above, or registered assigns, on the Maturity Date specified above (unless this bond, if subject to

1 prior redemption, shall have been called for prior redemption in which case on such redemption
2 date), upon the presentation and surrender hereof at BOKF, NA, Albuquerque, New Mexico, as
3 paying agent, or its successor (herein the "Paying Agent"), the Principal Amount stated above, in
4 lawful money of the United States of America, and to pay to the registered owner hereof as of the
5 Regular Record Date (being the 15th day of the calendar month whether or not a business day
6 preceding each regularly scheduled interest payment date as defined in Ordinance No. _____,
7 adopted July 28, 2021, which authorizes this bond and which is referred to herein as the "Bond
8 Ordinance"), by check or draft mailed to such registered owner, on or before each interest payment
9 date as hereinafter provided (or, if such interest payment date is not a business day, on or before
10 the next succeeding business day), at his address as it last appears on the Regular Record Date on
11 the registration books kept for that purpose by BOKF, NA, Albuquerque, New Mexico, as registrar
12 (i.e., transfer agent) for the bonds, or its successor (herein the "Registrar") or by such other
13 arrangement as may be agreed to by the Paying Agent and the registered owner hereof, interest on
14 such sum in lawful money of the United States of America from the Series Date specified above or
15 the most recent interest payment date to which interest has been fully paid or duly provided for in
16 full (as more fully provided in the Bond Ordinance) until maturity at the per annum Interest Rate
17 specified above, payable on December 1, 2021 and semiannually thereafter on June 1 and December
18 1 in each year. Any such interest not so timely paid or duly provided for shall cease to be payable
19 to the registered owner as of the Regular Record Date and shall be payable to the registered owner
20 as of a Special Record Date (as defined in the Bond Ordinance), as further provided in the Bond
21 Ordinance. If upon presentation and surrender to the Paying Agent at or after maturity or on a
22 designated prior redemption date on which the City may have exercised its right to prior redeem
23 this bond pursuant to the Bond Ordinance, payment of this bond is not made as herein provided,
24 interest hereon shall continue at the rate herein designated until the principal hereof is paid in full.
25 If the Bonds are issued in book-entry only form, an authorized officer of the City and the applicable

1 securities depository (“Depository”) may make other arrangements for the payments on the Bonds.

2 The bonds of the series of which this bond is a part maturing on and after June 1, ____, are
3 subject to redemption prior to maturity at the City’s option in one or more units of principal of
4 \$5,000 on an after June 1, ____, in whole or in part at any time, in such order of maturities as the
5 City may determine (and by lot if less than all of the Bonds of such maturity is called, such selection
6 by lot to be made by the Registrar in such manner as he shall consider appropriate and fair), at a
7 redemption price equal to the principal amount of the Bonds or the portion thereof to be redeemed
8 plus accrued interest, if any, to the redemption date.

9 Redemption shall be made upon mailed notice to each registered owner of each bond
10 selected for redemption as shown on the registration books kept by the Registrar in the manner and
11 upon the conditions provided in the Bond Ordinance.

12 The bonds of the series of which this is one are fully registered (i.e., registered as to
13 payment of both principal and interest), and are issuable in the denomination of \$5,000 or any
14 denomination which is an integral multiple of \$5,000 (provided that no bond may be in a
15 denomination which exceeds the principal coming due on any maturity date and no individual bond
16 will be issued for more than one maturity). Upon surrender of any of such bonds at the Registrar
17 with a written instrument satisfactory to the Registrar duly executed by the registered owner or his
18 duly authorized attorney, such bond may, at the option of the registered owner or his duly
19 authorized attorney, be exchanged for an equal aggregate principal amount of such bonds of the
20 same maturity of other authorized denominations, subject to such terms and conditions as set forth
21 in the Bond Ordinance.

22 This bond is fully transferable by the registered owner hereof in person or by his duly
23 authorized attorney on the registration books kept by the Registrar upon surrender of this bond
24 together with a duly executed written instrument of transfer satisfactory to the Registrar. Upon
25 such transfer a new fully registered bond of authorized denomination or denominations of the same

1 aggregate principal amount and maturity will be issued to the transferee in exchange for this bond,
2 subject to such terms and conditions as set forth in the Bond Ordinance. The City and the Registrar
3 and Paying Agent may deem and treat the person in whose name this bond is registered as the
4 absolute owner hereof for the purpose of making payment and for all other purposes.

5 This bond is one of a series of bonds designated "City of Santa Fe Subordinate Lien Gross
6 Receipts Tax Refunding Revenue Bonds, Series 2021," of like tenor and date, except as to interest
7 rate, number and maturity, authorized for the purpose of (1) refunding, discharging and paying the
8 City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds,
9 Series 2010B maturing on and after June 1, 2022, (2) refunding, discharging and paying the City
10 of Santa Fe, New Mexico Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series
11 2012A maturing on and after June 1, 2022, and (3) paying Costs of Issuance of the Bonds, as set
12 forth in the Bond Ordinance.

13 This bond is issued pursuant to and in strict compliance with the Constitution and laws of
14 the State of New Mexico.

15 This bond does not constitute an indebtedness of the City within the meaning of any
16 constitutional or statutory provision or limitation, shall not be considered or be held to be a general
17 obligation of the City, and is payable and collectible solely from the Pledged Gross Receipts Tax
18 Revenues pursuant to the Bond Ordinance, which revenues are so pledged; and the holder of this
19 bond may not look to any general or other fund for the payment of the principal and interest on this
20 obligation, except the special funds pledged therefor. Payment of the bonds of the series of which
21 this bond is one and the interest thereon shall be made solely from, and as security for such payment,
22 there are pledged pursuant to the Bond Ordinance special funds identified as the "One-Half Percent
23 Gross Receipts Tax Revenue Fund," the "Infrastructure Gross Receipts Tax Revenue Fund" and
24 the "State-Shared Gross Receipts Tax Revenue Fund" into which the City covenants to pay the
25 Pledged Gross Receipts Tax Revenues, after payment of all outstanding Superior Lien Gross

1 Receipts Tax Obligations, and concurrently with debt service payments for outstanding Parity
2 Subordinate Lien Obligations, sums sufficient to pay when due the principal of and the interest on
3 the bonds of the series of which this bond is one. For a description of the funds, the nature and
4 extent of the security afforded thereby for the payment of the principal of and interest on the bonds,
5 and other details concerning the bonds, reference is made to the Bond Ordinance. Additional bonds
6 and other obligations, in addition to the series of which this bond is one, may be issued and made
7 payable from the City's Pledged Gross Receipts Tax Revenues having a lien thereon superior to,
8 on parity with, or junior to the lien of the bonds of the series of which this bond is one, in accordance
9 with the provisions of the Bond Ordinance and the ordinances authorizing the issuance of the
10 outstanding Superior Lien Gross Receipts Tax Obligations, or Subordinate Lien Gross Receipts
11 Tax Obligation, as applicable.

12 The City covenants and agrees with the registered owner of this bond and with each and
13 every person who may become the registered owner hereof that it will keep and perform all of the
14 covenants of the Bond Ordinance.

15 This bond is subject to the conditions, and every registered owner hereof by accepting the
16 same agrees with the obligor and every subsequent registered owner hereof that the principal of
17 and the interest on this bond shall be paid, and this bond is transferable, free from, and without
18 regard to any equities between the obligor and the original or any intermediate registered owner
19 hereof for any setoffs or cross-claims.

20 It is further certified, recited and warranted that all the requirements of law have been fully
21 complied with by the City Council and officers of the City in the issuance of this bond; and that it
22 is issued pursuant to and in strict conformity with the Constitution and laws of the State of New
23 Mexico, and particularly the terms and provisions of Sections 3-31-1 through 3-31-12, NMSA
24 1978, as amended, and all laws thereunto enabling and supplemental thereto.

25 This bond shall not be valid or obligatory for any purpose until the Registrar shall have

1 manually signed the certificate of authentication herein.

2 IN WITNESS WHEREOF, the City of Santa Fe has caused this bond to be signed,
3 subscribed, and executed, and attested with the facsimile signatures of its Mayor and its City Clerk,
4 respectively and has caused the facsimile of its corporate seal to be affixed on this bond, all as of
5 the Series Date.

6 CITY OF SANTA FE
7 [(FACSIMILE SEAL)] By _____ (Facsimile Signature)
8 Mayor

9 ATTEST:
10 By _____ (Facsimile Signature)
11 City Clerk

12 (Form of Registrar's Certificate of Authentication)
13 REGISTRAR'S CERTIFICATE OF AUTHENTICATION

14 Date of Authentication: ____, 2021

15 This is one of the bonds described in the within-mentioned Bond Ordinance, and this bond
16 has been duly registered on the registration books kept by the undersigned as Registrar for such
17 Bonds.

18 BOKF, NA,
19 Albuquerque, New Mexico, as Registrar
20 By _____
21 Authorized Officer

22 (End of Form of Registrar's Certificate of Authentication)
23 (Form of Assignment)

24 ASSIGNMENT
25 For value received, _____ hereby sells, assigns and transfers unto

1 _____ the within bond and hereby irrevocably constitutes and appoints .
2 _____ attorney, to transfer the same on the books of the Registrar, with full
3 power of substitution in the premises.

4 Signature Guaranteed: _____
5 Name and Address of Transferee
6 _____
7 _____
8 Dated: _____ Social Security Number or other
9 Tax Identification Number
10 _____
11 _____

12 (End of Form of Assignment)

13 (End of Form of Series 2021 Bond)

14 **Section 13. Period of Project's Usefulness.** It is hereby determined and recited that
15 the useful life of the capital projects financed with proceeds of the Refunded Series 2010B Bonds
16 and Refunded Series 2012A Bonds is not less than the final maturity date of the Bonds.

17 **Section 14. Delivery of Bonds and Initial Registration.** When the Bonds have been
18 duly executed, authenticated, registered and sold, the Mayor or other Authorized Officer identified
19 in Section 4B hereof shall deliver them to the Purchaser on receipt of the agreed purchase price.
20 The Registrar shall initially register the Bonds in the name of Cede & Co.

21 **Section 15. Authorization to Execute Related Documents and Delegated**
22 **Authority.**

23 A. **Approval of Documents; Ratification.** The form, terms and provisions of the
24 Related Documents are in all respects approved, authorized and confirmed, with such changes
25 therein not inconsistent with this Ordinance as the Authorized Officers of the City deem necessary

1 or desirable.

2 B. Delegated Authority and Execution of Documents. In addition to the delegation
3 of authority provided in Section 4B hereof, the officers, agents and employees of the City are
4 authorized, empowered and directed to take all action required by this Ordinance, and all such other
5 action as may be necessary or appropriate to effectuate the provisions of this Ordinance, the Related
6 Documents and any other documents as may be necessary or appropriate to carry out and comply
7 with the provisions of this Ordinance.

8 **Section 16. Use of Bond Proceeds; Purchaser Not Responsible.** Except as herein
9 otherwise specifically provided in this Ordinance, the proceeds from the sale of the Bonds shall be
10 used and paid solely for the valid costs of the Refunding Project.

11 A. Refunding Account. An amount of proceeds received from the sale of the Bonds
12 shall be deposited in the Refunding Account and used to pay the costs of the Refunding Project.

13 B. Payment of Costs of Issuance. An amount of proceeds received from the sale of
14 the Bonds shall be used to pay Costs of Issuance, and to the extent not needed to pay Costs of
15 Issuance, shall be deposited in the Series 2021 Bond Fund.

16 C. Project Completion. It is anticipated that the Refunding Project shall be completed
17 on the date of delivery of the Bonds.

18 D. Purchaser Not Responsible. The validity of the Bonds is not dependent on nor
19 affected by the validity or regularity of any proceedings related to the completion of the Refunding
20 Project as defined in this Ordinance. The Purchaser of the Bonds, and any subsequent owner of
21 any Bonds, shall in no manner be responsible for the application or disposal by the City or by any
22 officer or any employee or other agent of the City of the moneys derived from the sale of the Bonds
23 or of any other moneys designated in this Ordinance.

24 **Section 17. Establishment and Continuance of Funds and Accounts.** The City
25 hereby creates, or continues, as applicable, the following special and separate trust funds:

1 A. Refunding Account. The Refunding Account to be maintained by the Paying
2 Agent is hereby created for the deposit of a portion of the proceeds of the Bonds for the Refunding
3 Project.

4 B. State-Shared Gross Receipts Tax Revenue Fund. The “City of Santa Fe, New
5 Mexico State-Shared Gross Receipts Tax Revenue Account of the General Fund of the City,” is
6 hereby continued to be maintained by the City and deposited in an Insured Bank, into which the
7 City shall deposit the State-Shared Gross Receipts Tax Revenues.

8 C. One-Half Percent Municipal Gross Receipts Tax Revenue Fund. The “City of
9 Santa Fe, New Mexico One-Half Percent Municipal Gross Receipts Tax Revenue Fund,” is hereby
10 continued to be maintained by the City and deposited in an Insured Bank, into which the City shall
11 deposit the One-Half Percent Municipal Gross Receipts Tax Revenues.

12 D. Infrastructure Gross Receipts Tax Revenue Fund. The “City of Santa Fe, New
13 Mexico Infrastructure Gross Receipts Tax Revenue Fund,” is hereby continued to be maintained
14 by the City and deposited in an Insured Bank, into which the City shall deposit the Infrastructure
15 Gross Receipts Tax Revenues.

16 E. Environmental Services Gross Receipts Tax Revenue Fund. The “City of Santa
17 Fe, New Mexico Environmental Services Gross Receipts Tax Revenue Fund,” is hereby continued
18 to be maintained by the City and deposited in an Insured Bank, into which the City shall deposit
19 the Environmental Services Gross Receipts Tax Revenues.

20 F. Series 2021 Bond Fund. The “City of Santa Fe Senior Lien Gross Receipts Tax
21 Refunding Revenue Bonds, Series 2021, Bond Fund” is hereby created to be maintained by the
22 City and deposited in an Insured Bank.

23 **Section 18. Administration of Pledged Gross Receipts Tax Revenue Fund.**

24 So long as any of the Bonds shall be outstanding, either as to principal or interest or both, the
25 following payments shall be made monthly from the Pledged Gross Receipts Tax Revenues:

1 A. Bond Fund Payments.

2 (1) First, as a first charge on the Pledged Revenues, the amounts necessary to
3 pay the Debt Service Requirements on Superior Tax Obligations now outstanding or
4 hereafter issued, or to fund any reserve account as required by the terms of any ordinance
5 authorizing the issuance of Superior Tax Obligations, shall be withdrawn first from the
6 One-Half Percent Municipal Gross Receipts Tax Revenue Fund, and if funds therein are
7 insufficient, then if pledged for such Superior Tax Obligations, from the Infrastructure
8 Gross Receipts Tax Revenue Fund, and, if pledged for such Superior Tax Obligations, from
9 the Environmental Services Gross Receipts Tax Revenue Fund, if funds therein are still
10 insufficient, then from the State-Shared Gross Receipts Tax Revenue Fund in that order or
11 in such other order as permitted or required by the authorizing ordinances, at the time
12 prescribed in such authorizing ordinances.

13 (2) Second, but subject to and after the withdrawals authorized by the
14 preceding paragraph A(1), so long as any of the Bonds shall be outstanding, the following
15 amounts shall be withdrawn from the One-Half Percent Municipal Gross Receipts Tax
16 Revenue Fund, then from the Infrastructure Gross Receipts Tax Revenue Fund if the
17 moneys in the One-Half Percent Municipal Gross Receipts Tax Revenue Fund are not
18 sufficient, and, if such moneys are still insufficient, then from the State-Shared Gross
19 Receipts Tax Revenue Fund (unless the City determines that such amounts shall be
20 withdrawn from such funds in some other order), and credited to the Bond Fund:

21 (a) Interest Payments. Monthly, commencing on the first day of the
22 first month following the delivery of the Bonds, an amount in equal monthly
23 installments necessary, together with any moneys therein and available therefor,
24 to pay the next maturing installment of interest on the Bonds then outstanding and
25 monthly thereafter commencing on each interest payment date, one-sixth (1/6th)

1 of the amount necessary to pay the next maturing installment of interest on the
2 outstanding Bonds, and

3 (b) Principal Payments. Monthly, commencing on the first day of the
4 first month following delivery of the Bonds, an amount in equal monthly
5 installments necessary, together with any moneys therein and available therefor,
6 to pay the next maturing installment of principal on the Bonds then outstanding
7 and monthly thereafter commencing on the first day of the twelfth month preceding
8 each principal payment date, one-twelfth (1/12th) of the amount necessary to pay
9 the next maturing installment of principal on the Bonds.

10 (3) Third, but concurrently with the payments required by paragraph A(2) of
11 this section, funds remaining in the One-Half Percent Municipal Gross Receipts Tax
12 Revenue Fund, and if the funds therein are insufficient, then funds remaining in the
13 Infrastructure Gross Receipts Tax Revenue Fund, and if the funds therein are insufficient,
14 then funds remaining in the State-Shared Gross Receipts Tax Revenue Fund and, if pledged
15 therefor, funds remaining in the Environmental Services Gross Receipts Tax Revenue
16 Fund, shall be used by the City to pay the Debt Service Requirements of such additional
17 Parity Subordinate Obligations, if any, hereafter authorized to be issued and payable from
18 Pledged Revenues.

19 If, prior to any interest payment date or principal payment date, there has been accumulated
20 in the Bond Fund the entire amount necessary to pay the next maturing installment of interest or
21 principal, or both, the payment required in subparagraphs 2(a) and 2(b) (whichever is applicable)
22 of this paragraph, may be appropriately reduced and the required monthly amounts again shall be
23 so credited to such account commencing on such interest payment date or principal payment date
24 (whichever is applicable).

25 B. Debt Service Reserve Fund. No debt service reserve fund will be created or

1 required for the Bonds.

2 C. Termination Upon Deposits to Maturity. No payment need be made into the Series
3 2021 Bond Fund if the amount in such fund totals a sum at least equal to the entire amount of the
4 Bonds then outstanding, both as to principal and interest to their respective maturities, and both
5 accrued and not accrued, in which case, moneys in the Series 2021 Bond Fund in an amount at least
6 equal to such principal and interest requirements shall be used solely to pay such as the same accrue
7 and any moneys in excess thereof in the Series 2021 Bond Fund and any other moneys derived
8 from the Pledged Revenues may be used in any lawful manner determined by the City.

9 D. Defraying Delinquencies in the Series 2021 Bond Fund; Use of Moneys in the
10 Series 2021 Bond Fund. If, in any month, amounts in the One-Half Percent Municipal Gross
11 Receipts Tax Revenue Fund are insufficient to make the payments into the Series 2021 Bond Fund
12 required by Paragraph A(2) of this Section 18, there shall be withdrawn first from the Infrastructure
13 Gross Receipts Tax Revenue Fund and then from the State-Shared Gross Receipts Tax Revenue
14 Fund, and deposited in the Series 2021 Bond Fund the additional amounts necessary to make the
15 payments into the Series 2021 Bond Fund required by Paragraph A of this Section 18. The moneys
16 in the Series 2021 Bond Fund shall be used solely and only for the purpose of paying the principal
17 of and the interest on the Bonds issued under this Ordinance; provided, however, that any moneys
18 in the Series 2021 Bond Fund in excess of accrued and unaccrued principal and interest
19 requirements to the respective maturities of the outstanding Bonds may be used in any lawful
20 manner.

21 E. Payment of Additional Obligations and Qualified Exchange Agreements. Either
22 prior to, concurrently with or subsequent to the payments required by Paragraph A of this Section
23 18, depending upon whether the additional Obligations are Superior Obligations or Parity
24 Subordinate Obligations or Super Subordinate Obligations (as defined in Section 21 hereof) as
25 provided in this Ordinance, the Pledged Gross Receipts Tax Revenues shall be used by the City for

1 the payment of Debt Service Requirements on additional Obligations, if any, hereafter authorized
2 to be issued and payable from the Pledged Revenues as the same accrue. In the event that such
3 obligations are Parity Subordinate Obligations, the payments of Debt Service Requirements on
4 such additional Obligations shall be made concurrently with the payments required by Paragraphs
5 A(2), A(3) and D of this Section 18 (provided that such payments may be made at any intervals as
6 may be provided in the ordinance or resolution authorizing such additional Obligations). The
7 following amounts required to be paid by the City shall be paid from Pledged Gross Receipts Tax
8 Revenues with the same priority as other payments of Debt Service Requirements on Parity
9 Subordinate Obligations:

10 (1) Any amount to reimburse or pay a bond insurer or reserve account insurer
11 or guarantor, or to make payments or reimbursements pursuant to another Credit Facility,
12 for payments of Debt Service Requirements made on Parity Subordinate Obligations; and
13 amounts payable to a Qualified Counterparty under a Qualified Exchange Agreement,
14 excluding Exchange Termination Payments, if such payments are designated in a City
15 ordinance relating to that Qualified Exchange Agreement as having a lien on Pledged
16 Revenues on parity with the lien thereon of Parity Subordinate Obligations;

17 (2) Reimbursement of any reserve fund Credit Facility obtained for any issue
18 of Parity Subordinate Obligations; and

19 (3) Cash deposits to any required reserve fund established with respect to any
20 issue of Parity Subordinate Obligations.

21 Each payment of Debt Service Requirements on Parity Subordinate Obligations shall be
22 transferred to the Paying Agent for payment of Parity Subordinate Obligations, or directly to a
23 Qualified Counterparty, bond insurer, reserve account insurer or guarantor or other provider of a
24 Credit Facility entitled to receive payments on Parity Subordinate Obligations, on or before the due
25 date of such payment.

1 F. Payment of Expenses and Certain Obligations which are not Parity Subordinate
2 Obligations. After and subject to the payments required, and provisions contained in, any of the
3 preceding paragraphs of this Section, any remaining Pledged Gross Receipts Tax Revenues shall
4 be used, to the extent necessary, for payment of: (i) any other amounts, expenses, fees and interest
5 owed by the City relating to the issuance, delivery, servicing, payment, redemption and refunding
6 of Parity Subordinate Obligations and (ii) other Obligations relating to Parity Subordinate
7 Obligations owed by the City pursuant to the Related Documents, any Qualified Exchange
8 Agreement (excluding Exchange Termination Payments), bond insurance policy, reserve fund
9 insurance policy or similar documents which are not payable pursuant to any other prior paragraph
10 of this Section.

11 G. RESERVED.

12 H. Use of Surplus Revenues. After making the payments required to be made by
13 Paragraphs A to F of this Section 18, the remaining Pledged Gross Receipts Tax Revenues, if any,
14 may be applied to any other lawful purposes. The One-Half Percent Municipal Gross Receipts Tax
15 Revenues received by the City pursuant to the One-Half Percent Municipal Gross Receipts Tax
16 Ordinance shall be used only for the purposes authorized by that ordinance. The Infrastructure
17 Gross Receipts Tax Revenues received by the City pursuant to the Infrastructure Gross Receipts
18 Tax Ordinance shall be used only for the purposes authorized by that ordinance. The
19 Environmental Services Gross Receipts Tax Revenues received by the City pursuant to the
20 Environmental Services Gross Receipts Tax Ordinance shall be used only for the purposes
21 authorized in that ordinance.

22 I. Variable Interest Rate. In making the computations required by this Section,
23 interest on Obligations which bear a Variable Interest Rate shall be computed: (i) at the actual
24 Variable Interest Rate or Variable Exchange Rate for the computation period, if such rate can be
25 computed exactly, or (ii) if the Variable Interest Rate or Variable Exchange Rate cannot be

1 | computed exactly, at the actual rate for the immediately preceding computation period.

2 | **Section 19. General Administration of Funds.** The funds and accounts designated
3 | in Sections 16 through 18 of this Ordinance shall be administered as follows:

4 | A. Investment of Money. Any moneys in any fund designated in Sections 16 through
5 | 18 may be invested in any Permitted Investments. The obligations so purchased as an investment
6 | of moneys in a fund shall be deemed at all times to be part of the fund, and the interest accruing
7 | thereon and any profit realized therefrom shall be credited to the fund, and any loss resulting from
8 | each investment shall be charged to the fund. The City Finance Director shall present for
9 | redemption or sale on the prevailing market any obligations so purchased as an investment of
10 | moneys in the fund whenever it shall be necessary to do so in order to provide moneys to meet any
11 | payment or transfer from such fund.

12 | B. Deposits of Funds. Except for direct investments in Permitted Investments
13 | allowed by Paragraph A of this Section 19, the moneys and investments comprising each of the
14 | funds and accounts hereinabove designated in Sections 16 through 18 of this Ordinance shall be
15 | maintained and kept separate from all other funds and accounts in an Insured Bank or Insured
16 | Banks. The amounts prescribed shall be paid to the appropriate funds as specified in Sections 16
17 | through 18. Each payment shall be made into the proper bank account and credited to the proper
18 | fund not later than the last day designated; provided that when the designated date is a Sunday or a
19 | legal holiday, then such payment shall be made on the next preceding secular day. Nothing in this
20 | Ordinance shall prevent the establishment of one such bank account or more (or consolidation with
21 | any existing bank account), for all of the funds and accounts in Sections 16 through 18 of this
22 | Ordinance.

23 | **Section 20. Subordinate Lien on Pledged Revenues.** The Pledged Gross Receipts
24 | Tax Revenues and the amounts and securities on deposit in the Bond Fund, and the proceeds
25 | thereof, are hereby authorized to be pledged to, and are hereby pledged, and the City grants a

1 security interest therein, for the payment of the principal of and interest on the Bonds, subject to
2 the uses thereof permitted by, and the priorities set forth in, this Ordinance. The Bonds constitute
3 an irrevocable subordinate lien (but not an exclusive subordinate lien) on the Pledged Revenues
4 subordinate to the lien thereon of Superior Obligations, and co-equal with the lien thereon of the
5 outstanding Parity Subordinate Obligations.

6 **Section 21. Additional Superior Obligations and Parity Subordinate Obligations.**

7 A. Limitations Upon Issuance of Additional Superior Obligations. No provision of
8 this Ordinance shall be construed in such a manner as to prevent the issuance by the City of
9 additional Obligations payable from Pledged Revenues and constituting a lien upon such revenues
10 prior and superior to the lien of the Bonds on Pledged Revenues. Before any additional Superior
11 Obligations are issued or Obligations refunding outstanding Superior Obligations, the conditions
12 set forth in the ordinances authorizing the issuance of Superior Obligations or refunding Superior
13 Obligations, as applicable, must be satisfied.

14 Before any additional Parity Subordinate Obligations are actually issued (excluding
15 refunding bonds the proceeds of which are used to refund Superior Obligations as provided in
16 Section 22, but including Parity Subordinate Obligations which are refunding bonds which refund
17 subordinate obligations), the following conditions shall be met:

18 (1) The Parity Subordinate Obligations must be Obligations; and

19 (2) The City shall then be current in all of the deposits required to be made
20 with respect to the Parity Subordinate Obligations (including, if applicable, any obligation
21 to fund any reserve account required by the terms of any ordinance authorizing the issuance
22 of any such Obligations); and

23 (3)

24 (a) No additional Parity Subordinate Obligations shall be issued
25 unless the Pledged Gross Receipts Tax Revenues for the Historic Test Period shall

1 have been sufficient to pay an amount representing two hundred percent (200%)
2 of the combined maximum annual Debt Service Requirements coming due in any
3 subsequent Fiscal Year on the then outstanding Superior Obligations, outstanding
4 Parity Subordinate Obligations and the Parity Subordinate Obligations proposed
5 to be issued (excluding the accumulation of any reserves therefor); and

6 (b) In making the computations required by this subparagraph (3)
7 other gross receipts tax revenues, including without limitation, the Environmental
8 Services Gross Receipts Tax Revenues, received by the City, whether from
9 distribution by the State or pursuant to gross receipts taxes imposed by the City
10 (other than State-Shared Gross Receipts Tax Revenues) pledged to the Superior
11 Obligations, Parity Subordinate Obligations and the Parity Subordinate
12 Obligations proposed to be issued, may be included only to the extent such gross
13 receipts tax revenues are pledged to a particular series of such outstanding
14 Obligations or proposed Parity Subordinate Obligations and only to the extent of
15 the maximum annual Debt Service Requirements on such outstanding Obligations
16 or proposed Parity Subordinate Obligations.

17 B. Super Subordinate Obligations Permitted; Certain Obligations Prohibited. No
18 provision of this Ordinance shall be construed in such a manner as to prevent the issuance by the
19 City of additional Obligations payable from the Pledged Revenues with a lien on Pledged Revenues
20 subordinate and junior to the lien of the Bonds thereon, nor to prevent the issuance of Obligations
21 refunding all or part of the Bonds as permitted by Section 22.

22 C. Variable Interest Rate. In making the computations required by this Section 21
23 and Section 22, Obligations which bear a Variable Interest Rate shall be deemed to bear interest at
24 the maximum rate permitted for those Obligations.

25 D. Certificate of City Finance Director. A written certificate or opinion of the City

1 Finance Director that the Pledged Revenues for the applicable Historic Test Period are sufficient
2 to pay the amounts required in this Section 21 shall be required in making a determination that the
3 requirements set forth in this Section have been satisfied and shall be conclusively presumed to be
4 accurate in determining that such requirements have been satisfied.

5 E. Bond Anticipation Notes. Whenever the City shall have authorized the issuance
6 of Superior Obligations or Parity Subordinate Obligations under the Act and the City shall, at the
7 time, be permitted by the laws of the State to issue notes representing loans in anticipation of the
8 sale of such Superior Obligations or Parity Subordinate Obligations ("Bond Anticipation Notes"),
9 the City may by resolution or ordinance authorize the issuance of Bond Anticipation Notes in
10 anticipation of the sale of such Superior Obligations or Parity Subordinate Obligations, provided,
11 however, that before any Bond Anticipation Notes are actually issued, the conditions of Section
12 21A shall be met. Bond Anticipation Notes shall not be issued in an amount exceeding the principal
13 amount of the Superior Obligations or Parity Subordinate Obligations in anticipation of the sale of
14 which such notes are proposed to be issued.

15 For the purposes of determining compliance with this Section, as of the date of issuance of
16 any Bond Anticipation Notes, the aggregate principal amount of all outstanding Bond Anticipation
17 Notes (including such proposed Bond Anticipation Notes) shall never exceed the principal amount
18 of a hypothetical issue of Superior Obligations or Parity Subordinate Obligations which could be
19 issued hereunder having an assumed final maturity of twenty (20) years, bearing an assumed rate
20 of interest equal to the highest rate then borne by any Bond Anticipation Note then outstanding (or,
21 if none, the interest rate borne by the proposed Bond Anticipation Notes to be issued) and having
22 debt service due in each Fiscal Year in approximately equal amounts.

23 F. Put Obligations. In making the computations required by this Section 21 and
24 Section 22, the principal amount of any Put Obligations to be outstanding in the Fiscal Year when
25 the combined maximum annual Debt Service Requirements come due shall be excluded from the

1 maximum annual Debt Service Requirements only if the Credit Facility providing liquidity or
2 standby purchase support for Put Obligations is rated, on the date the computations are made, “A”
3 or better by Fitch or S&P (if such rating agencies are then rating the Bonds). If there is no Credit
4 Facility for the Put Obligations or the rating requirement for the Credit Facility set forth in the
5 preceding sentence is not satisfied, the principal amount of the Put Obligations to be outstanding
6 in the Fiscal Year when combined maximum annual Debt Service Requirements come due shall be
7 considered in computing maximum annual Debt Service Requirements.

8 **Section 22. Refunding Bonds.** The provisions of Section 21 hereof are subject to
9 the following exceptions:

10 A. Privilege of Issuing Refunding Obligations. If at any time after the Bonds, or any
11 part thereof, shall have been issued and remain outstanding, the City shall find it desirable to refund
12 any outstanding Parity Subordinate Obligations or other outstanding obligations payable from the
13 Pledged Revenues, such bonds or other obligations, or any part thereof, may be refunded (but only
14 with the consent of the registered owner or owners thereof, unless the bonds or other obligations,
15 at the time of their required surrender for payment, shall then mature, or shall then be callable for
16 prior redemption at the City’s option), regardless of whether the priority of the lien for the payment
17 of the refunding obligations on the Pledged Revenues is changed (except as provided in Paragraph
18 A of Section 21 and in Paragraphs B and C of this Section 22).

19 B. Limitations Upon Issuance of Refunding Obligations. No refunding bonds or other
20 refunding obligations payable from the Pledged Revenues shall be issued on parity with the Bonds
21 herein authorized, unless:

22 (1) The lien on the Pledged Revenues of the outstanding obligations so
23 refunded is on parity with the lien thereon of the Bonds herein authorized; or

24 (2) The refunding bonds or other refunding obligations are issued in
25 compliance with Paragraph A of Section 21 of this Ordinance.

1 C. Refunding Part of an Issue. The refunding bonds or other obligations so issued
2 shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same
3 issue which is not refunded, if any there be; and the registered owner or owners of such refunding
4 bonds or such other refunding obligations shall be subrogated to all of the rights and privileges
5 enjoyed by the registered owner or owners of the bonds or other obligations of the same issue
6 refunded thereby.

7 D. Limitations Upon Issuance of any Refunding Obligations. Any refunding bonds
8 or other refunding obligations payable from the Pledged Revenues shall be issued with such details
9 as the City may by ordinance provide, subject to the inclusion of any such rights and privileges
10 designated in Paragraph C of this Section 22, but without any impairment of any contractual
11 obligations imposed upon the City by any proceedings authorizing the issuance of any unrefunded
12 portion of such outstanding obligations of any one or more issues (including but not necessarily
13 limited to the issue herein authorized). If only a part of the outstanding bonds and any other
14 outstanding obligations of any issue or issues payable from the Pledged Revenues are refunded,
15 then such obligations may not be refunded without the consent of the registered owner or owners
16 of the unrefunded portion of such obligations, unless:

17 (1) The refunding bonds or other refunding obligations do not increase any
18 aggregate annual principal and interest requirements evidenced by such refunding
19 obligations and by the outstanding obligations not refunded on and prior to the last maturity
20 date of such unrefunded obligations, or

21 (2) The refunding bonds or other refunding obligations are issued in
22 compliance with Paragraph A of Section 21 hereof, or

23 (3) The lien on the Pledged Revenues for the payment of the refunding
24 obligations is subordinate to each such lien for the payment of any obligations not refunded.

25 E. Cross-over Refunding Bonds. If the refunding bonds to be issued are Cross-over

1 Refunding Bonds, the ordinance providing for the issuance thereof shall provide (1) that until the
2 date on which the principal portion of the related Parity Subordinate Obligations being refunded is
3 to be paid or redeemed from the proceeds of such Cross-over Refunding Bonds, the Cross-over
4 Refunding Bonds shall not be Parity Subordinate Obligations and shall be payable solely from the
5 escrow provided for in the related ordinance, and (2) a certificate of an Independent Accountant
6 shall be prepared to demonstrate the sufficiency of the moneys and investments in the escrow to
7 pay the principal of and interest on the Cross-over Refunding Bonds until the date on which the
8 principal portion of the related Parity Subordinate Obligations being refunded is to be paid or
9 redeemed and to pay or redeem the related Parity Subordinate Obligations being refunded.

10 **Section 23. Equality of Bonds.** The Bonds authorized to be issued hereunder and
11 from time to time outstanding shall not be entitled to any priority one over the other in the
12 application of the Pledged Revenues, regardless of the time or times of their issuance, it being the
13 intention of the Governing Body that there shall be no priority among the Bonds regardless of the
14 fact that they may be actually issued and delivered at different times.

15 **Section 24. Protective Covenants.** The City hereby covenants and agrees with each
16 and every registered owner of the Bonds that:

17 A. **Payment of Bonds Herein Authorized.** The City will promptly pay the principal
18 of and the interest on every Bond issued hereunder and secured hereby at the place, on the dates
19 and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.
20 Such principal and interest are payable solely from the Pledged Revenues. Nothing in the Bonds,
21 any Qualified Exchange Agreement or this Ordinance shall be construed as obligating the City to
22 pay principal or interest on any of the Bonds from, and the holders of the Bonds and any Qualified
23 Counterparty may not look to, any general or other fund of the City, except those specifically set
24 forth herein.

25 B. **Records.** So long as any of the Bonds remain outstanding, proper books of record

1 and account will be kept by the City, separate and apart from all other records and accounts,
2 showing complete and correct entries of all transactions relating to the Pledged Revenues.

3 C. Audits. The City further agrees that it will, by each March 31 following the close
4 of each Fiscal Year, cause an audit of such books and accounts to be made by an Independent
5 Accountant, showing the revenues and expenditures of the Pledged Revenues. The City agrees to
6 furnish forthwith a copy of each of such audits and reports to the Purchaser upon request. Any
7 registered owner of a Bond shall have the right to discuss, with the Independent Accountant or
8 person making the audit, the report and the contents thereof and to ask for such additional
9 information as he may reasonably require.

10 D. Extending Interest Payments. In order to prevent any accumulation of claims for
11 interest after maturity, the City will not directly or indirectly extend or assent to extension of time
12 for the payment of any claim for interest on any of the Bonds and it will not directly or indirectly
13 be a party to or approve any arrangement for any such extension or for the purpose of keeping alive
14 any of such interest.

15 E. Performing Duties. The City will faithfully and punctually perform all duties with
16 respect to the Bonds required by the Constitution and laws of the State of New Mexico and the
17 ordinances and resolutions of the City including but not limited to the proper segregation of the
18 Pledged Revenues and their application of the respective funds.

19 F. Other Liens. Other than the outstanding Parity Obligations, the outstanding
20 Subordinate Obligations and the Bonds as recited in this Ordinance, there are no liens or
21 encumbrances of any nature whatsoever on or against the Pledged Revenues. This Ordinance does
22 not prohibit the issuance of Parity Obligations with a lien on the Pledged Revenues on parity with
23 the lien thereon of the Bonds nor the issuance of Subordinate Lien Gross Receipts Tax Obligations
24 with a lien on the Pledged Revenues subordinate to the lien thereon of the Bonds.

25 G. City's Existence. The City will maintain its corporate identity and existence so

1 long as any of the Bonds herein authorized remain outstanding unless another political subdivision
2 by operation of law succeeds to the liabilities and rights of the City, without affecting to any
3 substantial degree the privileges and rights of any registered Owner of any outstanding Bonds.

4 H. Duty With Respect to Pledged Revenues. If the statutes or any ordinance which
5 materially affects the Pledged Revenues or any part of such ordinances, shall ever be held to be
6 invalid or unenforceable, it shall be the duty of the City, to the extent authorized by law, to
7 immediately take any action necessary to produce sufficient Pledged Revenues to comply with the
8 contracted obligations of this Ordinance, except as provided in Paragraph I of this Section 24.

9 I. Impairment of Contract. The City agrees that any law or ordinance or resolution
10 of the City in any manner affecting the Pledged Revenues or the Bonds, or otherwise appertaining
11 thereto, shall not be repealed or otherwise directly or indirectly modified, in such a manner as to
12 impair adversely any Bonds outstanding, unless such Bonds have been discharged in full or
13 provision has been fully made therefor, or unless the consent of the required percentage of the
14 registered owners of the then outstanding Bonds is obtained pursuant to Section 32 of this
15 Ordinance.

16 J. Tax Covenant. The City covenants that it will use, and will restrict the use and
17 investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary
18 so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds
19 under Sections 141, 148 or 149 of the Tax Code, including applicable regulations, rulings and
20 judicial decisions, or (ii) be treated other than as bonds to which Section 103(a) of the Tax Code
21 applies, and (b) the interest thereon will not be treated as a preference item under Section 57 of the
22 Tax Code. The City further covenants (a) that it will take or cause to be taken such actions that
23 may be required of it for the interest on the Bonds to be and to remain excluded from gross income
24 for federal income tax purposes, (b) that it will not take or authorize to be taken any actions that
25 would adversely affect that exclusion, and (c) that it, or persons acting for it, will, among other acts

1 of compliance, (i) apply the proceeds of the Bonds to the governmental purposes of the borrowings,
2 (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments, yield
3 reduction payments or payments of alternative amounts in lieu of rebate to the federal government,
4 (iv) maintain books and records and make calculations and reports, and (v) refrain from certain
5 uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that
6 interest under the Tax Code.

7 Authorized Officers of the City are hereby authorized (a) to make or effect any election,
8 selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the
9 Bonds as the City is permitted or required to make or give under the federal income tax laws,
10 including, without limitation thereto, any of the elections provided for in or available under Section
11 148 of the Tax Code, for the purpose of assuring, enhancing or protecting favorable tax treatment
12 or status of the Bonds or interest thereon or assisting in the compliance with requirements for that
13 purpose, reducing the burden or expense of such compliance, reducing the rebate amount, yield
14 reduction payments or payments of penalties, or making payments of special amounts in lieu of
15 making computations to determine, or paying, excess earnings as rebate or yield reduction
16 payments, or obviating those amounts or payments, as determined by that officer, which action
17 shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain
18 calculations, make payments, including amounts required to be rebated to the United States
19 pursuant to Section 148(f) of the Tax Code, and make or give reports, covenants and certifications
20 of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross
21 income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates
22 of the City, for inclusion in the transcript of the proceedings for the Bonds, setting forth the
23 reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds,
24 the facts, circumstances and estimates on which they are based, and other facts and circumstances
25 relevant to the tax treatment of the interest on and the tax status of the Bonds.

1 K. Limitation on Obligations with Variable Interest Rates. The City shall not issue
2 Parity Obligations or Subordinate Obligations with a Variable Interest Rate which, at the time of
3 issuance, are assigned a lower rating than the rating then assigned to the Bonds, as applicable, by
4 Fitch or S&P, unless the written consent of such rating agency to a lower rating is obtained prior
5 to issuance of such Superior Lien Gross Receipts Tax Obligations or Parity Gross Receipts Tax
6 Obligations.

7 L. Notice of Qualified Exchange Agreements to Rating Agencies. The City shall not
8 enter into a Qualified Exchange Agreement which is an Obligation or with respect to any
9 Obligations without first providing notice of such Qualified Exchange Agreement to Fitch and S&P
10 and without first receiving written confirmation from Fitch and S&P that entering into such
11 Qualified Exchange Agreement, in and of itself, would not result in a reduction of the ratings then
12 assigned to the Bonds, as applicable, by Fitch and S&P.

13 M. Continuing Disclosure Undertaking. Authorized Officers of the City are
14 authorized to sign such documents with respect to the City's continuing disclosure obligations as
15 are necessary or desirable to comply with the Continuing Disclosure Undertaking and requirements
16 of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities
17 Exchange Act of 1934, as amended.

18 **Section 25. Defeasance.** When all principal and interest in connection with the Bonds
19 hereby authorized have been duly paid, the pledge and lien and all obligations hereunder shall
20 thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the
21 meaning of this Ordinance. There shall be deemed to be such due payment as to any Bond when
22 the Governing Body has placed in escrow and in trust with a commercial bank located within or
23 without the State of New Mexico and exercising trust powers, an amount sufficient (including the
24 known minimum yield from Federal Securities in which such amount may initially be invested, if
25 applicable) to meet all requirements of principal and interest as the same become due to its maturity

1 or designated redemption date as of which the City shall have exercised or obligated itself to
2 exercise its option to call the Bond. The Federal Securities shall become due prior to the respective
3 times on which the proceeds thereof shall be needed, in accordance with a schedule established and
4 agreed upon between the Governing Body and such bank at the time of the creation of the escrow
5 or the Federal Securities shall be subject to the redemption at the option of the holders thereof to
6 assure such availability as so needed to meet such schedule. Federal Securities within the meaning
7 of this Section 25 shall include only direct obligations of, or obligations the principal of and interest
8 on which are unconditionally guaranteed by, the United States of America and which are not
9 callable prior to maturity by the issuer of such obligations.

10 **Section 26. Events of Default.** Each of the following events is hereby declared an
11 “event of default”:

12 A. Nonpayment of Principal. If payment of the principal of any of the Bonds herein
13 authorized to be issued shall not be made when the same become due and payable; or

14 B. Nonpayment of Interest. If payment of any installment of interest shall not be
15 made when the same becomes due and payable; or

16 C. Incapable to Perform. If the City shall for any reason be rendered incapable of
17 fulfilling its obligations (but not including any obligation of the City under any Qualified Exchange
18 Agreement) hereunder; or

19 D. Default of any Provision. If the City shall default in the due and punctual
20 performance of its covenants or conditions, agreements and provisions contained in the Bonds or
21 in this Ordinance on its part to be performed (other than defaults described in Subparagraphs A, B
22 and C of this Section 26), and if such default shall continue for 60 days after written notice
23 specifying such default and requiring the same to be remedied shall have been given to the City by
24 the registered owners of 25% in principal amount of the Bonds then outstanding.

25 E. Bankruptcy or Insolvency of City. (1) The City shall (a) apply for or consent to

1 the appointment of or the taking of possession by, a receiver, custodian, trustee, liquidator or the
2 like of the City or of all or a substantial part of its property, (b) commence a voluntary case under
3 the Federal Bankruptcy Code, or (c) file a petition seeking to take advantage of any other law
4 relating to bankruptcy, insolvency, or reorganization, or (2) a proceeding or case shall be
5 commenced, without application or consent of the City, in any court of competent jurisdiction
6 seeking (a) the liquidation, reorganization, dissolution, winding-up or adjustment of debts of the
7 City, (b) appointment of a trustee, receiver, custodian, liquidator or the like of the City or of all or
8 a substantial part of its assets, or (c) similar relief in respect of the City under any law relating to
9 bankruptcy, insolvency, reorganization, winding-up or adjustment of debts.

10 **Section 27. Remedies of Defaults.** Upon the happening and continuance of any of the
11 events of default as provided in Section 26 of this Ordinance, then and in every case the registered
12 owner or owners of not less than 25% in principal amount of the Bonds then outstanding, including
13 but not limited to a trustee or trustees, may proceed against the City, its Governing Body, and its
14 agents, officers and employees to protect and enforce the rights of any registered owner of Bonds
15 under this Ordinance by mandamus or other suit, action or special proceedings in equity or at law,
16 in any court of competent jurisdiction, either for specific performance of any covenant or agreement
17 contained herein or award or execution of any power herein granted for the enforcement of any
18 power, legal or equitable remedy as such registered owner or owners may deem most effectual to
19 protect and enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful
20 or in violation of any right of any registered owner, or to require the Governing Body of the City
21 to act as if it were the trustee of an expressed trust, or any combination of such remedies. All such
22 proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all
23 registered owners of the Bonds then outstanding. The failure of any such registered owner so to
24 proceed shall not relieve the City or any of its officers, agents or employees of any liability for
25 failure to perform any duty. Each right or privilege of any such registered owner (or trustee thereof)

1 is in addition and cumulative to any other right or privilege, and the exercise of any right or
2 privilege by or on behalf of any registered owner shall not be deemed a waiver of any other right
3 or privilege thereof.

4 **Section 28. Duties Upon Default.** Upon the happening of any of the events of default
5 as provided in Section 26 of this Ordinance, the City, in addition, will do and perform all proper
6 acts on behalf of and for the registered owners of the Bonds to protect and preserve the security
7 created for the payment of the principal of and interest on the Bonds promptly as the same become
8 due. All proceeds derived from the Pledged Revenues, so long as any of the Bonds herein
9 authorized, either as to principal or interest, are outstanding and unpaid, shall be paid into the proper
10 fund and used for the purposes therein provided. In the event the City fails or refuses to proceed
11 as in this Section 28 provided, the registered owner or registered owners of not less than 25% in
12 principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect
13 and enforce the rights of the registered owners as hereinabove provided.

14 **Section 29. Enforcement.** Any registered owner of any one or more of the Bonds,
15 may, either by law or in equity, by suit, action, mandamus or other appropriate proceedings in any
16 court of competent jurisdiction enforce the payment of principal of, and interest on, any Bond on
17 or after the date on which such payment is due, and may by suit, action, mandamus or other
18 appropriate proceeding or proceedings enforce and compel the performance of such payment in
19 accordance with the provisions of this Ordinance.

20 **Section 30. Severability.** If any Section, paragraph, clause or provision of this
21 Ordinance shall be held to be invalid or unenforceable, the invalidity or unenforceability of such
22 Section, paragraph, clause or provision shall not affect any of the remaining provisions of this
23 Ordinance.

24 **Section 31. Repealer Clause.** All ordinances or parts of ordinances inconsistent
25 herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be

1 construed to revive any ordinance or part of any ordinance heretofore repealed.

2 **Section 32. Amendment.**

3 A. Limitations upon Amendments. This Ordinance may be amended or supplemented
4 by ordinance or resolution of the Governing Body without the consent of registered owners:

5 (1) To cure any ambiguity, or to cure, correct or supplement any defect or
6 inconsistent provision contained in this Ordinance;

7 (2) To grant to the registered owners any additional rights, remedies, powers
8 or authority that may lawfully be granted to them;

9 (3) To obtain or maintain a rating on the Bonds from any rating agency which
10 amendment, in the judgment of Bond Counsel, does not materially adversely affect the
11 registered owners of the Bonds;

12 (4) To achieve compliance with federal securities or tax laws, as applicable;

13 (5) To make any other changes in this Ordinance which, in the opinion of
14 Bond Counsel, is not materially adverse to the registered owners; and

15 (6) To make any other changes in this Ordinance in connection with the
16 execution of a Qualified Exchange Agreement, which changes do not adversely affect the
17 rating(s) assigned to the Bonds by Fitch and S&P (if such rating agencies are then rating
18 the Bonds) and do not adversely affect the registered owners.

19 B. Additional Amendments. Except as provided above, this Ordinance may only be
20 amended or supplemented by ordinance adopted by the Governing Body in accordance with the
21 laws of the State, without receipt by the City of any additional consideration, but with the written
22 consent of the registered owners of a majority of the principal amount of the outstanding Bonds
23 which are affected by the amendment or supplement (not including Bonds which are then owned
24 by or for the account of the City); provided, however, that, without first obtaining the consent of
25 all registered owners of the outstanding Bonds, no such ordinances shall have the effect of

1 | permitting:

- 2 | (1) An extension of the maturity of any Bond; or
- 3 | (2) A reduction in the principal amount of or interest rate on any Bond; or
- 4 | (3) A reduction of the principal amount of Bonds required for consent to such
- 5 | amendment or supplement.

6 | C. Proof of Instruments. The fact and date of the execution of any instrument under
7 | the provisions of this Section may be proved by the certificate of any officer in any jurisdiction
8 | who by the laws of that jurisdiction is authorized to take acknowledgments of deeds within that
9 | jurisdiction that the person signing the instrument acknowledged before him the execution of that
10 | instrument, or may be proved by an affidavit of a witness to the execution sworn to before such
11 | officer.

12 | D. Proof of Bonds. The principal amount and number of Bonds owned by any person
13 | executing such instrument and the date of holding that instrument may be proved by a certificate
14 | executed by a bank or trust company showing that on the date mentioned that person had on deposit
15 | with the bank or trust company the Bonds described in the certificate.

16 | **Section 33. Ordinance Irrepealable.** After any of the Bonds herein authorized are
17 | issued, this Ordinance shall be and remain irrepealable until the Bonds and interest thereon shall
18 | be fully paid, canceled and discharged as therein provided, or there has been defeasance as provided
19 | in Section 25 of this Ordinance.

20 | **Section 34. Effective Date, General Summary for Publication.** Upon due adoption
21 | of this Ordinance, the ordinance shall be recorded and preserved by the City Clerk, authenticated
22 | by the signature of the Mayor and City Clerk, and the seal of the City impressed hereon, and the
23 | title and general summary of the subject matter contained in this Ordinance (set out below) shall
24 | be published in a newspaper which maintains an office and is of general circulation in the City and
25 | this Ordinance shall be in full force and effect after its publication in accordance with law.

1 Pursuant to Section 3-17-5 NMSA 1978, as amended, the title and a general summary of
2 the subject matter contained in this Ordinance shall be published in substantially the following
3 form:

4 (Form of Summary of Ordinance for Publication)

5 CITY OF SANTA FE, NEW MEXICO

6 NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter
7 contained in an ordinance duly adopted and approved by the Governing Body of the City of Santa
8 Fe on July 28, 2021. A complete copy of the ordinance is available for public inspection during
9 the normal and regular business hours of the City Clerk in the office of the City Clerk, City Hall,
10 200 Lincoln Avenue, Santa Fe, New Mexico and is available online at santafe.primegov.com.

11 The title of the ordinance is:

12 **AN ORDINANCE**

13 **AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF SANTA FE,**
14 **NEW MEXICO SUBORDINATE LIEN GROSS RECEIPTS TAX REFUNDING**
15 **REVENUE BONDS, SERIES 2021 IN AN AGGREGATE PRINCIPAL AMOUNT**
16 **NOT TO EXCEED \$14,745,000 FOR THE PURPOSE OF (1) REFUNDING,**
17 **DISCHARGING AND PAYING THE CITY OF SANTA FE, NEW MEXICO**
18 **SUBORDINATE LIEN GROSS RECEIPTS TAX REFUNDING REVENUE**
19 **BONDS, SERIES 2010B AND MATURING ON AND AFTER JUNE 1, 2022; (2)**
20 **REFUNDING, DISCHARGING AND PAYING THE CITY OF SANTA FE, NEW**
21 **MEXICO GROSS RECEIPTS TAX IMPROVEMENT AND REFUNDING**
22 **REVENUE BONDS, SERIES 2012A AND MATURING ON AND AFTER JUNE 1,**
23 **2022; AND (3) PAYING COSTS OF ISSUANCE OF THE SERIES 2021 BONDS;**
24 **CALLING FOR THE REDEMPTION OF THE OUTSTANDING SERIES 2010B**
25 **BONDS AND SERIES 2012A BONDS; PROVIDING THAT THE BONDS WILL BE**

1 **PAYABLE AND COLLECTIBLE FROM CERTAIN GROSS RECEIPTS TAX**
2 **REVENUES DISTRIBUTED TO THE CITY; APPROVING THE SELECTION OF**
3 **AN UNDERWRITER AND FORMS OF A PRELIMINARY OFFICIAL**
4 **STATEMENT AND A PAYING AGENT REGISTAR AND DEPOSITARY AGENT**
5 **AGREEMENT; DELEGATING AUTHORITY TO THE MAYOR OR, IN THE**
6 **MAYOR’S ABSENCE, THE CITY MANAGER OR FINANCE DIRECTOR, TO**
7 **APPROVE THE FINAL PRINCIPAL AMOUNT, INTEREST RATES AND**
8 **OTHER DETAILS OF THE BONDS WITHIN THE PARAMETERS SET FORTH**
9 **IN THIS AUTHORIZING ORDINANCE, AND TO EXECUTE AND DELIVER A**
10 **BOND PURCHASE AGREEMENT FOR THE SALE OF THE BONDS TO THE**
11 **UNDERWRITER; PROVIDING FOR THE COLLECTION OF CERTAIN GROSS**
12 **RECEIPTS TAX REVENUES; APPROVING CERTAIN OTHER AGREEMENTS**
13 **AND DOCUMENTS IN CONNECTION WITH THE BONDS; RATIFYING**
14 **ACTION PREVIOUSLY TAKEN IN CONNECTION WITH THE BONDS;**
15 **REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND RELATED**
16 **MATTERS.**

17 A general summary of the subject matter contained in such ordinance is set forth in the
18 title.

19 COMPLETE COPIES OF THE ORDINANCE ARE ON FILE IN THE OFFICE OF THE CITY
20 CLERK AT THE CITY HALL, 200 LINCOLN AVENUE, SANTA FE, NEW MEXICO, ARE
21 AVAILABLE ONLINE AT SANTAFE.PRIMEGOV.COM, AND ARE AVAILABLE FOR
22 INSPECTION AND/OR PURCHASE DURING REGULAR OFFICE HOURS. THIS NOTICE
23 ALSO CONSTITUTES COMPLIANCE WITH SECTION 3-17-5 AND SECTIONS 6-14-4
24 THROUGH 6-14-7, NMSA 1978.

25 WITNESS my hand and the seal of the City on the ___ day of _____, 2021.

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CITY OF SANTA FE

(SEAL)

Kristine Mihelcic, City Clerk

(End of Form of Ordinance for Publication)

PASSED, APPROVED, AND ADOPTED this ___ day of _____, 2021

GOVERNING BODY OF THE
CITY OF SANTA FE

(SEAL)

ALAN WEBBER, MAYOR

ATTEST:

KRISTINE MIHELICIC

APPROVED AS TO FORM:



Peter Franklin (Jul 1, 2021 17:15 MDT)

PETER FRANKLIN – MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A. AS BOND

COUNSEL

1 After discussion, Councilor _____ moved for approval, with Councilor _____
2 seconding the motion. Bill No. 2021-__ passed upon the following roll call vote:

3 Those voting AYE: Councilor: _____
4 Councilor: _____
5 Councilor: _____
6 Councilor: _____
7 Councilor: _____
8 Councilor: _____
9 Councilor: _____
10 Councilor: _____

11 Those voting NAY: _____

12 Those not present: _____

13 The presiding officer thereupon declared that at least three-fourths of all the members of
14 the Governing Body having voted in favor of adoption of Bill No. 2021-__ the motion was carried
15 and Ordinance No. 2021-__ was duly passed and adopted.

16 After consideration by the Governing Body of other business the meeting was duly
17 adjourned.

18 GOVERNING BODY OF THE
19 CITY OF SANTA FE, NEW MEXICO

20 (SEAL)

21 _____
22 _____
23 ALAN WEBBER, MAYOR
24 _____
25 _____

1 ATTEST:

2

3

4 KRISTINE MIHELICIC, CITY CLERK

5 APPROVED AS TO FORM AND LEGAL SUFFICIENCY

6

7

8 PETER FRANKLIN – MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A. AS BOND

9 COUNSEL

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25 *Legislation/2021/Bills/GRT Refunding Revenue Bond Series 2021*

FISCAL IMPACT REPORT

General Information:

(Check) Bill: X Resolution: _____

Short Title(s): GRT Refunding Revenue Bond Series 2021

Sponsor(s): Mayor Webber and Councilor Abeyta

Reviewing Department(s): Finance

Staff Completing FIR: Bradley Fluetsch, CFA Date: June 25, 2021 Phone: 955-6885

Reviewed by City Attorney:  Date: Jul 1, 2021
Peter Franklin (Jul 1, 2021 17:15 MDT)

Reviewed by Finance Director:  Date: Jul 2, 2021
Alexis Lotero (Jul 2, 2021 16:46 MDT)

Summary:

The 2012A Senior Lien GRT Revenue Bond and the 2010B Subordinate Lien GRT Revenue Bond became eligible to refund and according to the City's Debt Policy, it is permissible according to Section IX. C, having met all the criteria.

Departments Affected:

Finance

Consequences of Not Enacting Legislation:

There are several consequences, most notably the City would forego saving \$1.35 million in interest expense. Next and more importantly, the perception of municipal bond investors and other market participants may be affected, they would wonder why the City has not refunded these bonds and save the money.

Conflict, Duplication, Companionship, or Relationship to Other Legislation:

No conflict, duplication, companionship or relationship to any other legislation.

Performance and Administrative Implications:

No performance implications and the administrative ones are minimal.

Fiscal Implications:

All net savings to the City of an estimated \$1.35 million over five years

Fiscal Impact

_____ Check here if no fiscal impact

Expenditures

Expenditure Type	FYE 22	FYE 23	FYE 24	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
Personnel and Benefits*	\$ _____	\$ _____	\$ _____	_____	_____	_____	
Capital Outlay	\$-340,000	\$-335,000	\$-335,000	N	NR	515,100	
Contractual/ Professional Services	\$30,000	\$ _____	\$ _____				
Operating	\$ _____	\$ _____	\$ _____				\$ _____
Total:	\$-310,000	\$-335,000	\$-335,000				\$-980,000

* This includes all staff time associated with executing the job functions of the proposed legislation.

Expenditure Narrative:

There will be a fee from both the Municipal Advisor and Bond Counsel in Professional Services, but in capital outlay there are negative expenses (i.e. savings)

Revenue

Revenue Type	FYE __	FYE __	FYE __	Recurring (R) or Non-recurring (NR)	Fund
General Fund	\$ _____	\$ _____	\$ _____	_____	_____
Special Revenue	\$ _____	\$ _____	\$ _____	_____	_____
CIP	\$ _____	\$ _____	\$ _____	_____	_____
Enterprise	\$ _____	\$ _____	\$ _____	_____	_____
Internal Service	\$ _____	\$ _____	\$ _____	_____	_____
Trust and Agency	\$ _____	\$ _____	\$ _____	_____	_____
Federal	\$ _____	\$ _____	\$ _____	_____	_____
Other	\$ _____	\$ _____	\$ _____	_____	_____
Total	\$ _____	\$ _____	\$ _____		

Revenue Narrative:

There are no revenues in this transaction.

**CITY OF SANTA FE, NEW MEXICO
GROSS RECEIPTS TAX REFUNDING REVENUE BONDS
SERIES 2021
FINANCING SCHEDULE**

JUNE 2021						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

JULY 2021						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

AUGUST 2021						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

SEPTEMBER 2021						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

OCTOBER 2010						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24/31	25	26	27	28	29	30

NOVEMBER 2021						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Council Meeting Dates 5:00/7:00 p.m.
 Finance Committee Meeting Dates 5:00 p.m.
 Public Works

DATE	ACTION	RESPONSIBLE PARTIES
Thursday, June 3, 2021	Distribute Financing Schedule	Modrall Sperling

DATE	ACTION	RESPONSIBLE PARTIES
Tuesday, June 8, 2021	Distribute Draft Bond Parameters Ordinance for first reading on June 30, 2021	Modrall Sperling
Tuesday, June 15, 2021	Distribute initial draft of Preliminary Official Statement	Modrall Sperling
Wednesday, June 16, 2021	Draft Bond Parameters Ordinance, Preliminary Official Statement, and Registrar/Paying Agent Agreement delivered to City for Public Works Committee and Finance Committee Agenda Packets (Introduction on June 30, First Reading of Ordinance on July 14, Finance Committee meeting on July 19, Public Works Committee on July 26)	City Finance Hilltop Securities Modrall Sperling
Friday, June 18, 2021	Draft Request for Underwriters' Qualifications distributed to City Finance	Hilltop Securities
Tuesday, June 22, 2021	Request for Underwriters' Qualifications circulated to underwriters	City Finance
Wednesday, June 30, 2021	Introduction of Bond Parameters Ordinance	City Finance Hilltop Securities Modrall Sperling
Thursday, July 1, 2021	Underwriter responses to RFQ due	Underwriters
Tuesday, July 6, 2021	City Finance recommendation of underwriter selection delivered to Finance Committee (for July 19 Finance Committee Meeting)	City Finance Hilltop Securities Modrall Sperling

DATE	ACTION	RESPONSIBLE PARTIES
Wednesday, July 14, 2021	First reading of Bond Parameters Ordinance by City Council	City Hilltop Securities Modrall Sperling
Thursday, July 15, 2021	Coordinate Publication of Notice of Public Hearing and Intent to Adopt Bond Parameters Ordinance (August 11, 2021 Council Meeting) to the <i>Santa Fe New Mexican</i> for publication by or before July 26, 2021	City Clerk Modrall Sperling
Monday, July 19, 2021	Finance Committee Meeting; review of recommended selection of underwriter(s) and draft Bond Parameters Ordinance, Preliminary Official Statement, and Registrar/Paying Agent Agreement	City Finance Hilltop Securities Modrall Sperling
Monday, July 26, 2021	Notice of August 11, 2021 Public Hearing and Intent to Adopt Bond Parameters Ordinance published in the <i>Santa Fe New Mexican</i>	Newspaper
Monday, July 26, 2021	Public Works Committee Meeting; review of draft Bond Parameters Ordinance, Preliminary Official Statement, and Registrar/Paying Agent Agreement	City Finance Hilltop Securities Modrall Sperling
Wednesday, July 28, 2021	Final Bond Parameters Resolution, Preliminary Official Statement, Disclosure Responsibilities Memorandum and Registrar/Paying Agent Agreement delivered to City for Council Agenda Packets (July 28 Council Meeting)	Modrall Sperling City Finance
Monday, August 9, 2021	Draft Preliminary Official Statement distributed to Rating Agencies	Hilltop Securities Modrall Sperling

DATE	ACTION	RESPONSIBLE PARTIES
Wednesday, August 11, 2021	City Council adopts Bond Parameters Ordinance* *Selection of underwriters and delegation of final terms authority to be included in Bond Parameters Ordinance	City Hilltop Securities Modrall Sperling
Thursday, August 12, 2021	Submit Notice of Adoption of Bond Parameters Ordinance for publication in the August 18, 2021 edition of the <i>Santa Fe New Mexican</i>	Modrall Sperling
Week of August 16 and 23, 2021	Calls with Rating Agencies	Hilltop Securities City Finance Modrall Sperling
Wednesday, August 18, 2021	Notice of Adoption of Bond Parameters Ordinance for publication in the <i>Santa Fe New Mexican</i>	Newspaper
Friday, August 30, 2021	Submit request for approval of parameters for refunding transaction to the Department of Finance and Administration pursuant to 2.61.8.9 NMAC	Modrall Sperling Hilltop Securities
Tuesday, August 24, 2021	Transmit Conditional Notice of Redemption of Bonds to BOKF, NA, as Registrar	Modrall Sperling
Friday, August 27, 2021	Post Conditional Notice of Redemption on EMMA	BOKF, NA, as Registrar
Friday, September 10, 2021	Ratings received	Hilltop Securities

DATE	ACTION	RESPONSIBLE PARTIES
Friday, September 10, 2021	Final comments on Preliminary Official Statement due	Underwriter(s) City Finance Hilltop Securities Modrall Sperling
Monday, September 13, 2021	Post Preliminary Official Statement on EMMA	Hilltop Securities Underwriters Modrall Sperling
Friday, September 17, 2021	30-day limitation of actions period expires	
Tuesday, September 21, 2021	Negotiated Sale of Bonds; Execution and Delivery of Bond Purchase Agreement and Pricing Certificate	Hilltop Securities Underwriters Mayor City Finance Director
Thursday, September 23, 2021	Circulate draft Official Statement	Modrall Sperling
Friday, September 24, 2021	Report refunding results to Department of Finance and Administration	Hilltop Securities
Monday, September 27, 2021	Comments due on draft Official Statement	Underwriters
Wednesday, September 29, 2021	Mayor or Finance Director reports on final terms of Bonds and presents Pricing Certificate at City Council Meeting (informational purposes only)	Mayor or Finance Director
Thursday, September 30, 2021	Deadline for transmitting Official Statement to Underwriters	Modrall Sperling

DATE	ACTION	RESPONSIBLE PARTIES
Monday, October 4, 2021	Circulate draft Closing Documents	Modrall Sperling
Week of October 11, 2021 (exact date TBD)	Meet with City Officials to execute Closing Documents	Modrall Sperling City Finance Mayor, City Manager, City Clerk, City Attorney
Friday, October 15, 2021	Bonds sent to BOKF, NA for FAST Closing	Modrall Sperling
Monday, October 18, 2021	Bonds delivered to BOKF, NA	FedEx
Thursday, October 21, 2021	Closing; redemption of refunded bonds	City Finance BOKF, NA Hilltop Securities Modrall Sperling

OFFICIAL STATEMENT

NOTICE

\$14,745,000*

CITY OF SANTA FE, NEW MEXICO

**Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds
Series 2021**

Preliminary Official Statement, subject to completion,
dated _____, 2021

The Preliminary Official Statement, dated _____, 2021 (the “Preliminary Official Statement”), relating to the above-described bonds (the “Bonds”) of the City of Santa Fe, New Mexico (the “City”), has been posted as a matter of convenience. The posted version of the Preliminary Official Statement has been formatted in Adobe Portable Document Format. Although this format should replicate the Preliminary Official Statement available from the City, appearance may vary for a number of reasons, including electronic communication difficulties or particular user software or hardware. Using software other than Adobe Acrobat may cause the Preliminary Official Statement that you view or print to differ in appearance from the Preliminary Official Statement.

The Preliminary Official Statement and the information contained therein are subject to completion or amendment or other change without notice. Under no circumstances shall the Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Bonds in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

For purposes of Rule 15c2-12 promulgated by the United States Securities and Exchange Commission, the Preliminary Official Statement alone, and no other document or information on the internet, constitutes the “Official Statement” that the City has “deemed final” as of its date in respect of the Bonds, except for certain information permitted by Rule 15c2-12 to be omitted therefrom.

No person has been authorized to give any information or to make any representations other than those contained in the Preliminary Official Statement in connection with the offer and sale of the Bonds and, if given or made, such information or representations must not be relied upon as having been authorized. The information and expressions of opinion in the Preliminary Official Statement are subject to change without notice and neither the delivery of the Official Statement nor any sale made thereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City since the date of the Preliminary Official Statement.

By choosing to proceed and view the electronic version of the Preliminary Official Statement, you acknowledge that you have read and understood this Notice.

Preliminary Official Statement dated _____, 2021

* Preliminary, subject to change.

NEW ISSUE

RATINGS: S&P Global Ratings: _____

Fitch Ratings: _____

BOOK-ENTRY ONLY

In the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, under existing laws, regulations, rulings and judicial decisions, and assuming compliance with certain covenants described in "TAX EXEMPTION" herein, interest on the Bonds (a) is excludable from the gross income of the recipients thereof for federal income tax purposes under Section 103 of the Internal Revenue Code, as amended; and (b) is not an item of tax preference under Section 57 of the Internal Revenue Code of 1986, as amended, for purposes of the federal alternative minimum tax imposed on individuals. Bond Counsel is also of the opinion, based on existing laws of the State of New Mexico as enacted and construed, that the Bonds and income from the Bonds are exempt from all taxation by the State of New Mexico or any political subdivision thereof. For a more complete description of such opinion of Bond Counsel and a description of certain provisions of the Internal Revenue Code of 1986, as amended, which may affect the federal tax treatment of interest on the Bonds for certain registered owners of such bonds, see "TAX EXEMPTION" herein.

\$14,745,000*

City of Santa Fe, New Mexico

Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds

Series 2021

Dated: Date of Delivery

Due: June 1, as shown on the inside front cover

The \$14,745,000* City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021 (the "Bonds") are being issued by the City of Santa Fe, New Mexico (the "City") to provide funds for the Refunding Project. See the "REFUNDING PROJECT" and "SOURCES AND USES OF FUNDS" herein. The Bonds will bear interest from the date of delivery, at the rates set forth on the inside front cover hereof, payable semiannually on June 1 and December 1 of each year until maturity or prior redemption, commencing December 1, 2021, and will mature on June 1 of each of the years as set forth on the inside front cover hereof. Capitalized terms not defined on this front cover are as defined herein.

The Bonds are issuable as fully registered bonds in denominations of \$5,000 or any integral multiple thereof. The Bonds will be issued pursuant to a book-entry only system and will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). Underwriters of the Bonds ("Beneficial Owners") will not receive physical delivery of bond certificates representing their beneficial ownership interests. So long as DTC or its nominee is the owner of the Bonds, principal of and interest on the Bonds will be paid by the Paying Agent to DTC or its nominee, which will in turn remit such payment to its Direct Participants for subsequent disbursement by the Direct Participants and the Indirect Participants to the Beneficial Owners. See "DESCRIPTION OF THE BONDS—Book-Entry Only System."

The Bonds, together with the interest accruing thereon, will be payable solely from Pledged Revenues. Pledged Revenues consist of: (i) the State-Shared Gross Receipts Tax Revenues; (ii) the One-Half Percent Municipal Gross Receipts Tax Revenues; (iii) the Infrastructure Gross Receipts Tax Revenues; (iv) the portion of the gross receipts tax distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, which represents the amount of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues, and Infrastructure Gross Receipts Tax Revenues that would have been remitted to the City but for the deductions provided by Section 7-9-92 and 7-9-93 NMSA 1978 and any similar distributions made to the City in lieu of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues and Infrastructure Gross Receipts Tax Revenues pursuant to law (collectively, the "Pledged Revenues" or "Pledged Gross Receipts Tax Revenues"). The lien on the Pledged Gross Receipts Tax Revenues will be: (A) on parity with the lien on the Pledged Revenues securing the City's 2013B Bonds, 2016C Bonds, 2016D Bonds, the 2017 Taxable Bonds, the 2018 Gas Tax/Sub. Lien GRT Bonds, the 2019 Finance Authority Refunding Loan and the 2019 Finance Authority Parking Improvements Loan, and (B) subordinate to the lien of the Pledged Revenues securing the City's 2013A Bonds, 2014 Bonds, 2016A Bonds, 2016B Bonds, 2018A Bonds and any other Superior Lien Gross Receipts Tax Obligations; The Bonds are subject to optional redemption prior to maturity as more fully described herein. See "DESCRIPTION OF THE BONDS—Optional Redemption of Bonds" herein.

The registered owners of the Bonds may not look to any general or other fund of the City for the payment of the principal of and interest on the Bonds except for the Pledged Revenues. The Bonds do not constitute an indebtedness of the City within the meaning of any constitutional, charter or statutory provision or limitation, nor will they be considered or held to be general obligations of the City. Neither the full faith and credit of the City nor the taxing power of the City, the State or any political subdivision or public agency thereof, other than the City to the extent of the Pledged Revenues, are pledged to the payment of the principal of and interest on the Bonds. No Owner has the right to compel the exercise of the taxing power of the City or the forfeiture of any of its property in connection with any default under the Bond Ordinance.

The purchase and ownership of the Bonds involve investment risk and may not be suitable for all investors. This cover page is not intended to be a summary of the terms of, or the security for, the Bonds. Investors are advised to read this Official Statement in its entirety to obtain information essential to the making of an informed investment decision.

The Bonds are offered when, as and if issued and received by the underwriters set forth below (the "Underwriters") subject to the approval of validity by Modrall, Sperling, Roehl, Harris & Sisk, P.A., Albuquerque, New Mexico, Bond Counsel. Modrall, Sperling, Roehl, Harris & Sisk, P.A., has also acted as special counsel to the City in connection with the preparation of this Official Statement. Certain legal matters will be passed on for the City by Erin McSherry, Esq., City Attorney. Certain legal matters will be passed upon for the Underwriters by _____. It is anticipated that the Bonds will be available for delivery through the facilities of DTC on or about October 21, 2021.

Dated: _____, 2021

* Preliminary, subject to change.

[UNDERWRITER LOGO]

This Preliminary Official Statement and the information contained herein are subject to completion and amendment. Under no circumstances shall the Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

\$14,745,000*
City of Santa Fe, New Mexico
Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds
Series 2021

MATURITY SCHEDULE

Year (June 1)	Principal*	Interest	Yield	Price	CUSIP⁽¹⁾
2022					
2023					
2024					
2025					
2026					
2027					
2028					
2029					
2030					
2031					
2032					
2033					
2034					
2035					
2036					
2037					
2038					
2039					
2040					
2041					

* Preliminary, subject to change.

⁽¹⁾ CUSIP® is a registered trademark of the American Bankers Association. CUSIP Global Services (CGS) is managed on behalf of the American Bankers Association by S&P Global Market Intelligence. Copyright© 2018 CUSIP Global Services. All rights reserved. CUSIP® data herein is provided by CUSIP Global Services. This data is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP® numbers are provided for convenience of reference only. None of the City, the Underwriters or their agents or counsel assumes responsibility for the accuracy of such numbers.

CITY OF SANTA FE, NEW MEXICO

200 Lincoln Avenue
Santa Fe, New Mexico 87501
(505) 955-6500

MAYOR

Alan Webber

CITY COUNCIL

Signe I. Lindell, Mayor Pro Tem
Renee Villarreal, Councilor
Michael Garcia, Councilor
Carol Romero-Wirth, Councilor
Chris Rivera, Councilor
Roman "Tiger" Abeyta, Councilor
Jamie Cassutt-Sanchez, Councilor
JoAnne Vigil Coppler, Councilor

CITY OFFICIALS

Jarel Lapan Hill, City Manager
Kristine Mihelcic, City Clerk
Mary T. McCoy, Director of Finance
Erin McSherry, City Attorney

BOND AND DISCLOSURE COUNSEL

Modrall, Sperling, Roehl, Harris & Sisk, P.A.

PAYING AGENT AND REGISTRAR

BOKF, NA

FINANCIAL ADVISOR

Hilltop Securities Inc.

UNDERWRITER[S]
[to be inserted]

REGARDING THIS OFFICIAL STATEMENT

No dealer, salesman or other person has been authorized to give any information or to make any statements or representations, other than those contained in this Official Statement, in connection with the offering of the Bonds, and, if given or made, such other information, statements or representations must not be relied upon as having been authorized by the City or Underwriters. This Official Statement does not constitute an offer or solicitation in any jurisdiction in which such offer or solicitation is not authorized, or in which any person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation.

The information contained in this Official Statement has been furnished by the City or obtained from other sources which are believed by the City to be reliable. The information in this Official Statement is subject to change without notice and neither the delivery of this Official Statement nor any sale hereunder shall, under any circumstances, create any implication that there has been no change since the date of this Official Statement.

The Underwriters have reviewed the information in this Official Statement pursuant to their responsibilities to investors under the federal securities laws, but the Underwriters do not guarantee the accuracy or completeness of such information.

The Bonds have not been registered under the Securities Act of 1933 in reliance upon exemptions contained in such Act. The registration and qualification of the Bonds in accordance with applicable provisions of the securities laws of the states in which the Bonds have been registered or qualified and the exemption from registration or qualification in other states cannot be regarded as a recommendation thereof. Neither the United States Securities and Exchange Commission nor any other federal, state, municipal or other governmental entity, nor any agency or department thereof, has passed upon the merits of the Bonds or the accuracy or completeness of this Official Statement. Any representation to the contrary may be a criminal offense.

This Official Statement contains statements relating to the City's future financial plans, receipt of future revenues and other matters that are "forward-looking statements" as defined in the Private Securities Litigation Reform Act of 1995. When used in this Official Statement, the words "estimate," "intend," "anticipate," "expect" and similar expressions are intended to identify forward-looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof.

THE PRICES AT WHICH THE BONDS ARE OFFERED TO THE PUBLIC BY THE UNDERWRITERS (AND THE YIELDS RESULTING THEREFROM) MAY VARY FROM THE INITIAL PUBLIC OFFERING PRICES APPEARING ON THE INSIDE FRONT COVER PAGE HEREOF. IN ADDITION, THE UNDERWRITERS MAY ALLOW CONCESSIONS OR DISCOUNTS FROM SUCH INITIAL PUBLIC OFFERING PRICES TO DEALERS AND OTHERS. IN CONNECTION WITH THE OFFERING OF THE BONDS, THE PURCHASERS MAY EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Copies of the ordinance authorizing the issuance of the Bonds are available upon request at the office of the City Clerk, 200 Lincoln Avenue, Room 210, Santa Fe, New Mexico 87504, (505) 955-6521.

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CITY OF SANTA FE, NEW MEXICO
SUBORDINATE LIEN GROSS RECEIPTS TAX REFUNDING REVENUE BONDS
SERIES 2021

SUMMARY OF INFORMATION

There follows a summary of certain provisions discussed in this Official Statement. SUCH SUMMARY DOES NOT PURPORT TO BE COMPREHENSIVE OR DEFINITIVE AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE COMPLETE OFFICIAL STATEMENT. This Summary is only a brief statement and a full review of the entire Official Statement should be made by potential investors. Capitalized terms used but not otherwise defined in this “SUMMARY OF INFORMATION” will have the meanings given such terms in “APPENDIX C—DEFINITIONS OF CERTAIN TERMS IN THE BOND ORDINANCE.”

Dated: The date of initial delivery to the Underwriters, which is expected to be on or about October 21, 2021.

Registration: The City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021 (the “Bonds”) will be issued as fully registered bonds in denominations of \$5,000 and integral multiples thereof. The Registrar is BOKF, NA.

Principal Payment: The Bonds will mature on June 1 of each of the years set forth on the inside front cover page of this Official Statement.

Interest Payment: Interest will be payable semiannually on June 1 and December 1, commencing on December 1, 2021.

Security: The Bonds are special limited obligations, payable solely from Pledged Revenues. “Pledged Revenues” consist of Pledged Gross Receipts Tax Revenues.

Pledged Gross Receipts Tax Revenues consist of (i) the State-Shared Gross Receipts Tax Revenues; (ii) the One-Half Percent Municipal Gross Receipts Tax Revenues; (iii) the Infrastructure Gross Receipts Tax Revenues; and (iv) the portion of the gross receipts tax distribution to the City made pursuant to Section 7-1-6.46, NMSA, which represents the amount of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues, and Infrastructure Gross Receipts Tax Revenues that would have been remitted to the City but for the deductions provided by Sections 7-9-92 and 7-9-93, NMSA, and any similar distributions made to the City in lieu of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues, and Infrastructure Gross Receipts Tax Revenues pursuant to law (see “SPECIAL FACTORS RELATING TO THE BONDS—Legislative Changes” herein).

See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” herein.

Superior and Parity
Subordinate Lien Gross
Receipts Tax Obligations:

The lien of the Bonds on Pledged Gross Receipts Tax Revenues will be on parity with the lien thereon of the outstanding 2012B Bonds, the 2013B Bonds, the 2016C Bonds, the 2016D Bonds, the 2017 Taxable Bonds, the 2018 Gas Tax/Sub. Lien GRT Bonds, the 2019 Finance Authority Refunding Loan, the 2019 Finance Authority Parking Improvements Loan, and any other Subordinate Lien Gross Receipts Tax Obligations issued subsequent to the issuance of the Bonds, and will be subordinate to the lien on Pledged Gross Receipts Tax Revenues of the outstanding 2013A Bonds, 2014 Bonds, 2016A Bonds, 2016B Bonds, 2018A Bonds and any other Parity Superior Lien Gross Receipts Tax Obligations issued subsequent to the issuance of the Bonds, as more fully described herein. SEE “SUMMARY OF CERTAIN PROVISIONS OF THE BOND ORDINANCE—Additional Superior Lien Gross Receipts Tax Obligations and Parity Subordinate Gross Receipts Tax Obligations” herein.

Special Obligations:

THE BONDS ARE SPECIAL LIMITED OBLIGATIONS, PAYABLE SOLELY FROM PLEDGED REVENUES. THE PRINCIPAL OF AND INTEREST ON THE BONDS WILL BE PAYABLE FROM PLEDGED REVENUES, AND WILL NOT BE PAYABLE FROM ANY FUNDS OF THE CITY EXCEPT THE DESIGNATED SPECIAL FUNDS PLEDGED TO THE PAYMENT OF THE BONDS. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL, CHARTER OR STATUTORY PROVISION OR LIMITATION, NOR WILL THEY BE CONSIDERED OR HELD TO BE GENERAL OBLIGATIONS OF THE CITY. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION OR PUBLIC AGENCY THEREOF, OTHER THAN THE CITY TO THE EXTENT OF THE PLEDGED REVENUES, ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS. NO OWNER HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE CITY OR THE FORFEITURE OF ANY OF ITS PROPERTY IN CONNECTION WITH ANY DEFAULT UNDER THE BOND ORDINANCE.

Prior Redemption:

The Series Bonds maturing on and after June 1, 20__ are subject to optional redemption prior to maturity in one or more units of principal of \$5,000 on and after June 1, 20__. See “DESCRIPTION OF THE BONDS – Optional Redemption of Bonds.”

Additional Bonds:

Additional Superior Lien Gross Receipts Tax Obligations may be issued with a lien on the Pledged Gross Receipts Tax Revenues superior and prior to the lien thereon of the Bonds. Additional Subordinate Lien Gross Receipts Tax Obligations may be issued with a lien on the Pledged Gross Receipts Tax Revenues on parity with the lien thereon of the Bonds.

See “SUMMARY OF CERTAIN PROVISIONS OF THE BOND ORDINANCE—Additional Superior Lien Gross Receipts Tax Obligations and Parity Subordinate Lien Gross Receipts Tax Obligations” herein.

Bond and Disclosure Counsel: Modrall, Sperling, Roehl, Harris & Sisk, P.A., Albuquerque, New Mexico

Financial Advisor: Hilltop Securities Inc., Dallas, Texas

Paying Agent/Registrar: BOKF, NA, Albuquerque, New Mexico

Underwriters: _____

Special Factors: Investors and prospective investors should give particular attention to various factors, including that the Bonds are limited, Superior Lien Gross Receipts Tax Obligations secured by a lien on (i) the Pledged Gross Receipts Tax Revenues, and that additional Gross Receipts Tax obligations (including Superior Lien Gross Receipts Tax Obligations and Parity Subordinate Lien Gross Receipts Tax Obligations) may be issued, secured by and paid from the Pledged Gross Receipts Tax Revenues. See “SPECIAL FACTORS RELATING TO THE BONDS”, “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS— Pledged Gross Receipts Tax Revenues” and “SUMMARY OF CERTAIN PROVISIONS OF THE BOND ORDINANCE—Additional Superior Lien Gross Receipts Tax Obligations and Parity Subordinate Gross Receipts Tax Obligations” herein.

OFFICIAL STATEMENT

\$14,745,000*

**CITY OF SANTA FE, NEW MEXICO
SUBORDINATE LIEN GROSS RECEIPTS TAX REFUNDING REVENUE BONDS
SERIES 2021**

INTRODUCTION

This Official Statement, which includes the cover page and the appendices hereto, sets forth certain information in connection with the offering of \$14,745,000* aggregate principal amount of City of Santa Fe, New Mexico, Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021 (the “Bonds”) to be issued by the City of Santa Fe, Santa Fe County, New Mexico (the “City,” the “County” and the “State,” respectively), pursuant to Ordinance No. 2021-__, adopted on July 28, 2021, as supplemented by the Pricing Certificate dated the date of this Official Statement (together, the “Bond Ordinance”).

The Bonds are payable and collectible solely from Pledged Revenues which consist of (i) the revenues distributed to the City monthly by the Department pursuant to Sections 7-1-6 and 7-1-6.4 NMSA 1978, at the rate authorized (currently 1.225% of the gross receipts of persons doing business within the City) from the proceeds of a state-wide gross receipts tax imposed pursuant to Chapter 7, Article 9, NMSA 1978 (the “State-Shared Gross Receipts Tax Revenues”); (ii) the revenues received by the City pursuant to the Sections 7-19D-9 through 7-19D-12 NMSA 1978 and Ordinance No. 1981-45 of the City, which impose a 0.50% tax on the gross receipts of persons doing business within the City (the “One-Half Percent Municipal Gross Receipts Tax Revenues”); (iii) the revenues received by the City pursuant to Section 7-19D-11 NMSA 1978 and Ordinance No. 1993-21 of the City which impose a 0.0625% tax on the gross receipts of persons doing business within the City (the “Infrastructure Gross Receipts Tax Revenues”); (iv) the portion of the gross receipts tax distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, which represents the amount of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues, and Pledged Infrastructure Gross Receipts Tax Revenues that would have been remitted to the City but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978, and any similar distributions made to the City in lieu of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues and Infrastructure Gross Receipts Tax Revenues pursuant to law, and (v) any other gross receipts tax revenues received by the City, whether from distribution by the State or pursuant to gross receipts taxes imposed by the City and hereafter pledged to the payment of the Bonds by an affirmative act of the City Council of the City. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Pledged Gross Receipts Tax Revenues”.

The Bonds are special, limited obligations of the City payable from and secured solely by the Pledged Revenues. The Bonds will be issued with a lien on the Pledged Gross Receipts Tax Revenues on parity with the lien thereon of outstanding Parity Subordinate Lien Gross Receipts Tax Obligations, and subordinate to the lien thereon of outstanding Superior Lien Gross Receipts Tax Obligations. See “SUMMARY OF CERTAIN PROVISIONS OF THE BOND ORDINANCE—Additional Superior Lien Gross Receipts Tax Obligations and Parity Subordinate Lien Gross Receipts Tax Obligations” herein.

The City has previously issued and there are currently outstanding the following gross receipts tax revenue bonds secured by a first lien on the Pledged Gross Receipts Tax Revenues on parity with the lien thereon, following issuance, of the Bonds (the “Outstanding Superior Lien Gross Receipts Tax Obligations”): (a) Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2012A (the

* Preliminary, subject to change.

“2012A Bonds”) in an original aggregate principal amount of \$32,725,000 of which \$10,735,000 of such 2012A Bonds remain outstanding, which will be refunded, redeemed and paid with proceeds of the Bonds, (b) Gross Receipts Tax Improvement Revenue Bonds, Series 2014 (the “2014 Bonds”) in an original aggregate principal amount of \$15,460,000, of which \$14,615,000 of such 2014 Bonds remain outstanding, (c) Senior Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016A (the “2016A Bonds”) in an original aggregate principal amount of \$6,700,000 of which \$2,140,000 of such 2016A Bonds remain outstanding, (d) Senior Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016B (the “2016B Bonds”) in an original aggregate principal amount of \$21,900,000, of which \$10,225,000 of such 2016B Bonds remain outstanding, and (e) Senior Lien Gross Receipts Tax Improvement Revenue Bonds, Series 2018A (the “2018A Bonds”) in an original aggregate principal amount of \$20,000,000, of which \$18,975,000 of such 2018A Bonds remain outstanding. The City may issue additional Parity Superior Lien Gross Receipts Tax Obligations with a lien on the Pledged Gross Receipts Tax Revenues on parity with the lien thereon of the 2018A Bonds (together with the Outstanding Parity Superior Lien Gross Receipts Tax Obligations, the “Superior Lien Gross Receipts Tax Obligations”).

The City has previously issued and there are currently outstanding the following gross receipts tax obligations secured by a lien on the Pledged Gross Receipts Tax Revenues subordinate to the lien thereon of the Superior Lien Gross Receipts Tax Obligations (the “Outstanding Subordinate Lien Gross Receipts Tax Obligations”): (1) Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2010B (the “2010B Bonds”) in an aggregate principal amount of \$10,490,000, of which \$4,860,000 of such 2010B Bonds remains outstanding, which will be refunded, redeemed and paid with proceeds of the Bonds, (2) Gross Receipts Tax (Subordinate Lien)/Wastewater Systems Refunding Revenue Bonds, Series 2012B⁽¹⁾ (the “2012B Bonds”) in an original aggregate principal amount of \$14,280,000, of which \$1,960,000 of such 2012B Bonds remain outstanding, (3) Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2013B (the “2013B Bonds”) in an original aggregate principal amount of \$13,780,000, of which \$11,245,000 of such 2013B Bonds remain outstanding, (4) Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016C (the “2016C Bonds”) in an original aggregate principal amount of \$9,480,000, of which \$2,455,000 of such 2016C Bonds remain outstanding, (5) Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016D (the “2016D Bonds”) in an original aggregate principal amount of \$2,020,000, of which \$1,690,000 of such 2016D Bonds remain outstanding, (6) Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2017 (the “2017 Taxable Bonds”) in an original aggregate principal amount of \$4,530,000 of which \$3,805,000 of such 2017 Taxable Bonds remain outstanding, (8) Gasoline Tax/Subordinate Lien Gross Receipts Tax Improvement Revenue Bonds, Series 2018 (the “2018 GasTax/Sub.Lien GRT Bonds”) in an original aggregate principal amount of \$10,290,000, of which \$8,660,000 of such 2018 Gas Tax/Sub. Lien GRT Bonds remain outstanding; (9) 2019 Taxable Subordinate Lien Finance Authority Refunding Loan (“2019 Refunding Loan”) in an original principal amount of \$23,705,000, of which \$22,810,000 of such 2019 Refunding Loan principal remains outstanding; and (10) 2019 Subordinate Lien Finance Authority Parking Improvements Loan (the “2019 Parking Improvements Loan”) in an original principal amount of \$1,575,000, of which \$1,380,000 of such 2019 Parking Improvements Loan principal remains outstanding. The City may issue additional Subordinate Lien Gross Receipts Tax Obligations with a lien on the Pledged Gross Receipts Tax Revenues subordinate to the lien thereon of the Bonds (together with the Outstanding Subordinate Lien Gross Receipts Tax Obligations, the “Subordinate Lien Gross Receipts Tax Obligations”). See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” and “SUMMARY OF CERTAIN PROVISIONS OF THE BOND ORDINANCE—Additional Parity Superior Lien Gross Receipts Tax Obligations and Subordinate Lien Gross Receipts Tax Obligations.”

THE BONDS ARE SPECIAL LIMITED OBLIGATIONS, PAYABLE SOLELY FROM PLEDGED REVENUES. THE PRINCIPAL OF AND INTEREST ON THE BONDS WILL BE

⁽¹⁾ The Series 2012B Bonds are, in addition to the Pledged Gross Receipts Tax Revenues, secured by a subordinate lien on certain Environmental Services Gross Receipts Tax Revenues, and a first (but not an exclusive first) lien on Wastewater System Revenues, which are not included in the Pledged Revenues securing the Bonds.

PAYABLE SOLELY FROM PLEDGED REVENUES AND WILL NOT BE PAYABLE FROM ANY FUNDS OF THE CITY EXCEPT THE DESIGNATED SPECIAL FUNDS PLEDGED TO THE PAYMENT OF THE BONDS. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL, CHARTER OR STATUTORY PROVISION OR LIMITATION, NOR WILL THEY BE CONSIDERED OR HELD TO BE GENERAL OBLIGATIONS OF THE CITY. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION OR PUBLIC AGENCY THEREOF, OTHER THAN THE CITY TO THE EXTENT OF THE PLEDGED REVENUES, ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS. NO OWNER HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE CITY OR THE FORFEITURE OF ANY OF ITS PROPERTY IN CONNECTION WITH ANY DEFAULT UNDER THE BOND ORDINANCE.

The descriptions and summaries of various documents hereinafter set forth do not purport to be comprehensive or definitive, and reference is made to each document for the complete details of all terms and conditions. All statements herein are qualified in their entirety by reference to each document. All capitalized terms used in this Official Statement and not otherwise defined herein have the same meanings as in the Bond Ordinance.

SPECIAL FACTORS RELATING TO THE BONDS

Each prospective investor of the Bonds is encouraged to read this Official Statement and to give particular attention to the factors described below which, among other conditions, could affect the payment of debt service on the Bonds and could affect the market price and marketability of the Bonds to an extent that cannot be determined at this time.

Limited Obligations

The Bonds are special limited obligations of the City payable as to principal and interest solely from Pledged Revenues. Therefore, the security for the punctual payment of the principal of and interest on the Bonds is dependent on the City's receipt of the Pledged Revenues in an amount sufficient to meet the debt service requirements of the Bonds, the Parity Superior Lien Gross Receipts Tax Obligations and the Subordinate Lien Gross Receipts Tax Obligations. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS", "INFORMATION CONCERNING GROSS RECEIPTS TAXES AND REVENUES" herein. The Bonds and the interest thereon do not constitute a debt or indebtedness of the City within the meaning of any provision or limitation of the Constitution or laws of the State and do not give rise to a pecuniary liability of the City or a charge against its general credit or taxing power. Further, the Bonds are not obligations of the State, and the owners of the Bonds may not look to the State for payment of the principal of or interest on the Bonds.

NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION OR PUBLIC AGENCY THEREOF, OTHER THAN THE CITY TO THE EXTENT OF THE PLEDGED REVENUES, ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS.

Superior Gross Receipts Tax Obligation

The lien on the Pledged Gross Receipts Tax Revenues securing the Bonds will be subordinate to the lien on the Pledged Gross Receipts Tax Revenues securing the Superior Lien Gross Receipts Tax Obligations. See "SECURITY AND SOURCES OF PAYMENTS FOR THE BONDS" herein.

Additional Superior Lien Gross Receipts Tax Obligations Payable from Pledged Gross Receipts Tax Revenues

The Bond Ordinance permits the issuance of additional Parity Superior Lien Gross Receipts Tax Obligations and additional Parity Subordinate Lien Gross Receipts Tax Obligations if certain conditions specified in the Bond Ordinance are satisfied. See “SUMMARY OF CERTAIN PROVISIONS OF THE BOND ORDINANCE—Additional Superior Lien Gross Receipts Tax Obligations and Parity Subordinate Lien Gross Receipts Tax Obligations” herein.

Gross Receipts Tax Collections are Subject to Fluctuation; Effect of Tourism

Gross receipts tax collections are subject to the fluctuations in spending related, in part, to national and local economic conditions, which determine the amount of gross receipts taxes collected. This causes gross receipts tax revenues to increase along with the increasing prices brought about by inflation, but also causes collections to be vulnerable to adverse economic conditions and reduced spending. The City’s economic base and the future collections of Pledged Gross Receipts Tax Revenues are impacted by tourism and summer and winter resort activities. The City’s associated retail sales are affected by both weather and general economic circumstances. See SPECIAL FACTORS RELATING TO THE BONDS -- Public Health Pandemics or Outbreak Risks herein.

The Pledged Gross Receipts Tax Revenues are based on the total gross receipts of persons transacting business within the City that is subject to payment of the gross receipts taxes that produce Pledged Gross Receipts Tax Revenues. Various circumstances and developments, most of which are beyond the control of the City, may have an adverse effect on the future level of Pledged Gross Receipts Tax Revenues. Such circumstances may include, among others, adverse changes in national and local economic and financial conditions generally, reductions in the rates of employment and economic growth in the City, the State and the region, a decrease in rates of population growth and rates of residential and commercial development in the City, the County, the State, and the region and various other factors.

For the fiscal year ended June 30, 2020, total taxable gross receipts reported by standard industrial classification were \$3,692,443,207, compared with \$3,973,758,233 in the previous fiscal year (both figures unaudited). See “INFORMATION CONCERNING GROSS RECEIPTS TAXES AND REVENUES – Total Taxable Gross Receipts Reported by Standard Industrial Classification” and “INFORMATION CONCERNING GROSS RECEIPTS TAXES AND REVENUES – Total Gross Receipts Reported by Standard Industrial Classification.”

For the fiscal year ended June 30, 2020, State Shared Gross Receipts Tax Revenues totaled \$43,857,758, representing an increase of 3.51% from the previous fiscal year. Since 2010, State- Shared Gross Receipts Tax Revenues have increased each year until 2014, in which such revenues decreased by 3.3%. After the fiscal year ended June 30, 2014, State-Shared Gross Receipts Tax Revenues have increased in each year through 2020. See “INFORMATION CONCERNING GROSS RECEIPTS TAXES AND REVENUES” herein. For the fiscal year ended June 30, 2020, total One-Half Percent Municipal Gross Receipts Tax Revenues were \$19,192,912, representing an increase of 17.31% from the previous fiscal year. In the last ten years, the One-Half Percent Municipal Gross Receipts Tax Revenues decreased in fiscal year 2010 before increasing in each year until fiscal year 2019. For fiscal year ended June 30, 2019, total Pledged Infrastructure Gross Receipts Tax Revenues were \$2,231,223, representing a decrease of 0.034% from the previous fiscal year. In the last ten years, the Pledged Infrastructure Gross Receipts Tax Revenues decreased in fiscal year 2010, and then increased in fiscal year 2011 and every year following, until fiscal year 2019, in which such revenues decreased by 0.03%, and then increased in fiscal year 2020 by 3.38%.⁽¹⁾

⁽¹⁾ Figures are unaudited.

Additional revenues related to each specifically named gross receipts tax revenue category are included in the percentages described above. The City cannot predict with certainty the future growth or decline of gross receipts tax revenues. A decline of gross receipts tax revenues may adversely affect the financial well-being of the City and the City's ability to make payments on the Bonds.

Public Health Pandemics or Outbreak Risks

An international, national or localized public health pandemic or outbreak could adversely impact the City's operations and finances and the Pledged Revenues. The World Health Organization has declared a pandemic following the outbreak of COVID-19, a respiratory disease caused by a new strain of coronavirus.

On March 11, 2020, New Mexico Governor Michelle Lujan Grisham issued Executive Order 2020-004, declaring a state of public health emergency and directing State agencies to use all resources necessary to prepare for and respond to the outbreak, which declaration was renewed on January 8, 2021. Governor Lujan Grisham, New Mexico Department of Health ("NMDOH") Secretary Kathyleen Kunkel and NMDOH Secretary-Designate Tracie C. Collins, M.D. have issued additional orders that, among other things, order the temporary closure of all public schools and certain businesses and non-profit entities, advise the public to stay home except for necessary outings, and direct that hotels, motels, RV parks, and other places of lodging shall not operate at more than 25% of maximum occupancy, and prohibit mass gatherings.

On June 2, 2021, the Secretary of NMDOH renewed the December 30, 2020 Public Health Order Clarifying that Current Guidance Documents, Advisories and Emergency Public Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose County-by-County Restrictions due to COVID-19. The December 30, 2020 Order provides for a "Red to Green" framework for three levels of operations that are based on a county's ability to satisfy the following specified metrics: Green Level Counties must have (1) a new COVID-19 incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period, and (2) an average percentage of positive COVID-19 test results over the most recent 14-day period less than or equal to 5%. Yellow Level Counties must meet one of the foregoing metrics. Red Level Counties do not meet either metric.

Green Level Counties may permit mass gatherings of more than 20 individuals in "essential businesses other than retail spaces" (but only to the extent necessary to carry out essential function) and may permit retail establishments, houses of worship, and food and drink establishments which complete the NM Safe Certified training program to operate at up to 50% maximum occupancy, and up to 75% capacity outdoors, if tables are at least 6 feet apart and a maximum of 6 patrons are seated at each table. Places of lodging which have completed the NM Safe Certified training program may operate at 75% of maximum occupancy; all other places of lodging may operate at 40%. "Close contact recreational facilities" may not operate.

Yellow Level Counties may permit mass gatherings of more than 10 individuals in essential businesses other than retail, but only to the extent necessary to carry out essential functions; essential businesses identified as retail and houses of worship may operate at up to 33% of maximum occupancy; outdoor recreational facilities and food and drink establishments that have completed the NM Safe Certified training program may operate at up to 25% capacity indoors, and up to 75% capacity outdoors, if tables are at least 6 feet apart and a maximum of 6 patrons are seated at each table. Places of lodging that have completed the NM Safe Certified training program may operate at 60% capacity, while all other places of lodging may operate at no more than 25% capacity. Close contact recreational facilities may not operate.

Red Level Counties may permit mass gatherings of more than 5 individuals in essential businesses other than those defined as retail space, but only to the extent absolutely necessary to carry out essential

functions; essential businesses identified as retail space, houses of worship and outdoor recreational facilities may operate at up to 25% of maximum occupancy; food and drink establishments may not offer dine-in service, but may provide service in outdoor seating areas at up to 25% occupancy, if tables are at least 6 feet apart and a maximum of 6 patrons are seated at each table.

The December 30, 2020 Public Health Order provides that, regardless of a county's level, all individuals shall wear a mask in public settings except where eating or drinking, unless a healthcare professional has directed otherwise; retail spaces shall limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products and hygiene products to three items per individual. The order specifies additional requirements for immediate closure of businesses within its scope upon the occurrence of positive tests of individuals present in such locations for a 14 day period.

The foregoing is a summary of the December 30, 2020 Public Health Order and is not intended to be a comprehensive explanation of all requirements applicable to Green, Yellow and Red Level Counties. There can be no assurance that additional restrictions applicable to lodging occupancy, travel, mass gatherings, or other matters won't be imposed.

The New Mexico Department of Health provides information relating to COVID-19 and related developments in the State of New Mexico on its website, <https://cv.nmhealth.org/>. The information presented on the NMDOH website is not a part of this Official Statement and should not be relied upon in making an investment decision with respect to the Bonds. References to website addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such websites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement.

The current spread of COVID-19 is altering the behavior of businesses and people in a manner that may have negative effects on economic activity, and therefore adversely affect the financial condition of the City, either directly or indirectly. The City cannot predict (i) the duration or extent of the COVID-19 outbreak/pandemic; (ii) the duration or expansion of public health orders, regulations or legislation, mandated or voluntary business closings, travel restrictions or warnings; (iii) the extent or duration of the negative effects that any COVID-19 or other outbreak/pandemic-related orders, regulations, legislation, restrictions or warnings will have on the local or global economy; (iv) the duration of lodging occupancy and travel restrictions or (v) the extent of the adverse financial impact that such circumstances or economic effects will have on gross receipts tax collections or the City's financial condition. In addition, financial markets in the United States and globally have experienced significant volatility or declines in connection with the COVID-19 which may have a material impact on the market price of the Bonds.

Legislative Changes

Revisions to laws of the State affecting taxed activities and distributions of gross receipts tax revenues could be adopted in the future by the State Legislature. Proposals affecting taxed activities and distributions are frequently considered by the State Legislature. There is no assurance that any future revisions to State laws will not adversely affect activities now subject to the gross receipts tax or distribution of gross receipts tax revenues to the City. Notwithstanding the foregoing, the provisions of State law authorizing the issuance of revenue bonds (including gross receipts tax bonds such as the Bonds) include a provision stating that any law which authorizes the pledge of revenues to the payment of revenue bonds, or which affects the pledged revenue "shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds."

In the 2004 Legislative Session, a bill was adopted by the Legislature and signed into law that relieved from gross receipts taxes (i) food or food products for home consumption sold at an establishment that sells food for home preparation and consumption and (ii) receipts from payments by a managed health

care provider or health care insurer for commercial contract services or Medicare Part C services provided by a health care provider. See Sections 7-9-92 and 7-9-93 NMSA 1978. The law also provides, pursuant to Section 7-1-6.46 NMSA 1978, for distribution from the State general fund to municipalities to offset any reduced gross receipts tax distributions resulting from the food and health care services tax relief effected by Sections 7-9-92 and 7-9-93. A portion of such offset distributions are included in the Pledged Revenues. However, as discussed below, these distributions began to be reduced by a legislatively set percentage each year starting in 2016 and will be phased out entirely by 2030.

In the 2012 Legislative session, the State Legislature amended the State Gross Receipts and Compensating Tax Act as related to certain manufacturing and construction gross receipts. Specifically, the amendment expanded the gross receipts tax deductions for sales of tangible property to manufacturers to include property consumed in the process of manufacturing, excluding tools and equipment. Additionally, the definition of “construction services” was expanded thereby increasing the scope of the deduction for sale of construction services to persons engaged in the construction business. Both of these amendments are phased in over the next several fiscal years.

In the 2013 New Mexico Legislative session, House Bill 641, passed by both chambers and signed by the Governor, included several changes to New Mexico’s tax code. The bill lowers the New Mexico’s top corporate income tax over five years and permits single sales factor apportioning for certain manufacturing corporations phased in over five years, amends the gross receipts tax deduction for tangible property consumed in the manufacturing process, and amends the high-wage jobs tax credit to extend the credit and add qualifications criteria for the credit. The bill also requires combined reporting for certain corporations and phases out the hold-harmless distribution to municipalities and counties that offset the food and medical deductions over 15 years starting in Fiscal Year 2016.

Other amendments to State laws affecting taxed activities and distribution of gross receipts tax revenues have been proposed from time to time and could be proposed in the future by the Legislature. There is no assurance that any future amendments will not adversely affect activities now subject to the gross receipts tax or distribution of gross receipts tax revenues to the City.

The law as currently enacted will result in annual reductions and ultimately the elimination of the hold harmless distributions to the City, which began on July 1, 2015, as follows:

Fiscal year ending June 30	% of Total Hold Harmless Distribution*
2016	94%
2017	88%
2018	82%
2019	76%
2020	70%
2021	63%
2022	56%
2023	49%
2024	42%
2025	35%
2026	28%
2027	21%
2028	14%
2029	7%
2030	-0-

* Based on percentage of total deductions from gross receipts claimed for sale of food at retail food stores and services provided by health care practitioners.

In order to offset the reduced hold harmless distributions, the law allows municipalities and counties to impose a local option gross receipts tax of up to three-eighths of one percent (3/8%) (the “Hold Harmless Gross Receipts Tax”). The City has not imposed any increment of the Hold Harmless Gross Receipts Tax and the imposition of any increment of such tax would not be pledged toward repayment of the Bonds without additional action by the City Council. It is possible that the New Mexico Legislature will further amend the law to provide for additional decreases in hold harmless distributions in the event that a municipality or county imposes any increment of the Hold Harmless Gross Receipts Tax.

Bankruptcy and Foreclosure

The ability of the State to collect gross receipts taxes owed from an owner or operator of a business may be adversely affected by the filing of a bankruptcy proceeding by the owner. The ability to collect delinquent gross receipts taxes using foreclosure and sale for non-payment of taxes may be forestalled or delayed by bankruptcy, reorganization, insolvency or other similar proceedings affecting the owner or operator of a business. The Federal bankruptcy laws provide for an automatic stay of foreclosure and sale proceedings, thereby delaying such proceedings, perhaps for an extended period. Delays in the exercise of remedies could result in gross receipts tax collections that may be insufficient to pay debt service on the Bonds when due.

Secondary Market

No guarantee can be made that a secondary market for the Bonds will be established and maintained. Owners of Bonds should be prepared to hold their bonds to maturity.

Bond Ratings

There is no assurance that the ratings assigned to the Bonds will not be lowered or withdrawn at any time, the effect of which could adversely affect the market price or the marketability of the Bonds. See the information herein under the caption “RATINGS.”

THE REFUNDING PROJECT

The Bonds are being issued to provide funds for the Refunding Project. The Refunding Project will pay the costs of refunding, discharging and paying the principal of, and accrued interest on, the Series

2010B Bonds and the Series 2012A Bonds maturing on and after June 1, 2021, and paying the costs of issuance of the Bonds allocable to the Refunding Project.

SOURCES AND USES OF FUNDS

The proceeds from the sale of the Bonds will be applied as follows:

Sources of Funds

Par Amount of Bonds	
Original Issue Premium	
Total	\$

Uses of Funds

Costs of Issuance ⁽¹⁾	
Underwriters' Discount ⁽²⁾	
Refunding Account	
Total	

⁽¹⁾ Includes financial advisor fees, legal fees, fees of the paying agent/registrar and other miscellaneous costs and expenses related to the issuance of the Bonds.

⁽²⁾ See "UNDERWRITING" herein.

Source: Hilltop Securities Inc.

DESCRIPTION OF THE BONDS

General

The Bonds are being issued in the aggregate principal amount of \$ _____* to provide funds for the Refunding Project . See "THE REFUNDING PROJECT" herein.

The Bonds will be dated their date of issuance and initial delivery to the Underwriters as set forth on the cover page hereto. The Bonds will bear interest at the rates, and will mature in the amounts and on the dates set forth on the inside front cover page of this Official Statement. Interest on the Bonds will be payable semiannually on June 1 and December 1 of each year, commencing December 1, 2021 until maturity or prior redemption. The Bonds will bear interest from their date of issuance and delivery. Interest on the Bonds will be computed on the basis of a 360-day year consisting of twelve 30-day months. The Bonds will be issued as fully registered bonds in denominations of \$5,000 or any integral multiple thereof; provided that no Bonds may be in a denomination which exceeds the principal coming due on any maturity date, and no individual Bond will be issued for more than one maturity.

The principal of any Bond will be payable to the registered owner thereof as shown on the registration books with respect to the Bonds kept by BOKF, NA, registrar (the "Registrar"), upon maturity thereof and upon presentation and surrender to BOKF, NA, paying agent (the "Paying Agent"). If any Bond is not paid upon such presentation and surrender at or after maturity, it will continue to draw interest at the rate borne by the Bond until the principal thereof is paid in full. Payment of interest on any Bond will be made by check or draft mailed by the Paying Agent, on or before each interest payment date (or, if such interest payment date is not a business day, on or before the next succeeding business day), to the registered owner thereof as of the fifteenth day of the calendar month (whether or not a business day) preceding each regularly scheduled interest payment date on the Bonds (the "Regular Record Date") at the address as it last appears on the registration books with respect to the Bonds on the Regular Record Date (or by such other arrangements as may be mutually agreed to by the Paying Agent and any registered owner on such Regular Record Date) notwithstanding any transfer or exchange thereof subsequent to such Regular

* Preliminary, subject to change.

Record Date and prior to such interest payment date. Any interest not so timely paid or duly provided for will cease to be payable as described above and will be payable to the person in whose name any Bond is registered at the close of business on a special record date to be fixed by the Registrar (the “Special Record Date”) whenever moneys become available for payment of any such defaulted interest. Notice of the Special Record Date will be given not less than 10 days prior thereto, by first-class mail, to the registered owners of the Bonds. See “DESCRIPTION OF THE BONDS—Book-Entry Only System” herein.

All payments of principal and interest on the Bonds will be made in lawful money of the United States of America. The City and the Registrar may treat the registered owner of a Bond as the absolute owner thereof for all purposes except as otherwise provided in the Bond Ordinance with respect to the Regular Record Date and the Special Record Date for the payment of interest. Payment of or on account of either principal or redemption price or interest on any Bond will be made only to or upon the written order of the registered owner thereof or his legal representative. All such payments will be valid and effectual to discharge the liability upon the Bond to the extent of the sum or sums so paid.

Optional Redemption of Bonds

A. Optional Redemption. The Bonds maturing on and after June 1 _____, are subject to redemption prior to their stated maturities at the City’s option in one or more units of principal of \$5,000 on at par on and after June 1, _____ in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all of the Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair) at a redemption price equal to the principal amount of the Bonds or portions thereof to be redeemed plus accrued interest, if any, to the date fixed for redemption.

B. Notice by City. At least 45 days prior to any date selected by the City for optional redemption of any of the Bonds, the City shall give written instructions to the Registrar with respect to the optional redemption. The Registrar shall not be required to give notice of any optional redemption unless the Registrar has received written instructions from the City in regard thereto at least 45 days prior to such redemption date (unless such deadline is waived by the Registrar). Additionally, notice of optional redemption shall be given by the City by sending a copy of such notice by first-class, postage prepaid mail, not less than thirty days prior to the optional redemption date to the Paying Agent, if the Registrar is not the Paying Agent.

C. Notice by Registrar. Additionally, notice of redemption shall be given by the Registrar by sending a copy of such notice in the manner required by the Depository or by first-class, postage prepaid mail, not more than 60 days and not less than 30 days prior to the redemption date to each registered owner of each Bond selected for redemption as shown on the registration books kept by the Registrar as of the date of mailing of notice. Failure to give such notice by mailing to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any of the Bonds.

D. Other Redemption Details. The notice required by paragraph C of this Section shall specify the number or numbers of the Bond or Bonds or portions thereof to be so redeemed (if less than all are to be redeemed); and all notices required by this Section shall specify the date fixed for redemption, and shall further state that on such redemption date there will become due and payable upon each \$5,000 unit of principal so to be redeemed at the Paying Agent the principal thereof, accrued interest, if any, to the redemption date, and the applicable prior redemption premium thereon (if any), and that from and after such date interest will cease to accrue. Accrued interest to the redemption date will be paid by check or draft mailed to the registered owner (or by alternative means if so agreed to by the Paying Agent and the registered owner). Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated; and upon presentation thereof at the Paying Agent, the City will pay the Bond or Bonds so called for redemption and the applicable prior redemption premium (if any). In the event that only a portion of the principal amount

of a Bond is so redeemed, a new Bond representing the unredeemed principal shall be duly completed, authenticated and delivered by the Registrar to the registered owner pursuant to Section 9 of the Bond Ordinance and without charge to the registered owner thereof. The Registrar and Paying Agent shall comply with any other terms regarding redemption and notice of redemption as required by any applicable agreement with a Depository.

E. Conditional Redemption. If money or Government Obligations sufficient to pay the redemption price of the Bonds to be called for redemption are not on deposit with the Paying Agent prior to the giving of notice of redemption pursuant this Section, such notice shall state such Bonds will be redeemed in whole or in part on the redemption date in a principal amount equal to that part of the redemption price received by the Paying Agent on the applicable redemption date. If the full amount of the redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the redemption price is on deposit with the Paying Agent. If all Bonds called for redemption cannot be redeemed, the Bonds to be redeemed shall be selected in a manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which the original notice of redemption was given, that such money was not received in accordance with the requirements of the Bond Ordinance. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been redeemed.

Registration, Transfer and Exchange of Bonds

Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer of any Bonds at the Registrar, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at the Registrar for an equal aggregate principal amount of Bonds of the same maturity of other authorized denominations. The Registrar shall authenticate and deliver a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as provided in the Bond Ordinance shall be without charge to the owner or any transferee, but the Registrar may require the payment by the owner of any Bond requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

If any Bond is lost, stolen, destroyed or mutilated, the Registrar will, upon receipt of such evidence, information or indemnity relating thereto as it may reasonably require, authenticate and deliver a replacement bond or bonds of like aggregate principal amount and of the same subseries and maturity, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond has matured, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

Book-Entry Only System

Introduction

Unless otherwise noted, the information contained under the caption “General” below has been provided by DTC. The City, the Financial Advisor, the Underwriters or their agents and counsel, make no representations as to the accuracy or the completeness of such information. The Beneficial Owners of the Bonds should confirm the following information with DTC, the Direct Participants or the Indirect Participants.

NEITHER THE CITY NOR THE PAYING AGENT WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DIRECT PARTICIPANTS, TO INDIRECT PARTICIPANTS, OR TO ANY

BENEFICIAL OWNER WITH RESPECT TO (A) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT, OR ANY INDIRECT PARTICIPANT; (B) ANY NOTICE THAT IS PERMITTED OR REQUIRED TO BE GIVEN TO THE OWNERS OF THE BONDS UNDER THE BOND ORDINANCE; (C) THE SELECTION BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE BONDS; (D) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR INTEREST DUE TO THE OWNER OF THE BONDS; (E) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNERS OF THE BONDS; OR (F) ANY OTHER MATTER REGARDING DTC.

General

The Bonds will be issued in book-entry form. DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond will be issued for each maturity of the Bonds, each in the aggregate principal amount of that maturity and will be deposited with DTC.

DTC, the world's largest depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of the Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

Purchases of the Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each bond (the "Beneficial Owner") in turn is to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interest in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested

by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to the Bonds unless authorized by Direct Participants in accordance with DTC's procedures. Under its usual procedures, DTC will mail an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal of and sinking fund and interest payments on the Bonds will be made to Cede & Co., or such other name as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts on each payable date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on the date payable. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City, disbursement of such payments to Direct Participants shall be the responsibility of DTC or the Paying Agent, and disbursement of such payments to the Beneficial Owners shall be responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Bonds at any time by giving reasonable notice to the City or the City may decide to discontinue use of the system of book entry transfers through DTC (or a successor securities depository). In such an event, bonds will be printed and delivered as described in the Bond Ordinance.

The City cannot and does not give any assurances that DTC will distribute to Participants, or that Participants or others will distribute to the Beneficial Owners, payments of principal of and interest and premium, if any, on the Bonds paid or any redemption or other notices or that they will do so on a timely basis or will serve and act in the manner described in this Official Statement. The City is not responsible or liable for the failure of DTC or any Direct Participant or Indirect Participant to make any payments or give any notice to a Beneficial Owner with respect to the Bonds or any error or delay relating thereto.

The foregoing description of the procedures and record keeping with respect to beneficial ownership interests in the Bonds, payment of principal of and interest and other payments with respect to the Bonds to Direct Participants, Indirect Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in such bonds and other related transactions by and between DTC, the Direct Participants, the Indirect Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and none of the Direct

Participants, the Indirect Participants or the Beneficial Owners should rely on the foregoing information with respect to such matters but should instead confirm the same with DTC or the Participants, as the case may be.

SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE BONDS, AS NOMINEE OF DTC, REFERENCES HEREIN TO THE HOLDERS SHALL MEAN CEDE & CO., AS AFORESAID, AND SHALL NOT MEAN THE BENEFICIAL OWNERS OF THE BONDS.

SECURITY AND SOURCES OF PAYMENT FOR THE BONDS

Limited Obligations

The Bonds are special limited obligations of the City and are payable as to principal and interest exclusively from the Pledged Revenues. Pledged Revenues consist of (i) the revenues distributed to the City monthly by the Department pursuant to Sections 7-1-6 and 7-1-6.4 NMSA 1978, at the rate authorized (currently 1.225% of the gross receipts of persons doing business within the City) from the proceeds of a state-wide gross receipts tax imposed pursuant to Chapter 7, Article 9, NMSA 1978 (the “State-Shared Gross Receipts Tax Revenues”); (ii) the revenues received by the City pursuant to the Sections 7-19D-9 through 7-19D-12 NMSA 1978 and Ordinance No. 1981-45 of the City, which impose a 0.50% tax on the gross receipts of persons doing business within the City (the “One-Half Percent Municipal Gross Receipts Tax Revenues”); (iii) the revenues received by the City pursuant to Section 7-19D-11 NMSA 1978 and Ordinance No. 1993-21 of the City which impose a 0.0625% tax on the gross receipts of persons doing business within the City (the “Infrastructure Gross Receipts Tax Revenues”); (iv) the portion of the gross receipts tax distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, which represents the amount of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues, and Pledged Infrastructure Gross Receipts Tax Revenues that would have been remitted to the City but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978, and any similar distributions made to the City in lieu of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues and Infrastructure Gross Receipts Tax Revenues pursuant to law; and (v) any other gross receipts tax revenues received by the City, whether from distribution by the State or pursuant to gross receipts taxes imposed by the City and hereafter pledged to the payment of the Bonds by an affirmative act of the City Council of the City. See “SPECIAL FACTORS RELATING TO THE BONDS—Legislative Changes”.

Additionally, certain amounts held under the Bond Ordinance are pledged to secure the payment of the principal and interest on the Bonds in accordance with the terms of the Bond Ordinance permitting the application thereof for the purposes and on the terms and conditions set forth therein.

THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL, CHARTER OR STATUTORY PROVISION OR LIMITATION, NOR WILL THEY BE CONSIDERED OR HELD TO BE GENERAL OBLIGATIONS OF THE CITY. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION OR PUBLIC AGENCY THEREOF, OTHER THAN THE CITY TO THE EXTENT OF THE PLEDGED REVENUES, ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS. NO OWNER HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE CITY OR THE FORFEITURE OF ANY OF ITS PROPERTY IN CONNECTION WITH ANY DEFAULT UNDER THE BOND ORDINANCE.

The Pledged Gross Receipts Tax Revenues will be disbursed, allocated and applied solely for the uses and purposes described below under “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Pledged Gross Receipts Tax Revenues – *Parity Superior Lien Gross Receipts Tax Obligations* and – *Subordinate Lien Gross Receipts Tax Obligations*” and “SUMMARY OF CERTAIN PROVISIONS

OF THE BOND ORDINANCE—Administration of Pledged Revenue Funds.” Amounts on deposit in each of the funds and accounts established pursuant to the Bond Ordinance will be invested in Permitted Investments. Investment income on amounts in any fund or account will be credited to such fund or account, and any loss will be charged to such fund or account.

Pledged Gross Receipts Tax Revenues

Superior Lien Gross Receipts Tax Obligations

All Pledged Gross Receipts Tax Revenues are irrevocably pledged by the City with a subordinate (but not an exclusive subordinate) lien thereon to secure the punctual payment of the principal of, redemption premium, if any, and interest on the Bonds and any other outstanding Parity Subordinate Lien Gross Receipts Tax Obligations, subject to the prior and superior lien of Superior Lien Gross Receipts Obligations now outstanding and which may be issued in the future. Such pledge of the Pledged Gross Receipts Tax Revenues and the pledge of the amounts in funds created under the Bond Ordinance will be valid and binding from and after the delivery of the Bonds without any physical delivery thereof or further act.

Subordinate Lien Gross Receipts Tax Obligations

After the Pledged Gross Receipts Tax Revenues are applied to Superior Lien Gross Receipts Tax Obligations now outstanding or which may be issued in the future, remaining Pledged Gross Receipts Tax Revenues will be applied to the payment of the principal of, interest and redemption premium, if any, on outstanding Subordinate Lien Gross Receipts Tax Obligations, without priority or distinction of one over the other. After making the foregoing allocations, remaining Pledged Gross Receipts Tax Revenues will be available to the City for all lawful City purposes. The pledge of the Pledged Gross Receipts Tax Revenues to the Bonds will be irrevocable until all Bonds are no longer outstanding. Additionally, certain amounts held under the Bond Ordinance are pledged to secure the payment of the principal and interest on the Bonds in accordance with their terms, subject only to the provisions of the Bond Ordinance permitting the application thereof for the purposes and on the terms and conditions set forth therein.

INFORMATION CONCERNING GROSS RECEIPTS TAXES AND REVENUES

As security for its obligations to pay the principal of and interest on the Bonds, the City has pledged revenues from the State Gross Receipts Tax (to the extent that the City is allocated a share of such revenues, as described below), the One-Half Percent Municipal Gross Receipts Tax described below, and the Pledged Infrastructure Gross Receipts Tax described below.

State Gross Receipts Tax

Imposition of Tax. The Gross Receipts and Compensating Tax Act (Sections 7-9-1 through 7-9-114 NMSA 1978) authorizes the State of New Mexico to impose a gross receipts tax (the “State Gross Receipts Tax”) which is levied by the State of New Mexico for the privilege of doing business in the State of New Mexico and is collected by the New Mexico Taxation and Revenue Department (the “Department”). The State of New Mexico presently levies a gross receipts tax of five and one eighth percent (5.125%) of taxable gross receipts. Of the 5.125 cents collected per dollar of taxable gross receipts reported for a particular municipality, 1.225 cents is distributed to the municipality by the State of New Mexico monthly, based on the prior month’s filings (the “State-Shared Gross Receipts Tax Revenues”). See “Manner of Collection and Distribution of State Gross Receipts Tax” under this caption and “SPECIAL FACTORS RELATING TO THE BONDS – Legislative Changes.”

Taxed Activities. For the privilege of engaging in business in the State of New Mexico, the State Gross Receipts Tax is imposed upon any person engaging in business in the State. “Gross Receipts” is defined in the Gross Receipts and Compensating Tax Act as the total amount of money or value or other

consideration received from selling property in the State of New Mexico (including tangible personal property handled on consignment in the State), from leasing property employed in the State of New Mexico, from performing services in the State of New Mexico and from selling services outside New Mexico, the product of which is initially used in New Mexico. The definition excludes cash discounts allowed and taken, the State Gross Receipts Tax payable on transactions for the reporting period and any county sales tax, county fire protection excise tax, county and municipal gross receipts taxes, any type of time-price differential and certain gross receipts or sales taxes imposed by an Indian tribe or pueblo. Unlike most other states, the State taxes sales of services, including legal services and certain medical services.

Exemptions and Deductions. Some activities and industries are exempt from the State Gross Receipts Tax many by virtue of their taxation under other laws. Exemptions include but are not limited to receipts of governmental agencies and certain organizations (some of which are taxable by the State, with no local distribution), receipts from the sale of vehicles, occasional sales of property or services, wages, certain agricultural products, dividends, receipts from the sale of prescription drugs and certain federal government paid medical expenses and interest and receipts from the sale of or leasing of natural gas, oil or mineral interests. Various deductions are also allowed, including, but not limited to, receipts from the sale or lease of real property, receipts from various types of sales or leases of tangible personal property or services, receipts from sales to governmental agencies or certain organizations, receipts from processing certain agricultural products, receipts from certain publication sales, certain receipts from interstate commerce transactions and receipts from the sale of certain food and certain medical services. See “Imposition of State Gross Receipts Tax” under this caption. In spite of the numerous specified exemptions and deductions from gross receipts taxation, the general presumption is that all receipts of a person engaging in business in the State and the City are subject to the State Gross Receipts Tax.

Legislative Changes. Revisions to laws of the State affecting taxed activities and distributions of gross receipts tax revenues could be adopted in the future by the State Legislature. Proposals affecting taxed activities and distributions are frequently considered by the State Legislature. There is no assurance that any future revisions to State laws will not adversely affect activities now subject to the gross receipts tax or distribution of gross receipts tax revenues to the City. See “SPECIAL FACTORS RELATING TO THE BONDS – Legislative Changes” herein.

Manner of Collection and Distribution of State Gross Receipts Tax. Businesses must make their payments of State Gross Receipts Taxes on or before the twenty-fifth of each month for taxable events in the prior month. Collection of the State Gross Receipts Tax is administered by the Revenue Division of the Department (the “Revenue Division”), pursuant to Section 7-1-6 NMSA 1978. Collections are first deposited into a suspense fund for the purpose of making disbursements for refunds, among other items. On the last day of each month, the balance of the suspense fund is transferred to the State general fund, less the following disbursements to the municipalities in the State. The Revenue Division remits monthly to municipalities, including the City, an amount equal to the product of the quotient of 1.225% divided by the tax rate times the net receipts (total amount paid by taxpayers less any refunds disbursed), less applicable deductions and disbursements, attributable to the gross receipts of businesses located in the municipality and other designated areas.

Remedies for Delinquent Taxes. The Revenue Division may assess State Gross Receipts Taxes to a taxpayer who has not paid the taxes due to the State. If any taxpayer to whom State Gross Receipts Taxes have been assessed or upon whom demand for payment has been made does not make payment thereof (or protest the assessment or demand for payment) within thirty (30) days after the date of assessment or demand for payment, the taxpayer becomes a delinquent taxpayer. Such taxpayer remains delinquent until payment of all the taxes due, including interest and penalties, or until security is furnished for the payment thereof. The Revenue Division may, under certain circumstances, enter into an agreement with a delinquent taxpayer to permit monthly installment payments for a period of not more than sixty (60) months. Interest is due on any delinquent taxes from the first day following the day on which it is due at a variable rate based on the applicable federal rate under the Internal Revenue Code Section 6621, as determined from time to

time, computed on a daily basis until paid, without regard to any installment agreement. However, if the State Gross Receipts Tax is paid within ten (10) days after demand is made, no interest shall be imposed for the period after the date of demand.

The Revenue Division may levy upon all property or rights to property of a delinquent taxpayer and sell the same in order to collect the delinquent tax. The amount of delinquent State Gross Receipts Taxes is also a lien in favor of the State upon all property and rights to property of the delinquent taxpayer, which lien may be foreclosed as provided by State statutes.

State Gross Receipts Tax Report. Set forth below is a 10-year history of the State-Shared Gross Receipts Tax Revenues received by the City:

<u>Fiscal Year Ended 6/30</u>	<u>State Gross Receipts Tax Rate</u>	<u>Percentage Distributed to City</u>	<u>State-Shared Gross Receipts Tax Revenues⁽¹⁾</u>	<u>Percent Increase (Decrease)</u>
2011	5.125%	1.225%	35,925,147	1.50%
2012	5.125%	1.225%	37,065,822	3.18%
2013	5.125%	1.225%	37,634,396	1.53%
2014	5.125%	1.225%	36,390,693	(3.31%)
2015	5.125%	1.225%	37,283,925	2.45%
2016	5.125%	1.225%	38,643,525	3.65%
2017	5.125%	1.225%	39,418,967	2.01%
2018	5.125%	1.225%	42,286,241	7.27%
2019	5.125%	1.225%	42,369,327	0.30%
2020	5.125%	1.225%	43,857,758	3.51%

Source: State of New Mexico Department of Finance and Administration, Local Government Division; City of Santa Fe Finance Department.

⁽¹⁾ Includes all State-Shared Gross Receipts Tax Revenues and related additional revenues received by the City.

Municipal Gross Receipts Tax

Authority for Imposition of the Municipal Gross Receipts Tax. The Municipal Local Option Gross Receipts Tax Act, Sections 7-19D-1 through 7-19D-9, NMSA 1978, authorizes municipalities to impose by ordinance an excise tax (“Municipal Gross Receipts Tax”) not to exceed 1.25% of the gross receipts of any person engaging in business in the municipality. An election of the registered electors of a municipality is not required unless the municipality chooses to submit the ordinance to its registered electors or a petition is filed requesting such an election. The ordinance imposing or amending any Municipal Gross Receipts Tax becomes effective either July 1 or January 1, whichever date occurs first after the expiration of three months from the date the ordinance is enacted or the date the results of the election are certified. No referendum election was held for the City’s Municipal Gross Receipts Taxes described below.

Pursuant to the Municipal Local Option Gross Receipts Taxes Act and the One-Half Percent Municipal Gross Receipts Tax Ordinance, the City has imposed a municipal gross receipts tax on persons engaging in business in the City in the amount of one-half of one percent (0.50%) and receives monthly One-Half Percent Municipal Gross Receipts Tax Revenues from the New Mexico Department of Taxation and Revenue equal to one-half of one percent (0.50%) of the gross receipts of persons engaging in business within the City, as determined and adjusted under the Municipal Local Option Gross Receipts Taxes Act. The One-Half Percent Municipal Gross Receipts Tax was imposed by City Ordinance No. 1981-45 (the “One-Half Percent Gross Receipts Tax Ordinance”) and is dedicated for capital improvements to City facilities and street and road construction and reconstruction as authorized by the Municipal Local Option Gross Receipts Taxes Act. Other increments of Municipal Gross Receipts Tax are imposed by the City

which are not pledged for payment of Subordinate Lien Gross Receipts Tax Obligations or Superior Lien Gross Receipts Tax Obligations.

Infrastructure Gross Receipts Tax

Authority for Imposition of the Infrastructure Gross Receipts Tax. Section 7-19D-11 NMSA 1978 authorizes municipalities to impose by ordinance an excise tax (“Infrastructure Gross Receipts Tax”) not to exceed one quarter of one percent (0.25%), in increments of one sixteenth of one percent (0.0625%), of the gross receipts of any person engaging in business in the municipality. The first one-eighth of one percent of the tax is not subject to referendum unless any portion was imposed after July 1, 1998 for economic development. Any Infrastructure Gross Receipts Tax imposed after July 1, 1998 for the purpose of certain economic development plans and projects must be submitted to a vote of the taxpayers in a referendum election. The ordinance imposing or amending the Infrastructure Gross Receipts Tax becomes effective either July 1 or January 1, whichever date occurs first after the expiration of three months from the date the ordinance is mailed or delivered to the Department.

Pursuant to Section 7-19D-11 NMSA 1978 and City Ordinance No. 1993-21, the City has imposed an Infrastructure Gross Receipts Tax on persons engaging in business in the City and receives monthly distributions of Infrastructure Gross Receipts Tax Revenues from the Department equal to one sixteenth of one percent (0.0625%) of the gross receipts of persons engaging in business within the City, as determined and adjusted under the Municipal Local Option Gross Receipts Taxes Act and the Gross Receipts and Compensating Tax Act. The Infrastructure Gross Receipts Tax is dedicated for purposes authorized by Section 7-19D-11 NMSA 1978. Other increments of Infrastructure Gross Receipts Tax are imposed by the City which are not pledged for payment of Subordinate Lien Gross Receipts Tax Obligations or Superior Lien Gross Receipts Tax Obligations.

Administration

Exemptions, Deductions and Credits. Any municipal ordinance imposing a Municipal Gross Receipts Tax or an Infrastructure Gross Receipts Tax is required to adopt by reference the same definitions and the same provisions relating to exemptions and deductions. See “State Gross Receipts Tax – Exemptions” herein. In addition, neither a Municipal Gross Receipts Tax, nor an Infrastructure Gross Receipts Tax may be imposed on the gross receipts arising from (1) the transmission of messages by wire or other means from one point within the municipality to another point outside the municipality; (2) transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or (3) a business located outside the boundaries of a municipality on land owned by that municipality for which a gross receipts tax distribution is made pursuant to the Gross Receipts and Compensating Tax Act.

Manner of Collection of Municipal Gross Receipts Taxes and Infrastructure Gross Receipts Taxes. Municipal Gross Receipts Taxes and Infrastructure Gross Receipts Taxes are collected by the Revenue Division in the same manner and at the same time that the Revenue Division collects the State Gross Receipts Tax. The Revenue Division remits to the City the revenues collected from the One-Half Percent Municipal Gross Receipts Tax, the 0.75% Municipal Gross Receipts Tax, the 0.1875% Infrastructure Gross Receipts Tax and the Pledged Infrastructure Gross Receipts Tax less any deduction for administrative cost and less any disbursements for tax credits, refunds and the payment of applicable interest. Distribution of the One-Half Percent Municipal Gross Receipts Tax Revenues and the revenues from the 0.75% Municipal Gross Receipts Tax, the 0.1875% Infrastructure Gross Receipts Tax and the Pledged Infrastructure Gross Receipts Tax is made within the month following the month in which the taxes are collected.

Remedies for Delinquent Taxes. The remedies for delinquent Municipal Gross Receipts Taxes and Infrastructure Gross Receipts Taxes are the same as those remedies described in “State Gross Receipts Tax - Remedies for Delinquent Taxes” above.

One-Half Percent Municipal Gross Receipts Tax Report. Set forth below is a ten-year history of the One-Half Percent Municipal Gross Receipts Tax Revenues received by the City:

Fiscal Year Ended June 30	One-Half Percent Municipal Gross Receipts Tax Rate	One-Half Percent Municipal Gross Receipts Tax Revenues⁽¹⁾⁽²⁾	Percent Increase (Decrease)
2011	0.50%	14,360,040	1.51%
2012	0.50%	14,814,638	3.16%
2013	0.50%	15,042,494	1.53%
2014	0.50%	15,489,596	2.97%
2015	0.50%	15,894,589	2.61%
2016	0.50%	16,496,023	3.78%
2017 ⁽³⁾	0.50%	18,222,207	10.46%
2018 ⁽³⁾⁽⁴⁾	0.50%	21,208,930 ⁽³⁾	16.39%
2019	0.50%	16,361,265 ⁽⁵⁾	(22.86%)
2020	0.50%	19,192,912	17.31%

Source: State of New Mexico Department of Finance and Administration, Local Government Division; City of Santa Fe Finance Department.

⁽¹⁾ Includes all One-Half Percent Municipal Gross Receipts Tax Revenues and related additional revenues received by the City.

⁽²⁾ Figures for Fiscal Years June 30, 2015 and June 30, 2016 represent adjustments to previously audited figures to correct errors in accrual.

⁽³⁾ The One-Half Percent Municipal Gross Receipts Tax Revenues and Infrastructure Gross Receipts Tax Revenues for fiscal years 2017 and 2018 reflect amounts reported by the New Mexico Taxation and Revenue Department (TRD) and received by the City. Upon inquiry by the City, TRD has not provided information reconciling the disparity in the growth between the One-Half Percent Municipal Gross Receipts Tax and the Infrastructure Municipal Gross Receipts Tax.

⁽⁴⁾ Unaudited.

⁽⁵⁾ [EXPLAIN DECREASE]

Pledged Infrastructure Gross Receipts Tax Report. Set forth below is a ten-year history of the Pledged Infrastructure Gross Receipts Tax Revenues received by the City:

Fiscal Year Ended June 30	Infrastructure Gross Receipts Tax Rate	Infrastructure Gross Receipts Tax Revenues⁽¹⁾⁽²⁾	Percent Increase (Decrease)
2011	0.0625%	1,773,654	1.52%
2012	0.0625%	1,829,904	3.17%
2013	0.0625%	1,858,226	1.54%
2014	0.0625%	1,913,142	2.95%
2015	0.0625%	1,963,060	2.61%
2016	0.0625%	2,037,494	3.79%
2017 ⁽³⁾	0.0625%	2,076,214	1.90%
2018 ⁽³⁾⁽⁴⁾	0.0625%	2,231,989 ⁽³⁾	7.50%
2019	0.0625%	2,231,223	(0.03%)
2020	0.0625%	2,306,713	3.38%

Source: State of New Mexico Department of Finance and Administration, Local Government Division; City of Santa Fe Finance Department.

⁽¹⁾ Includes all Infrastructure Gross Receipts Tax Revenues and related additional revenues received by the City.

⁽²⁾ Figures for Fiscal Years June 30, 2015 and June 30, 2016 represent adjustments to previously audited figures to correct errors in accrual.

⁽³⁾ The One-Half Percent Municipal Gross Receipts Tax Revenues and Infrastructure Gross Receipts Tax Revenues for fiscal years 2017 and 2018 reflect amounts reported by the New Mexico Taxation and Revenue Department (TRD) and received by the City. Upon inquiry by the City, TRD has not provided information reconciling the disparity in the growth between the One-Half Percent Municipal Gross Receipts Tax and the Infrastructure Municipal Gross Receipts Tax.

⁽⁴⁾ Unaudited.

Historical Pledged Gross Receipts Tax Revenues and Coverages

Combined Pledged Gross Receipts Tax Revenues Report. Set forth below is a ten-year history of the Pledged One-Half Percent Municipal Gross Receipts Tax Revenues, Pledged Infrastructure Gross Receipts Tax Revenues and Pledged State-Shared Gross Receipts Tax Revenues distributed to the City:

Fiscal Year	One-Half Percent Municipal Gross Receipts Tax⁽¹⁾	Infrastructure Gross Receipts Tax⁽¹⁾	State-Shared Gross Receipts Tax	Total
2011	14,360,040	1,773,654	35,925,147	52,058,841
2012	14,814,638	1,829,904	37,065,822	53,568,756
2013	15,042,494	1,858,226	37,634,396	54,535,116
2014	15,489,596	1,913,142	36,390,693	53,793,431
2015 ⁽²⁾	15,894,589	1,963,001	37,283,925	55,141,514
2016 ⁽²⁾	16,496,023	2,037,494	38,643,525	57,177,042
2017 ⁽³⁾	18,222,207	2,076,214	39,418,967	59,717,388
2018 ⁽³⁾⁽⁴⁾	21,208,930	2,231,989	42,286,241	65,727,161
2019	16,361,265	2,231,223	42,369,327	60,961,815
2020	19,192,912	2,306,713	43,857,758	65,357,382

Source: State of New Mexico Department of Finance and Administration, Local Government Division and City of Santa Fe Finance Department.

⁽¹⁾ Includes all Infrastructure Gross Receipts Tax Revenues and related additional revenues received by the City.

⁽²⁾ Figures for Fiscal Years June 30, 2015 and June 30, 2016 represent adjustments to previously audited figures to correct errors in accruals.

⁽³⁾ The One-Half Percent Municipal Gross Receipts Tax Revenues and Infrastructure Gross Receipts Tax Revenues for fiscal years 2017 and 2018 reflect amounts reported by the New Mexico Taxation and Revenue Department (TRD) and received by the City. Upon inquiry by the City, TRD has not provided information reconciling the disparity in the growth between the One-Half Percent Municipal Gross Receipts Tax and the Infrastructure Municipal Gross Receipts Tax.

⁽⁴⁾ Unaudited.

Historical Pledged Gross Receipts Tax Revenues and Coverages. Set forth in the following table is a 10-year history of the Pledged Gross Receipts Tax Revenues and the corresponding debt service coverage on all of the City's outstanding indebtedness payable from the Pledged Revenues. See "CITY OF SANTA FE DIRECT AND OVERLAPPING DEBT AS OF JUNE 30, 2017 —Summary of Indebtedness" herein.

Fiscal Year	Total Pledged Gross Receipts Tax Revenues	Combined Superior and Subordinate Lien Debt Service	Historical Coverage
2011	52,058,841	20,708,850	2.51x
2012	53,568,756	21,503,646	2.49x
2013	54,535,116	20,435,447	2.66x
2014	53,793,431	20,641,857	2.60x
2015	55,141,514	21,645,089	2.54x
2016	57,177,042	21,995,025	2.59x
2017	59,717,388	21,066,325	2.77x
2018 ⁽¹⁾	65,727,161 ⁽¹⁾	21,121,610	3.11x
2019	60,961,815	21,830,852	2.79x
2020	65,357,382	22,089,191	2.96x

⁽¹⁾ Unaudited.

Source: State of New Mexico Taxation and Revenue Department; City of Santa Fe Finance Director and Treasurer.

City Imposed Gross Receipts Tax Rates

Municipal Gross Receipts Tax Rates. As of July 1, 2018, the total municipal gross receipts taxes in effect in the City are as follows:

Type of Municipal Gross Receipts Tax	Amount	Effective Date	
Municipal Gross Receipts Tax	0.50%	1/82	Pledged Revenues
	0.25%	7/83	Not Pledged Revenues
	0.25%	1/88	Not Pledged Revenues
	0.25%	1/92	Not Pledged Revenues
	0.25%	1/17	Not Pledged Revenues
Municipal Infrastructure Gross Receipts Tax	0.0625%	1/94	Pledged Revenues
	0.0625%	1/99	Not Pledged Revenues
	0.0625%	1/00	Not Pledged Revenues
Environmental Gross Receipts Tax	0.0625%	1/94	Not Pledged Revenues
Total Municipal Gross Receipts Tax	1.8125%		

Source: New Mexico Department of Finance and Administration

The County presently imposes a gross receipts tax in the amount of 1.500%. Consequently, the combined State (5.125%), County (1.500%) and City (1.8125%) gross receipts tax rate within the City is currently 8.4375%. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Pledged Gross Receipts Tax Revenues” herein. Pledged Gross Receipts Tax Revenues consist of the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues, and the Pledged Infrastructure Gross Receipts Tax Revenues.

City of Santa Fe, New Mexico
Total Gross Receipts by Category
(fiscal year)

	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020*</u>
Agriculture, Forestry, Hunting	\$ 5,626,747	\$ 6,907,668	\$ 9,790,323	\$ 7,937,841	8,747,711
Mining	1,919,684	548,535	1,324,111	2,310,451	739,926
Utilities	118,735,695	107,951,392	104,119,177	108,956,927	113,699,891
Construction	425,686,284	465,817,799	656,861,335	671,512,887	819,133,560
Manufacturing	164,219,597	161,028,974	164,150,744	170,049,928	195,009,406
Wholesale	208,159,017	232,774,609	292,264,597	322,578,724	359,531,876
Retail	1,907,643,290	1,876,304,238	1,907,706,423	2,034,874,658	2,073,407,651
Transportation and Warehousing	21,225,195	33,175,637	31,512,205	26,190,372	22,640,047
Information	135,184,134	**	**	170,869,570	151,699,446
Finance and Insurance	60,924,330	71,944,362	98,124,023	70,191,010	88,475,752
Real Estate, Rental & Leasing	146,811,485	148,881,021	163,908,734	172,954,083	197,093,416
Prof, Scientific, Technical	415,032,291	587,563,307	589,722,111	575,338,368	792,575,719
Management of Companies	21,232,543	15,069,124	8,559,102	9,806,408	4,555,442
Admin & Support, Waste Mgt.	38,675,527	50,033,467	61,427,383	69,121,656	93,858,517
Educational Services	31,063,849	34,419,082	20,663,708	30,448,355	17,171,513
Health Care & Social Assist.	282,465,032	283,881,331	282,204,062	305,304,451	658,386,191
Arts, Entertainment & Recreation	46,582,022	56,324,501	62,223,886	80,291,174	86,225,297
Accommodation and Food	475,899,496	510,656,548	517,490,198	564,534,175	372,239,811
Other Services	535,197,480	542,392,056	448,749,551	464,765,455	540,709,243
Public Administration	1,151,512	1,502,679	1,784,756	1,802,013	2,693,220
Unclassified	57,088,554	22,260,310	16,253,208	29,906,442	26,244,886

Source: New Mexico Department of Taxation and Revenue Report No. 80 ("RP-80").

* Fiscal year 2020 data based on quarterly RP-80; prior years based on fiscal year RP-80s.

** Reliable data for this time period is not currently available.

PRO FORMA ANNUAL DEBT SERVICE SUMMARY

The following table sets forth for each fiscal year from 2022 through 2041 the amounts required in each such fiscal year to pay scheduled annual debt service on the Superior Lien Gross Receipts Tax obligations, the Subordinate Tax Obligations and the Bonds, as well as the debt service coverage ratio based on fiscal year 2021 Pledged Gross Receipts Tax Revenues (unaudited).

Fiscal Year Ending June 30	Debt Service on Outstanding Superior Lien Gross Receipts Tax Obligations ⁽¹⁾	Debt Service on Subordinate Lien Gross Receipts Tax Obligations ⁽²⁾⁽³⁾	Series 2021 Bonds Debt Service ⁽⁴⁾	Net Total Outstanding Debt Service ⁽⁴⁾⁽⁵⁾	Debt Service Coverage ⁽⁶⁾
2022	9,405,313				
2023	5,315,050				
2024	4,411,550				
2025	4,361,550				
2026	4,375,700				
2027	5,107,500				
2028	5,105,700				
2029	5,107,500				
2030	2,227,150				
2031	2,225,700				
2032	2,230,900				
2033	2,222,300				
2034	2,230,300				
2035	2,229,050				
2036	1,718,750				
2037	1,714,500				
2038	1,716,750				
2039					
2040					
2041					
Totals	\$	\$	\$	\$	

Source: Hilltop Securities Inc.

⁽¹⁾ Superior Lien Gross Receipts Tax Obligations in this table consist of the 2013A Bonds, the 2014 Bonds, the 2016A Bonds, the 2016B Bonds and the 2018A Bonds.

⁽²⁾ Subordinate Tax Obligations consist of the 2012B Bonds, the 2013B Bonds, the 2016C Bonds, the 2016D Bonds, the 2017 Taxable Bonds, the 2018 Gas Tax/Sub. Lien GRT Bonds, the 2019 Finance Authority Refunding Loan, and the 2019 Finance Authority Parking Improvements Loan.

⁽³⁾ The 2012B Bonds are also secured by the Pledged Wastewater Revenues and Environmental Services Gross Receipts Tax Revenues, which are not included in the Pledged Revenues securing the Bonds.

⁽⁴⁾ Preliminary, subject to change.

⁽⁵⁾ Sum of Debt Service on Superior Lien Gross Receipts Tax Obligations, Debt Service on Subordinate Tax Obligations and Debt Service on the Bonds.

⁽⁶⁾ Based on total Pledged Gross Receipts Tax Revenues of \$ _____ received in the fiscal year ended June 30, 2020, and assuming no increase over 2020 receipts. There is no assurance that Pledged Gross Receipts Tax Revenues received in the future will equal the Pledged Gross Receipts Tax Revenues used in the coverage computation. Pledged Gross Receipts Tax Revenues do not reflect the future annual phase-out of the hold harmless distributions that will occur through 2030.

SUMMARY OF CERTAIN PROVISIONS OF THE BOND ORDINANCE

Certain provisions of the Bond Ordinance are summarized below. Reference is made to the Bond Ordinance for a full and complete statement of its provisions. Capitalized terms have the definitions set forth in the Bond Ordinance, and are excerpted in Appendix C to this Official Statement.

Special Limited Obligations

The Bonds and all payments of principal, premium, if any, and interest thereon (whether at maturity or on a redemption date), and the obligations of the City for all other payments, fees, costs, interest and expenses of the City under the Bond Ordinance and under the Related Documents (as defined therein, the the Bond Purchase Agreement, the Pricing Certificate, the Continuing Disclosure Undertaking, the Preliminary Official Statement, the Official Statement, and any other document or agreement containing an obligation of the City as may be required in connection with the issuance of the Bonds), will be special limited obligations of the City. The principal of, premium, if any, and interest on the Bonds and all obligations under the Related Documents will be payable solely from the Pledged Revenues, on parity with the lien thereon of outstanding Parity Subordinate Lien Gross Receipts Tax Obligations, and subordinate to the lien thereon of outstanding Superior Lien Gross Receipts Tax Obligations.

Owners of the Bonds and the parties under the Related Documents may not look to any general or other fund of the City for the payment of the principal of or interest on, or the fees, costs and expenses relating to, such obligations, except the designated special funds pledged therefor. Neither the Bonds nor the obligations of the City under the Related Documents will constitute an indebtedness of the City within the meaning of any constitutional, charter or statutory prohibition or limitation, nor will they be considered or held to be general obligations of the City, and the Bonds will recite that they are payable and collectable solely out of the Pledged Revenues, on parity with the lien thereon of outstanding Parity Subordinate Lien Gross Receipts Tax Obligations and subordinate to the lien thereon of outstanding Superior Lien Gross Receipts Tax Obligations, and that the owners of the Bonds and the parties under the Related Documents may not look to any general or other municipal fund for the payment of the principal or interest, as applicable, on the Bonds or for the payment of any amounts owed under the Related Documents.

Nothing in the Bond Ordinance prevents or prohibits the City from applying other funds of the City legally available therefor to the payment or redemption of the Bonds, in its sole discretion.

Establishment and Continuance of Funds and Accounts

In the Bond Ordinance, the City creates, or continues, as applicable, the following special and separate trust funds:

A. *Refunding Account.* The “City of Santa Fe, New Mexico Senior Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021, Refunding Project Account” is established and will be maintained by the City.

B. *State-Shared Gross Receipts Tax Revenue Fund.* The “City of Santa Fe, New Mexico State-Shared Gross Receipts Tax Revenue Account of the General Fund of the City,” is continued to be maintained by the City and deposited in an Insured Bank, into which the City shall deposit the State-Shared Gross Receipts Tax Revenues.

C. *One-Half Percent Municipal Gross Receipts Tax Revenue Fund.* The “City of Santa Fe, New Mexico One-Half Percent Municipal Gross Receipts Tax Revenue Fund,” is continued to be maintained by the City and deposited in an Insured Bank, into which the City shall deposit the One-Half Percent Municipal Gross Receipts Tax Revenues.

D. *Infrastructure Gross Receipts Tax Revenue Fund.* The “City of Santa Fe, New Mexico Infrastructure Gross Receipts Tax Revenue Fund,” is continued to be maintained by the City and deposited in an Insured Bank, into which the City shall deposit the Infrastructure Gross Receipts Tax Revenues.

E. *Environmental Services Gross Receipts Tax Revenue Fund.* The “City of Santa Fe, New Mexico Environmental Services Gross Receipts Tax Revenue Fund,” is continued to be maintained by the

City and deposited in an Insured Bank, into which the City shall deposit the Environmental Services Gross Receipts Tax Revenues.

F. *Bond Fund.* The “City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021, Bond Fund” (hereinafter the “Bond Fund”) is created to be maintained by the City and deposited in an Insured Bank.

Administration of Pledged Revenue Funds

So long as any Bonds are outstanding, the Pledged Gross Receipts Tax Revenues shall, immediately upon receipt thereof by the City, be set aside and deposited into the proper funds for each component of the Pledged Gross Receipts Tax Revenues. All money deposited into such funds shall be held separate and apart from the City's general fund and applied only in accordance with the provisions of the Bond Ordinance and any other City ordinance authorizing the issuance of outstanding Obligations payable from the Pledged Gross Receipts Tax Revenues.

So long as any of the Bonds shall be outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues:

A. *Bond Fund Payments.*

(1) First, as a first charge on the Pledged Revenues, the amounts necessary to pay the Debt Service Requirements on Superior Tax Obligations now outstanding or hereafter issued, or to fund any reserve account as required by the terms of any ordinance authorizing the issuance of Superior Tax Obligations, shall be withdrawn first from the One-Half Percent Municipal Gross Receipts Tax Revenue Fund, and if funds therein are insufficient, then if pledged for such Superior Tax Obligations, from the Infrastructure Gross Receipts Tax Revenue Fund, and, if pledged for such Superior Tax Obligations, from the Environmental Services Gross Receipts Tax Revenue Fund, if funds therein are still insufficient, then from the State-Shared Gross Receipts Tax Revenue Fund in that order or in such other order as permitted or required by the authorizing ordinances, at the time prescribed in such authorizing ordinances.

(2) Second, but subject to and after the withdrawals authorized by the preceding paragraph A(1), so long as any of the Bonds shall be outstanding, the following amounts shall be withdrawn from the One-Half Percent Municipal Gross Receipts Tax Revenue Fund, then from the Infrastructure Gross Receipts Tax Revenue Fund if the moneys in the One-Half Percent Municipal Gross Receipts Tax Revenue Fund are not sufficient, and, if such moneys are still insufficient, then from the State-Shared Gross Receipts Tax Revenue Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order), and credited to the Bond Fund:

(a) *Interest Payments.* Monthly, commencing on the first day of the first month following the delivery of the Bonds, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of interest on the Bonds then outstanding and monthly thereafter commencing on each interest payment date, one-sixth (1/6th) of the amount necessary to pay the next maturing installment of interest on the outstanding Bonds, and

(b) *Principal Payments.* Monthly, commencing on the first day of the first month following delivery of the Bonds, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of principal on the Bonds then outstanding and monthly thereafter commencing on the first day of the twelfth month preceding each principal payment date, one-twelfth (1/12th) of the amount necessary to pay the next maturing installment of principal on the Bonds.

(3) Third, but concurrently with the payments required by paragraph A(2) of this section, funds remaining in the One-Half Percent Municipal Gross Receipts Tax Revenue Fund, and if the funds therein are insufficient, then funds remaining in the Infrastructure Gross Receipts Tax Revenue Fund, and if the funds therein are insufficient, then funds remaining in the State-Shared Gross Receipts Tax Revenue Fund and, if pledged therefor, funds remaining in the Environmental Services Gross Receipts Tax Revenue Fund, shall be used by the City to pay the Debt Service Requirements of such additional Parity Subordinate Obligations, if any, hereafter authorized to be issued and payable from Pledged Revenues.

If, prior to any interest payment date or principal payment date, there has been accumulated in the Bond Fund the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in subparagraphs 2(a) and 2(b) (whichever is applicable) of this paragraph, may be appropriately reduced and the required monthly amounts again shall be so credited to such account commencing on such interest payment date or principal payment date (whichever is applicable).

B. *Debt Service Reserve Fund.* No debt service reserve fund will be created or required for the Bonds.

C. *Termination Upon Deposits to Maturity.* No payment need be made into the Series 2021 Bond Fund if the amount in such fund totals a sum at least equal to the entire amount of the Bonds then outstanding, both as to principal and interest to their respective maturities, and both accrued and not accrued, in which case, moneys in the Series 2021 Bond Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such as the same accrue and any moneys in excess thereof in the Series 2021 Bond Fund and any other moneys derived from the Pledged Revenues may be used in any lawful manner determined by the City.

D. *Defraying Delinquencies in the Series 2021 Bond Fund; Use of Moneys in the Series 2021 Bond Fund.* If, in any month, amounts in the One-Half Percent Municipal Gross Receipts Tax Revenue Fund are insufficient to make the payments into the Series 2021 Bond Fund required by Paragraph A(2) of above, there shall be withdrawn first from the Infrastructure Gross Receipts Tax Revenue Fund and then from the State-Shared Gross Receipts Tax Revenue Fund, and deposited in the Series 2021 Bond Fund the additional amounts necessary to make the payments into the Series 2021 Bond Fund required by Paragraph A above. The moneys in the Series 2021 Bond Fund shall be used solely and only for the purpose of paying the principal of and the interest on the Bonds issued under this Ordinance; provided, however, that any moneys in the Series 2021 Bond Fund in excess of accrued and unaccrued principal and interest requirements to the respective maturities of the outstanding Bonds may be used in any lawful manner.

E. *Payment of Additional Obligations and Qualified Exchange Agreements.* Either prior to, concurrently with or subsequent to the payments required by Paragraph A above, depending upon whether the additional Obligations are Superior Obligations or Parity Subordinate Obligations or Super Subordinate Obligations (as defined in Section 21 hereof) as provided in this Ordinance, the Pledged Gross Receipts Tax Revenues shall be used by the City for the payment of Debt Service Requirements on additional Obligations, if any, hereafter authorized to be issued and payable from the Pledged Revenues as the same accrue. In the event that such obligations are Parity Subordinate Obligations, the payments of Debt Service Requirements on such additional Obligations shall be made concurrently with the payments required by Paragraphs A(2), A(3) and D of this Section 18 (provided that such payments may be made at any intervals as may be provided in the ordinance or resolution authorizing such additional Obligations). The following amounts required to be paid by the City shall be paid from Pledged Gross Receipts Tax Revenues with the same priority as other payments of Debt Service Requirements on Parity Subordinate Obligations:

(1) Any amount to reimburse or pay a bond insurer or reserve account insurer or guarantor, or to make payments or reimbursements pursuant to another Credit Facility, for payments of Debt Service Requirements made on Parity Subordinate Obligations; and amounts payable to a Qualified

Counterparty under a Qualified Exchange Agreement, excluding Exchange Termination Payments, if such payments are designated in a City ordinance relating to that Qualified Exchange Agreement as having a lien on Pledged Revenues on parity with the lien thereon of Parity Subordinate Obligations;

(2) Reimbursement of any reserve fund Credit Facility obtained for any issue of Parity Subordinate Obligations; and

(3) Cash deposits to any required reserve fund established with respect to any issue of Parity Subordinate Obligations.

Each payment of Debt Service Requirements on Parity Subordinate Obligations shall be transferred to the Paying Agent for payment of Parity Subordinate Obligations, or directly to a Qualified Counterparty, bond insurer, reserve account insurer or guarantor or other provider of a Credit Facility entitled to receive payments on Parity Subordinate Obligations, on or before the due date of such payment.

F. *Payment of Expenses and Certain Obligations which are not Parity Subordinate Obligations.* After and subject to the payments required, and provisions contained in, any of the preceding paragraphs under the heading “Administration of Pledged Revenue Funds”, any remaining Pledged Gross Receipts Tax Revenues shall be used, to the extent necessary, for payment of: (i) any other amounts, expenses, fees and interest owed by the City relating to the issuance, delivery, servicing, payment, redemption and refunding of Parity Subordinate Obligations and (ii) other Obligations relating to Parity Subordinate Obligations owed by the City pursuant to the Related Documents, any Qualified Exchange Agreement (excluding Exchange Termination Payments), bond insurance policy, reserve fund insurance policy or similar documents which are not payable pursuant to any other prior paragraph of this Section.

G RESERVED.

H. *Use of Surplus Revenues.* After making the payments required to be made by Paragraphs A through F above, the remaining Pledged Gross Receipts Tax Revenues, if any, may be applied to any other lawful purposes. The One-Half Percent Municipal Gross Receipts Tax Revenues received by the City pursuant to the One-Half Percent Municipal Gross Receipts Tax Ordinance shall be used only for the purposes authorized by that ordinance. The Infrastructure Gross Receipts Tax Revenues received by the City pursuant to the Infrastructure Gross Receipts Tax Ordinance shall be used only for the purposes authorized by that ordinance. The Environmental Services Gross Receipts Tax Revenues received by the City pursuant to the Environmental Services Gross Receipts Tax Ordinance shall be used only for the purposes authorized in that ordinance.

I. *Variable Interest Rate.* In making the computations required by this Section, interest on Obligations which bear a Variable Interest Rate shall be computed: (i) at the actual Variable Interest Rate or Variable Exchange Rate for the computation period, if such rate can be computed exactly, or (ii) if the Variable Interest Rate or Variable Exchange Rate cannot be computed exactly, at the actual rate for the immediately preceding computation period.

General Administration of Funds

The funds and accounts designated in the Bond Ordinance will be administered as follows:

A. *Investment of Money.* Any moneys in any fund designated in the Bond Ordinance may be invested in any Permitted Investments. The obligations so purchased as an investment of moneys in a fund shall be deemed at all times to be part of the fund, and the interest accruing thereon and any profit realized therefrom shall be credited to the fund, and any loss resulting from each investment shall be charged to the fund. The City Finance Director shall present for redemption or sale on the prevailing market any

obligations so purchased as an investment of moneys in the fund whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

B. *Deposits of Funds.* Except for direct investments in Permitted Investments allowed by Paragraph A of this Section, the moneys and investments comprising each of the funds and accounts hereinabove designated in the Bond Ordinance shall be maintained and kept separate from all other funds and accounts in an Insured Bank or Insured Banks. The amounts prescribed shall be paid to the appropriate funds as specified in the Bond Ordinance. Each payment shall be made into the proper bank account and credited to the proper fund not later than the last day designated; provided that when the designated date is a Sunday or a legal holiday, then such payment shall be made on the next preceding secular day. Nothing in the Bond Ordinance shall prevent the establishment of one such bank account or more (or consolidation with any existing bank account), for all of the funds and accounts in the Bond Ordinance.

Additional Superior Obligations and Parity Subordinate Obligations.

A. *Limitations Upon Issuance of Additional Superior Obligations.* No provision of the Bond Ordinance shall be construed in such a manner as to prevent the issuance by the City of additional Obligations payable from Pledged Revenues and constituting a lien upon such revenues prior and superior to the lien of the Bonds on Pledged Revenues. Before any additional Superior Obligations are issued or Obligations refunding outstanding Superior Obligations, the conditions set forth in the ordinances authorizing the issuance of Superior Obligations or refunding Superior Obligations, as applicable, must be satisfied.

Before any additional Parity Subordinate Obligations are actually issued (excluding refunding bonds the proceeds of which are used to refund Superior Obligations as provided in Section 22, but including Parity Subordinate Obligations which are refunding bonds which refund subordinate obligations), the following conditions shall be met:

- (i) The Parity Subordinate Obligations must be Obligations; and
- (ii) The City shall then be current in all of the deposits required to be made with respect to the Parity Subordinate Obligations (including, if applicable, any obligation to fund any reserve account required by the terms of any ordinance authorizing the issuance of any such Obligations); and
- (iii) (a) No additional Parity Subordinate Obligations shall be issued unless the Pledged Gross Receipts Tax Revenues for the Historic Test Period shall have been sufficient to pay an amount representing two hundred percent (200%) of the combined maximum annual Debt Service Requirements coming due in any subsequent Fiscal Year on the then outstanding Superior Obligations, outstanding Parity Subordinate Obligations and the Parity Subordinate Obligations proposed to be issued (excluding the accumulation of any reserves therefor); and
- (b) In making the computations required by this subparagraph (iii) other gross receipts tax revenues, including without limitation, the Environmental Services Gross Receipts Tax Revenues, received by the City, whether from distribution by the State or pursuant to gross receipts taxes imposed by the City (other than State-Shared Gross Receipts Tax Revenues) pledged to the Superior Obligations, Parity Subordinate Obligations and the Parity Subordinate Obligations proposed to be issued, may be included only to the extent such gross receipts tax revenues are pledged to a particular series of such outstanding Obligations or proposed Parity Subordinate Obligations and only to the extent of the maximum annual Debt Service Requirements on such outstanding Obligations or proposed Parity Subordinate Obligations.

B. *Super Subordinate Obligations Permitted; Certain Obligations Prohibited.* No provision of this Ordinance shall be construed in such a manner as to prevent the issuance by the City of additional

Obligations payable from the Pledged Revenues with a lien on Pledged Revenues subordinate and junior to the lien of the Bonds thereon, nor to prevent the issuance of Obligations refunding all or part of the Bonds as permitted by the Bond Ordinance.

C. *Variable Interest Rate.* In making the computations required by the provisions of the Bond Ordinance described under the heading “Additional Superior Obligations and Parity Subordinate Obligations” above and the heading “Refunding Bonds” below, Obligations which bear a Variable Interest Rate shall be deemed to bear interest at the maximum rate permitted for those Obligations.

D. *Certificate of City Finance Director.* A written certificate or opinion of the City Finance Director that the Pledged Revenues for the applicable Historic Test Period are sufficient to pay the amounts required as described in the preceding paragraphs shall be required in making a determination that the requirements set forth in this Section have been satisfied and shall be conclusively presumed to be accurate in determining that such requirements have been satisfied.

E. *Bond Anticipation Notes.* Whenever the City shall have authorized the issuance of Superior Obligations or Parity Subordinate Obligations under the Act and the City shall, at the time, be permitted by the laws of the State to issue notes representing loans in anticipation of the sale of such Superior Obligations or Parity Subordinate Obligations ("Bond Anticipation Notes"), the City may by resolution or ordinance authorize the issuance of Bond Anticipation Notes in anticipation of the sale of such Superior Obligations or Parity Subordinate Obligations, provided, however, that before any Bond Anticipation Notes are actually issued, the conditions of paragraph A above shall be met. Bond Anticipation Notes shall not be issued in an amount exceeding the principal amount of the Superior Obligations or Parity Subordinate Obligations in anticipation of the sale of which such notes are proposed to be issued.

For the purposes of determining compliance with this Section, as of the date of issuance of any Bond Anticipation Notes, the aggregate principal amount of all outstanding Bond Anticipation Notes (including such proposed Bond Anticipation Notes) shall never exceed the principal amount of a hypothetical issue of Superior Obligations or Parity Subordinate Obligations which could be issued hereunder having an assumed final maturity of twenty (20) years, bearing an assumed rate of interest equal to the highest rate then borne by any Bond Anticipation Note then outstanding (or, if none, the interest rate borne by the proposed Bond Anticipation Notes to be issued) and having debt service due in each Fiscal Year in approximately equal amounts.

F. *Put Obligations.* In making the computations required by the provisions of the Bond Ordinance described under the heading “Additional Superior Obligations and Parity Subordinate Obligations” above and the heading “Refunding Bonds” below, the principal amount of any Put Obligations to be outstanding in the Fiscal Year when the combined maximum annual Debt Service Requirements come due shall be excluded from the maximum annual Debt Service Requirements only if the Credit Facility providing liquidity or standby purchase support for Put Obligations is rated, on the date the computations are made, “A” or better by Fitch or S&P (if such rating agencies are then rating the Bonds). If there is no Credit Facility for the Put Obligations or the rating requirement for the Credit Facility set forth in the preceding sentence is not satisfied, the principal amount of the Put Obligations to be outstanding in the Fiscal Year when combined maximum annual Debt Service Requirements come due shall be considered in computing maximum annual Debt Service Requirements.

Refunding Bonds

The provisions described under the heading entitled “—Additional Superior Obligations and Parity Subordinate Obligations” are subject to the following exceptions:

A. *Privilege of Issuing Refunding Obligations.* If at any time after the Bonds, or any part thereof, shall have been issued and remain outstanding, the City shall find it desirable to refund any outstanding Parity Subordinate Obligations or other outstanding obligations payable from the Pledged Revenues, such bonds or other obligations, or any part thereof, may be refunded (but only with the consent of the registered owner or owners thereof, unless the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the City's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed (except as provided in Paragraph A under the heading "Additional Superior Obligations and Parity Subordinate Obligations" above, and in Paragraphs B and C under the heading "Refunding Bonds").

B. *Limitations Upon Issuance of Refunding Obligations.* No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on parity with the Bonds herein authorized, unless:

(1) The lien on the Pledged Revenues of the outstanding obligations so refunded is on parity with the lien thereon of the Bonds herein authorized; or

(2) The refunding bonds or other refunding obligations are issued in compliance with the requirements of the Bond Ordinance described in Paragraph A under the heading "Additional Superior Obligations and Parity Subordinate Obligations" above.

C. *Refunding Part of an Issue.* The refunding bonds or other obligations so issued shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same issue which is not refunded, if any there be; and the registered owner or owners of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the registered owner or owners of the bonds or other obligations of the same issue refunded thereby.

D. *Limitations Upon Issuance of any Refunding Obligations.* Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the City may by ordinance provide, subject to the inclusion of any such rights and privileges designated in Paragraph C immediately above, but without any impairment of any contractual obligations imposed upon the City by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including but not necessarily limited to the issue herein authorized). If only a part of the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues are refunded, then such obligations may not be refunded without the consent of the registered owner or owners of the unrefunded portion of such obligations, unless:

(1) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest requirements evidenced by such refunding obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations, or

(2) The refunding bonds or other refunding obligations are issued in compliance with the requirements of the Bond Ordinance described in Paragraph A under the heading "Additional Superior Obligations and Parity Subordinate Obligations" above, or **(3)** The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

E. *Cross-over Refunding Bonds.* If the refunding bonds to be issued are Cross-over Refunding Bonds, the ordinance providing for the issuance thereof shall provide (1) that until the date on which the principal portion of the related Parity Subordinate Obligations being refunded is to be paid or redeemed from the proceeds of such Cross-over Refunding Bonds, the Cross-over Refunding Bonds shall not be Parity Subordinate Obligations and shall be payable solely from the escrow provided for in the related ordinance, and (2) a certificate of an Independent Accountant shall be prepared to demonstrate the sufficiency of the moneys and investments in the escrow to pay the principal of and interest on the Cross-over Refunding Bonds until the date on which the principal portion of the related Parity Subordinate Obligations being refunded is to be paid or redeemed and to pay or redeem the related Parity Subordinate Obligations being refunded.

Equality of Bonds

The Bonds authorized to be issued by the Bond Ordinance and from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance, it being the intention of the City that there shall be no priority among the Bonds regardless of the fact that they may be actually issued and delivered at different times.

Protective Covenants

Payment of Bonds Authorized by the Bond Ordinance. The City will promptly pay the principal of and the interest on every Bond at the place, on the dates and in the manner specified in the Bond Ordinance and in the Bonds according to the true intent and meaning thereof. Such principal and interest are payable solely from the Pledged Revenues. Nothing in the Bonds, any Qualified Exchange Agreement or the Bond Ordinance will be construed as obligating the City to pay principal, premium, if any, or interest on any of the Bonds from, and the holders of the Bonds and any Qualified Counterparty may not look to, any general or other fund of the City, except those specifically set forth in the Bond Ordinance.

Records. So long as any of the Bonds remain outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

Audits. Within 270 days following the close of each Fiscal Year, the City will cause an audit of the books and accounts to be made by an Independent Accountant, showing the revenues and expenditures of the Pledged Revenues. The City agrees to furnish forthwith a copy of each such audits and reports to the Underwriters upon request. Any registered owner of a Bond shall have the right to discuss, with the Independent Accountant or person making the audit, the report and the contents thereof and to ask for such additional information as he may reasonably require.

Extending Interest Payments. To prevent any accumulation of claims for interest after maturity, the City will not directly or indirectly extend or assent to the extension of the time for the payment of any claim for interest on the Bonds and it will not directly or indirectly be a party to or approve any arrangement for any such extension or for the purpose of keeping alive any of such interest.

Performing Duties. The City will faithfully and punctually perform all duties with respect to the Project and the Bonds required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the City including but not limited to the proper segregation of the Pledged Revenues and their application of the respective funds.

City's Existence. The City will maintain its corporate identity and existence as long as the Bonds remain outstanding unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without affecting to any substantial degree the privileges and rights of any registered Owner of any Bonds.

Tax Compliance. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended, including applicable regulations, rulings and judicial decisions (the “Tax Code”), or (ii) be treated other than as bonds to which Section 103(a) of the Tax Code applies, and (b) the interest thereon will not be treated as a preference item under Section 57 of the Tax Code. The City further covenants (a) that it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, (b) that it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) that it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purposes of the borrowings, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments, yield reduction payments or payments of alternative amounts in lieu of rebate to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Tax Code.

Other Liens. Other than the outstanding Superior Lien Gross Receipts Tax Obligations, the outstanding Parity Subordinate Lien Gross Receipts Tax Obligations and the Bonds as recited in the Bond Ordinance, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues. The Bond Ordinance does not prohibit the issuance of additional Superior Lien Gross Receipts Tax Obligations with a lien on the Pledged Revenues superior to the lien thereon of the Bonds, nor the issuance of Parity Subordinate Lien Gross Receipts Tax Obligations with a lien on the Pledged Revenues on parity with the lien thereon of the Bonds.

Duty with Respect to Pledged Revenues. If the statutes or any ordinance which materially affects the Pledged Revenues, or any part of the ordinances, will ever be held to be invalid or unenforceable, the City will immediately take any legally permissible action necessary to produce sufficient Pledged Revenues to comply with the contracted obligations of the Bond Ordinance.

Impairment of Contract. The City agrees that any law or ordinance or resolution of the City in any manner affecting the Pledged Revenues or the Bonds, or otherwise appertaining thereto, will not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Bonds outstanding, unless such Bonds have been discharged in full or provision has been fully made therefor, or unless the consent of the required percentage of the registered owners of the then Outstanding Bonds is obtained as described under the caption “—Amendment” below.

Notice of Qualified Exchange Agreements to Rating Agencies. The City shall not enter into a Qualified Exchange Agreement which is a Subordinate Lien Gross Receipts Tax Obligation or with respect to any Subordinate Lien Gross Receipts Tax Obligations without first providing notice of such Qualified Exchange Agreement to Fitch and S&P and without first receiving written confirmation from Fitch and S&P that entering into such Qualified Exchange Agreement, in and of itself, would not result in a reduction of the ratings then assigned to the Bonds by Fitch and S&P.

Limitation on Superior Lien Gross Receipts Tax Obligations or Parity Subordinate Lien Gross Receipts Tax Obligations with Variable Interest Rates. The City shall not issue Superior Lien Gross Receipts Tax Obligations or Parity Subordinate Lien Gross Receipts Tax Obligations with a Variable Interest Rate which, at the time of issuance, are assigned a lower rating than the rating then assigned to the Bonds by Fitch or S&P, unless the written consent of such rating agency to a lower rating is obtained prior to issuance of such Superior Lien Gross Receipts Tax Obligations or Subordinate Lien Gross Receipts Tax Obligations.

Defeasance

When all principal and interest in connection with the Bonds have been duly paid, the pledge and lien and all obligations under the Bond Ordinance will thereby be discharged and the Bonds will no longer be deemed to be Outstanding within the meaning of the Bond Ordinance. There will be deemed to be such due payment as to any Bond when the Governing Body has placed in escrow and in trust with a commercial bank or trust company located within or without the State and exercising trust powers, an amount sufficient (including the known minimum yield from Federal Securities in which such amount may be initially invested) to meet all requirements of principal and interest as the same become due to its maturity or designated redemption date as of which the City will have exercised or obligated itself to exercise its option to call the Bond. The Federal Securities will become due prior to the respective times on which the proceeds are needed in accordance with a schedule established and agreed upon between the Council and such bank at the time of the creation of the escrow or the Federal Securities will be subject to redemption at the option of the holders thereof to assure such availability as so needed to meet such schedule. Federal Securities within the meaning of the Bond Ordinance will include only direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America and which are not callable prior to maturity by the issuer of such obligations.

Events of Default

Each of the following events is declared in the Bond Ordinance to be an “event of default”:

(a) *Nonpayment of Principal.* If payment of the principal of any of the Bonds is not made when the same become due and payable at maturity;

(b) *Nonpayment of Interest.* If payment of any installment of interest is not made when the same becomes due and payable;

(c) *Incapable to Perform.* If the City for any reason is rendered incapable of fulfilling its obligations (but not including any obligation of the City under any Qualified Exchange Agreement) under the Bond Ordinance;

(d) *Default of Any Provision.* If the City defaults in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in the Bond Ordinance on its part to be performed (other than defaults described in clause (a), (b) or (c) above), and if such default continues for 30 days after written notice specifying such default and requiring the same to be remedied has been given to the City by the registered owners of 25% in principal amount of the Bonds then outstanding; or

(e) *Bankruptcy or Insolvency of the City.* (i) The City (A) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the City or of all or a substantial part of its property; (B) commences a voluntary case under the Federal Bankruptcy Code; or (C) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency or reorganization; or (ii) a proceeding or case is commenced, without application or consent of the City, in any court of competent jurisdiction, seeking (A) liquidation, reorganization, dissolution, winding-up or adjustment of debts of the City; (B) appointment of a trustee, receiver, custodian, liquidator or the like of the City or of all or a substantial part of its assets; or (C) similar relief in respect of the City under any law relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts.

Remedies of Defaults

Upon the happening and continuance of any of the events of default described above under the caption entitled “—Events of Default,” then and in every case the registered owner or owners of not less than 25% in principal amount of the Bonds then outstanding, including but not limited to a trustee or trustees

therefor, may proceed against the City, the Council and its agents, officers and employees to protect and enforce the rights of any registered owner of the Bonds under the Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for specific performance of any covenant or agreement contained in the Bond Ordinance or an award or execution of any power granted in the Bond Ordinance for the enforcement of any power, legal or equitable remedy as such registered owner or owners may deem most effectual to protect and enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of any registered owner, or to require the Council to act as if it were the trustee of an expressed trust, or any combination of such remedies. All such proceedings at law or in equity will be instituted, had and maintained for the equal benefit of all registered owners of the Bonds then outstanding. The failure of any such registered owner so to proceed will not relieve the City or any of its officers, agents or employees of any liability for failure to perform any duty. Each right or privilege of any such registered owner (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any registered owner will not be deemed a waiver of any other right or privilege thereof.

Duties Upon Default

Upon the happening of any of the events of default as described above, the City, in addition, will do and perform all proper acts on behalf of and for the registered owners of the Bonds to protect and preserve the security created for the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived from the Pledged Revenues, so long as any of the Bonds authorized in the Bond Ordinance, either as to principal or interest, are outstanding and unpaid, will be paid into the proper fund and used for the purposes therein provided. In the event the City fails or refuses to proceed as described in the Bond Ordinance, the registered owner or registered owners of not less than 25% in principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the registered owners as hereinabove provided.

Enforcement

Any registered owner of any one or more of the Bonds may, either by law or in equity, by suit, action, mandamus or other appropriate proceedings in any court of competent jurisdiction enforce the payment of principal of or interest due in connection with any Bond on or after the date on which such payment is due, and may by suit, action, mandamus or other appropriate proceeding or proceedings enforce and compel the performance of such payment in accordance with the provisions of the Bond Ordinance.

Amendment

The Bond Ordinance may be amended or supplemented by ordinance or resolution of the Council without the consent of the owners of the Bonds:

- (a) to cure any ambiguity, or to cure, correct or supplement any defect or inconsistent provision contained in the Bond Ordinance;
- (b) to grant to the registered owners of the Bonds any additional rights, remedies, powers or authority that may lawfully be granted to them;
- (c) to obtain or maintain a rating on the Bonds from any rating agency, which amendment, in the judgment of Bond Counsel, does not materially adversely affect the registered owners of the Bonds;
- (d) to achieve compliance with federal securities or tax laws;

(e) to make any other changes in the Bond Ordinance which, in the opinion of Bond Counsel, is not materially adverse to the registered owners of the Bonds; and

(f) to make any other changes in the Bond Ordinance in connection with the execution of a Qualified Exchange Agreement, which changes do not adversely affect the rating(s) assigned to the Bonds by Fitch and S&P (if such rating agencies are then rating the Bonds) and do not adversely affect the registered owners.

Except as provided above, the Bond Ordinance may only be amended or supplemented by ordinance adopted by the Council in accordance with the laws of the State, without receipt by the City of any additional consideration but with the written consent of the registered owners of a majority of the principal amount of the outstanding Bonds which are affected by the amendment or supplement (not including Bonds which are then owned by or for the account of the City); provided, however, that, without first obtaining the consent of the registered owners of all then Outstanding Bonds, no such ordinance will have the effect of permitting:

- (a) an extension of the maturity of any Bond;
- (b) a reduction in the principal amount of or interest rate on any Bond; or
- (c) a reduction of the principal amount of Bonds required for consent to such amendment or supplement.

HERE HERE HERE

THE CITY

General

Located in north-central New Mexico, the City was established in 1610. The City was incorporated in 1891 as a body politic and corporate under the laws of the State and is both the County seat and capital of the State, with approximately 46% of the County population located in the City. The City is situated in the foothills of the Sangre de Cristo Mountains (Rocky Mountain Range) at 7,000 feet elevation and is located approximately 380 miles south of Denver and 320 miles north of El Paso at the junction of Interstate 25 and U.S. Highways 64, 84 and 285.

The Santa Fe economy is diversified, with government, tourism, retail trade and industry being predominant. The State is the largest employer in the City. Most State department headquarters are located in the City. State and federal offices plus County and City offices combine to make the City the governmental center of the State. See “ECONOMIC AND DEMOGRAPHIC INFORMATION—Employment” herein. The central business district and shopping centers contain approximately 450 businesses. The City is also the service center for the northern-central region of the State. There are over 300 art galleries and dealers and over 70 antique dealers in the City, in addition to cultural markets on the Plaza. It is the second largest financial center in the State with ten commercial banks, four savings & loans, approximately 15 financial lending entities and six credit unions.

The City has a unique culture because of its multicultural history and the proximity of numerous Pueblo Indian villages. Indian pottery, weaving, silver and turquoise jewelry, Spanish wood carving and weaving, paintings, glass and a complete range of contemporary arts and crafts are produced and sold. Popular tourist attractions in the City include the oldest church and the oldest house in the United States; numerous buildings listed in the State Register of Historic Sites and Property; the oldest public building in the United States; the Plaza, which was the end of the Camino Real and Santa Fe Trail; and numerous

museums and landmarks, including the Museum of Fine Arts, Museum of International Folk Art, Wheelwright Museum, Georgia O’Keeffe Museum and the Palace of the Governors. The Santa Fe National Forest and the Pecos Wilderness are also major tourist attractions. The Santa Fe Ski Basin and Santa Fe Opera are near the City. The City is a popular on-location site for both television and motion picture filming crews, including two western town movie sets nearby. The Laboratory of Anthropology is also located in the City and is a research center that has conducted thousands of archeological investigations.

A large segment of the City is controlled by historical zoning ordinances designed to maintain the Spanish architecture in the City. Numerous national, regional and State conventions are held in the City annually. Fiesta de Santa Fe, commemorating the return of the City to Spanish rule, is the oldest continuous community celebration in the United States.

St. John’s College is a four-year institution of higher learning located in the City. The Santa Fe Community College is a two-year institution of higher learning within the City. See “ECONOMIC AND DEMOGRAPHIC INFORMATION—Education” herein. The New Mexico School for the Deaf and the Institute of American Indian Arts are also located in the City. There are three newspapers, including two daily newspapers, several radio stations, several local television stations and cable television serving the City.

Administration and City Government

The administrative offices of the City are located at 200 Lincoln Avenue, Santa Fe, New Mexico. The Council is the policymaking body of the City and manages and controls the City’s finances and property. The eight members of the City Council (the “Council”) are elected for staggered four-year terms. The Mayor is the chief executive officer of the City and presiding officer of the Council.

Prior to December 9, 1997, the City operated under a Mayor-Council/City Manager form of government. On December 9, 1997, the City adopted a home-rule charter (“Charter”) form of government. The Charter form of government became effective March 15, 1998. Under an amendment to the Charter that became effective on March 12, 2018 (the “Charter Amendment”), the Mayor is authorized to vote on all matters that come before the Council. Under the Charter Amendment the Mayor has authority to appoint, with the consent of the Council, the City Manager, City Attorney, City Clerk and members of advisory commissions; may exercise control over and remove the City Manager, City Attorney and City Clerk; prepare an annual budget and proposed spending priority for review and approval by the City Finance Committee and Council.

The masthead of this Official Statement contains the names of the Mayor and the members of the Council.

Administrative Officers

Under the Charter, the Mayor, subject to the approval of the Council, appoints the City Manager, the City Clerk and the City Attorney. The City Manager hires all officers and employees of the City (except those holding elective office).

Budget

The City’s fiscal year begins on July 1 and ends on June 30. The City Manager is responsible for preparing the budget. After reviewing department requests and making adjustments as the City Manager deems necessary, the City Manager recommends to the Finance Committee of the City (the “Finance Committee”) approval of the budget as the City Manager envisions the operations of the City for the coming fiscal year. The Finance Committee reviews the City Manager’s recommendations, makes appropriate adjustments and recommends to the full Council for adoption of the budget. Finally, the Council reviews and adopts the budget. Prior to June 1, the City is required to submit a working draft of the budget to the

Local Government Division of the State Department of Finance and Administration (the “Finance Department”) for its approval. By July 20 of the new fiscal year, the City submits the budget to the Finance Department. Prior to the first Monday in September, the Finance Department must certify the budget with whatever adjustments it deems necessary to comply with State statutes. At mid-year, the City performs a budget review and adjusts the budget to reflect current conditions. Approval of the Finance Department is required for all budget increases, cash transfers between funds and budget transfers between departments within a fund or between funds. If adequate fund balances are available from the prior year, the City budgets expenditures in excess of revenues. The City budget is prepared using an estimate of anticipated revenues and expenditures.

Services

The City provides traditional services such as public safety and recreation, public works, highways and streets as well as water and sewer services and refuse collection. In addition, the City operates parking facilities, convention facilities, a golf course and an industrial park.

Employees

The City employs approximately 1,800 persons, approximately 1,600 of whom are full-time employees, and approximately 200 of whom are part-time employees, including 9 elected officials.

Retirement Plans

Public Employees Retirement Association

Substantially all of the City’s full-time employees participate in a public employee retirement system authorized under the Public Employees Retirement Act (Chapter 10, Article 11 NMSA 1978). The Public Employees Retirement Association (“PERA”) is the administrator of the plan, which is a cost-sharing multi-employer defined benefit retirement plan. The plan provides retirement, disability benefits, survivor benefits, and cost-of-living adjustments to plan members and beneficiaries. PERA issues a separate, publicly available financial report that includes financial statements and required supplementary information. The report may be obtained by writing to PERA, P. O. Box 2123, Santa Fe, New Mexico 87504-2123.

The contribution requirements of defined benefit plan members and the City of Santa Fe are established in state statute under Chapter 10, Article 11, NMSA 1978. The contribution requirements may be amended by acts of the legislature. For employer and employee contribution rates in effect for FY2020 for the various PERA coverage options, for both Tier I and Tier II, see the tables available in the PERA FY2020 annual audit report available at www.nmpera.org. The PERA coverage options that apply to the City are the Municipal General Division, Municipal Police Division and Municipal Fire Division. Statutorily required contributions to the pension plan from the City were \$_____ for the fiscal year ended June 30, 2020, The employer paid member benefits that were “picked up” by the employer were \$_____ for the fiscal year ended June 30, 2020.

On June 25, 2012, the Governmental Accounting Standards Board approved Statement No. 68 which requires governments providing defined benefit pensions to recognize their long-term obligation for pension benefits as a liability for the first time, and to more comprehensively and comparably measure the annual costs of pension benefits. Statement No. 68 requires cost-sharing employers, such as the City, to record a liability and expense equal to their proportionate share of the collective net pension liability and expense for the cost-sharing plan. Statement No. 68 is effective for fiscal years beginning after June 15, 2014.

Actuarial information is shown below:

**State of New Mexico Public Employees Retirement Fund
Summary Information as of June 30, 2020**

Membership ⁽¹⁾	111,326
Actuarial Information	
Actuarial Accrued Liability ⁽²⁾	\$22,388,870,869
Actuarial Value of Assets	\$15,737,838,938
Unfunded Actuarial Accrued Liability	\$6,651,031,931

Source: PERA Annual Actuarial Valuation (June 30, 2017)

⁽¹⁾ Includes active, inactive and retired members from all divisions.

⁽²⁾ Includes accrued liability of both the retired and active members.

In Fiscal Year 2013, PERA reported an Unfunded Actuarial Accrued Liability (“UAAL”) of \$4.6 billion, approximately \$1.6 billion less than the previous fiscal year. The decline in the UAAL was the result of comprehensive pension reform legislation proposed by the PERA Board and enacted by the State Legislature during the 2013 legislative session. Senate Bill 27 significantly amended the Public Employees’ Retirement Act by creating a new tier of reduced benefits for new hires. The law reduces the cost of living adjustments for all current and future retirees; delays the application of cost of living adjustments for certain future retirees; suspends the cost of living adjustments for certain return-to-work retirees; provides for an increase in the statutory employee contribution rate of 1.5% (subject to certain requirements) for employees earning \$20,000 or more in annual salary; provides for an increase in the statutory employer contribution of 0.4% beginning in Fiscal year 2015; increases age and service requirements; lengthens the base average salary calculation amount from three to five years for future employees; increases the vesting period for employees from five to eight years for most members; lowers the annual service credit by 0.5% for most members; and makes several other clarifying and technical changes. Also as a result of the passage of pension reform legislation, PERA’s 30 year projected funded ratio increased from 29% to 108.8%. PERA saw a further \$300 million decline in the UAAL, and increase in the 30-year projected funded ratio to 133% at the end of Fiscal Year 2014. The improvement in Fiscal Year 2014 was due largely to excess investment returns. PERA’s Fiscal Year 2014 return was 17.03%, higher than the 7.75% return assumption.

In Fiscal Year 2020, PERA reported an audited Net Pension Liability (“NPL”) of \$7,448,652,567, using methods and assumptions required under GASB Statement No. 67, the reporting standard applicable to pension plans. PERA annually prepares a “Schedule of Employer Allocations and Pension Amounts” that provides employer participants the information they need to comply with GASB Statement No. 68, including each employer’s proportionate share of the NPL. This schedule is audited by PERA’s independent auditors and is reviewed by the New Mexico Office of the State Auditor.

New Mexico Retiree Health Care Authority

The State of New Mexico Retiree Health Care Act (the “Health Care Act”) provides comprehensive core group health insurance for persons who have retired from certain public services in New Mexico. The purpose of the Health Care Act is to provide eligible retirees, their spouses, dependents, and surviving spouses and dependents with health insurance consisting of a plan, or optional plans, of benefits that can be purchased by funds deposited by the employer into the Retiree Health Care Fund and by co-payments or out-of-pocket payments of eligible retirees. Each participating retiree pays a monthly premium for the medical plus basic life plan. Each participating employer makes contributions to the Fund in the amount of 2.0% to 2.5% of each participating employee’s annual salary. Each participating employee contributes to the Fund an employee contribution equal to 1.25% of the employee’s annual salary. The City remitted \$ _____ in Fiscal Year 2020, \$ _____ in Fiscal Year 2019, and \$ _____ in Fiscal Year 2018, which equaled the required contributions for each year.

In June 2015, the Governmental Accounting Standards Board approved Statement No. 75 which requires governments providing other post-employment benefits (“OPEB”) to recognize their long-term obligation for those benefits as a liability for the first time, and to more comprehensively and comparably measure the annual costs of OPEB. Statement No. 75 requires governmental participants in cost-sharing multi-employer plans, such as the City, to record a liability and expense equal to their proportionate share of the collective net OPEB liability and expense for the cost-sharing plan. Statement No. 75 became effective for fiscal years beginning after June 15, 2017. As reported in the City’s fiscal year 2020 audited financial statements, the City’s proportionate share of OPEB liability was \$_____ at June 30, 2020.

Summary of Indebtedness

The table below summarizes all outstanding general obligation and revenue bond obligations of the City as of August 1, 2021:

Category of Indebtedness	Original Principal Amount	Interest Rate	Date of Final Maturity	Amount Outstanding
Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2010B*	\$ 10,490,000	4.00%-5.00%	6/1/26	\$ 4,860,000*
General Obligation Bonds, Series 2010	10,300,000	2.50%-4.00%	8/1/29	5,105,000
Gross Receipts Tax Improvement & Refunding Revenue Bonds, Series 2012A*	32,725,000	3.00%-5.00%	6/1/26	10,735,000*
Gross Receipts Tax (Subordinate Lien)/Wastewater System Refunding Revenue Bonds, Series 2012B	14,280,000	2.00%-5.00%	6/1/22	1,960,000
Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2013B	13,780,000	3.00%-5.00%	6/1/36	11,245,000
General Obligation Bonds, Series 2013	12,000,000	1.75%-4.00%	8/1/32	7,790,000
Gross Receipts Tax Improvement Revenue Bonds, Series 2014	15,460,000	2.25%-5.00%	6/1/29	14,615,000
General Obligation Bonds, Series 2014	5,800,000	3.00%-4.00%	8/1/34	4,275,000
Water Utility System Refunding Revenue Bonds, Series 2016	36,665,000	2.00%-5.00%	6/1/39	32,145,000
Senior Lien Gross Receipts Tax Refunding Bonds, Series 2016A	6,700,000	5.00%	6/1/23	2,140,000
Senior Lien Gross Receipts Tax Refunding Bonds, Series 2016B	21,900,000	2.00%-5.00%	6/1/35	10,225,000
Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016C	9,480,000	5.00%	6/1/24	475,000
Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016D	2,020,000	2.00%-5.00%	6/1/28	1,510,000
Taxable Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2017	4,530,000	1.42%-3.56%	6/1/33	3,555,000
Gasoline Tax/Subordinate Lien Gross Receipts Tax Improvement Revenue Bonds, Series 2018	10,290,000	3.00%-5.00%	6/1/28	7,745,000
Senior Lien Gross Receipts Tax Improvement Bonds, Series 2018A	20,000,000	5.00%	6/1/38	18,975,000
General Obligation Refunding Bonds, Series 2019	5,445,000	5.00%	8/1/29	4,525,000
Total	<u>\$230,865,000</u>			<u>\$141,880,000</u>

*To be refunded with proceeds of the Bonds.

In addition to its outstanding revenue and general obligation bonds referenced above, the City has loans payable to the New Mexico Finance Authority, on a subordinate basis by various revenue sources. The table below summarizes the outstanding loans of the City as of August 1, 2021.

<u>Category of Indebtedness</u>	<u>Original Principal Amount</u>	<u>Interest Rate</u>	<u>Date of Final Maturity</u>	<u>Amount Outstanding</u>
Convention Center	\$33,790,000	3.00%- 5.00%	June 2035	\$30,945,000
Drinking Water Loan (Buckman DW-2)	15,150,000	1.75%*	June 2029	9,069,552
College Acquisition ⁽¹⁾⁽²⁾	29,615,000	4.19%- 6.07%	June 2036	24,140,000
Drinking Water Loan (Buckman DW-4)	2,525,000	1.75%*	June 2035	2,080,017
Fire Equipment	917,815	0.84%- 1.63%	May 2025	815,340
Recycle Carts	1,300,582	0.96%- 2.34%	May 2024	1,047,049
Transit Buses	3,500,000	1.46%- 3.12%*	June 2026	2,436,749
Taxable College Acquisition Refunding Loan ⁽¹⁾	23,705,000	2.36%- 3.92%	June 2039	21,905,000
Taxable Parking Improvements Loan ⁽¹⁾	1,575,000	1.91%- 2.15%	June 2027	1,195,000
Total Loan Obligations	<u>\$223,078,497</u>			<u>\$93,644,707</u>

⁽¹⁾ Secured by a Subordinate lien on Pledged Gross Receipts Tax Revenues.

⁽²⁾ College Acquisition debt was paid from a lease with Laureate Education. The City is evaluating alternative uses of the asset and sources of revenue to pay debt service in connection with this financing.

⁽³⁾ Secured by the .25% Municipal Local Option Gross Receipts Tax.

* Interest rate does not include NMFA administration fee.

FINANCIAL INFORMATION CONCERNING THE CITY

The City's Accounting and Budgetary Practices and Procedures

Receipts and disbursements of the City are recorded on a modified accrual basis of accounting. Under this method of accounting, as a general rule, revenue which is available for financing of current appropriations is recognized when received or when susceptible to accrual, and expenditures benefiting more than one year are recorded when encumbered. Exceptions to this general rule include: (1) disbursements for some inventory items are recorded at the time of purchase, (2) prepaid expenses benefiting more than one year are recorded in the year of payment and (3) property taxes are recognized as received.

Governmental Accounting Standards Board Statement

The City's financial statements present the government as an entity for which the City is considered to be financially accountable. The City has no component units or blended component units that are legally separate entities.

During the year ended June 30, 2016, the City adopted GASB Statements Nos. 72, *Fair Value Measurement and Application*, a portion of No. 73 *Accounting and Financial Reporting for Pensions and Related Assets that are not within the Scope of GASB Statement 68 and Amendments to Certain Provisions of GASB Statements 67 and 68*, No. 76, *The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments*, No. 79, *Certain External Investment Pools and Pool Participants* and No. 82 *Pension Issues – an amendment of GASB Statement No. 67, No. 68, and No. 73*. These five Statements were required to be implemented by June 30, 2016.

GASB Statement No. 72 addresses accounting financial reporting issues related to fair value measurements. The definition of *fair value* is price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. It provides guidance for determining a fair value measurement for financial reporting purposes and for applying fair value to certain investments and disclosures related to all fair value measurements. The requirements of GASB 72 enhances comparability of financial statements among governments by requiring measurements of certain assets and liabilities at fair value using a consistent and more detailed definition of fair value and accepted valuation techniques. This Statement also will enhance fair value application guidance and related disclosures in order to provide information to financial statement users about the impact of fair value measurements on government's financial position.

GASB Statement No. 82 addresses certain issues that have been raised with respect to Statement No. 67, *Financial Reporting for Pension Plans*, No. 68, *Accounting and Financial Reporting for Pensions*, and No. 73, *Accounting and Financial Reporting for Pensions and Related Assets That are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68*. Specifically, this GASB 82 addresses issues regarding (1) the presentation of payroll-related measures in required supplementary information; (2) the selection of assumptions and the treatment of deviations from the guidance in an Actuarial Standard of Practice for financial reporting purposes, and; (3) the classification of payments made by employers to satisfy employee (plan member) contribution requirements. Its objective is to address certain issues that have been raised with respect to Statements No.67, *Financial Reporting for Pensions Plans*, No. 68, *Accounting and Financial Reporting for Pensions*, and No. 73, *Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statement 67 and 68*. Specifically, the statement addresses issues regarding (1) the presentation of payroll-related measures in required supplementary information; (2) the selection of assumptions and treatment of deviations from the guidance in an Actuarial Standard of Practice for financial reporting purposes, and; (3) the classification of payments made by employers to satisfy employee (plan member) contribution requirements.

The government-wide financial statements (i.e., the statement of net assets and the statement of changes in net assets) report information on all of the non-fiduciary activities of the primary government and its component units. For the most part, the effect of interfund activity has been removed from these statements. Governmental activities, which normally are supported by taxes and intergovernmental revenues, are reported separately from business-type activities, which rely to a significant extent on fees and charges for support. Likewise, the primary government is reported separately from the legally separate component unit for which the primary government is financially accountable.

Operations of the General Fund

The following sets forth a comparative summary of the operations of the General Fund of the City for the years ended June 30, 2013 through June 30, 2017. The General Fund is not pledged to the payment of principal of or interest on the Bonds. Information regarding the operations of the General Fund is presented only to summarize the City's operating history. For a more detailed discussion of the City's results of operations for the fiscal year ended June 30, 2017, see "Management's Discussion and Analysis" included in the attached financial statements.

GENERAL FUND REVENUES AND EXPENDITURES HISTORY⁽¹⁾

Revenues:	2016	2017
Taxes:		
Gross Receipts	\$55,427,303	\$57,939,139
Motor	407,436	408,485
Property	3,540,610	6,827,420
Franchise	3,650,602	4,090,448
Licenses and permits	2,760,196	3,533,969
Intergovernmental revenues	121,698	63,430
Fees and charges for services	10,935,407	10,049,108
Fines and forfeitures	373,917	304,712
Rents, royalties and concessions	26,448	23,189
Investment income (loss)	61,850	21,102
Other Revenues	58,869	113,885
Total Revenues	<u>77,364,336</u>	<u>83,374,887</u>
Expenditures:		
Current:		
General government	19,806,687	19,398,901
Public safety	33,986,877	38,588,216
Public works	2,985,705	4,152,864
Community development	4,985,731	4,671,829
Culture and recreation	7,583,676	8,116,334
Education	2,600,930	2,619,374
Total current expenditures	<u>71,949,606</u>	<u>77,547,518</u>
Capital outlay:		
General government	86,578	182,505
Public safety	185,915	1,111,775
Public works	35,445	18,461
Community development	1,038	11,220
Culture and recreation	129,043	170,166
Education	5,709	2,581
Total capital outlay expenditures	<u>443,728</u>	<u>1,496,708</u>
Total expenditures	<u>72,393,334</u>	<u>79,044,226</u>
Excess (deficiency) of revenues over expenditures	<u>4,971,002</u>	<u>4,330,661</u>
Other financing sources (uses):		
Sale of capital assets	-	-
Transfers in	6,567,805	459,980
Transfers out	(5,664,434)	(12,337,130)
Total other financing sources (uses)	903,371	(11,877,150)
Net change in fund balances	5,874,373	(7,546,489)
Fund balances, beginning of year	15,073,816	20,948,189
Prior period adjustment	-	838,940
Fund balances, beginning of year as restated	-	21,787,129
Fund Balances, end of year	<u>\$20,948,189</u>	<u>\$14,240,640</u>

Source: City of Santa Fe, Comprehensive Annual Financial Reports, 2016-2017

⁽¹⁾ Due to changes in the presentation and categories of Expenditures beginning in Fiscal Year 2018, General Fund Revenues and Expenditures for Fiscal Years 2018 through 2020 appear in a separate table on the following page of this Official Statement.

GENERAL FUND REVENUES AND EXPENDITURES HISTORY, continued⁽¹⁾

Revenues:	2018	2019	2020
Taxes:			
Gross Receipts	\$64,915,409	\$69,349,581	
Motor	416,819	451,466	
Property	9,044,751	8,351,923	
Franchise	4,378,595	4,831,198	
Licenses and permits	4,180,409	3,830,105	
Intergovernmental revenues	830,182	658,457	
Fees and charges for services	11,029,389	8,184,123	
Fines and forfeitures	241,812	220,332	
Rents, royalties and concessions	24,117	54,145	
Investment income (loss)	17,555	135,205	
Other Revenues	196,673	15,494	
Total Revenues	<u>95,275,711</u>	<u>96,082,029</u>	
Expenditures:			
Current:			
Salaries, Wages and Fringe Benefits	63,631,053	63,349,960	
Contractual Services and Utilities	8,461,617	6,562,797	
Repairs and Maintenance	626,908	723,530	
Supplies	2,481,634	2,280,306	
Capital Outlay- Inventory-Exempt Items	859,766	413,363	
Insurance Premiums	3,097,678	3,065,785	
Claims and Judgments	--	--	
Other	9,126,687	5,965,642	
Total current expenditures	<u>88,285,343</u>	<u>82,361,383</u>	
Capital outlay	1,026,742	1,041,843	
Debt Service:			
Principal Payments	--	--	
Interest	--	--	
Bond Issuance Costs	--	--	
Total expenditures	<u>89,312,085</u>	<u>83,403,226</u>	
Excess (deficiency) of revenues over expenditures	<u>5,963,626</u>	<u>12,678,803</u>	
Other financing sources (uses):			
Transfers in	1,658,068	1,070,509	
Transfers out	(6,739,886)	(4,500,562)	
Proceeds from Sale of Capital Assets	100	44,722	
Bond Proceeds	--	--	
Premiums on Bond Issues	--	--	
Total Other Financing Sources (Uses)	<u>(5,081,718)</u>	<u>(3,385,331)</u>	
Net change in fund balances	881,908	9,293,472	
Fund balances, beginning of year	14,240,640	15,122,548	
Fund Balances, end of year	<u>\$ 15,122,548</u>	<u>\$24,416,020</u>	

Source: City of Santa Fe, Comprehensive Annual Financial Reports, 2018-2020

⁽¹⁾ Due to changes in the presentation and categories of Expenditures beginning in Fiscal Year 2018, General Fund Revenues and Expenditures for Fiscal Years 2016 and 2017 appear in a separate table on the preceding page of this Official Statement.

ECONOMIC AND DEMOGRAPHIC INFORMATION

The statistics set forth below have been obtained from the referenced sources. The City has assumed that the information obtained from sources other than the City is accurate without independently verifying it. Historical figures provided under this caption have not been adjusted to reflect economic trends such as inflation. The following information is not to be relied upon as a representation or guarantee of the City.

Population

Population Growth			
<u>Census Year</u>	<u>City</u>	<u>County</u>	<u>State</u>
2010	81,030	144,170	2,064,756
2011	81,621	145,378	2,077,756
2012	82,022	146,157	2,083,784
2013	82,339	146,754	2,085,193
2014	82,594	147,329	2,083,024
2015	82,880	147,708	2,080,328
2016	83,287	148,651	2,081,015
2017	83,776	148,750	2,088,070
2018	83,875	148,758	2,093,000
2019	84,612	150,358	2,097,000
2020			

Source: City of Santa Fe Audited Financial Statement for Fiscal Year 2019.

The following table provides an estimated age profile of the City's 2016 population from the U.S. Census Bureau's 2016 American Community Survey, and comparative data for the County, State and the United States:

Percent of Population			
<u>Age Group</u>	<u>City of Santa Fe</u>	<u>New Mexico</u>	<u>United States</u>
0 – 19	22.10%	27.10%	26.10%
20 - 44	28.50%	32.30%	33.50%
45 - 64	28.30%	25.90%	26.30%
65+	21.10%	14.70%	14.10%

Source: City of Santa Fe Audited Financial Statements for Fiscal Year Ending June 30, 2019

The total population of the City grew by 13.3% over the decade of the 1980s (1980-1990), by 11.3% over the decade of the 1990s (1990-2000), and by 9.2% between 2000 and 2010, and by 23.4% between 2010 and 2015 which was largely due to annexation of unincorporated areas of Santa Fe County into the City.

Income

The following table sets forth the per-capita income, based on the total gross personal income divided by the population, for the Santa Fe MSA, the State and the United States. Although the State per capita income remains lower than the per capita income of the United States as a whole, the Santa Fe MSA per capita income is higher than the per capita income of the State and the United States.

<u>Per Capita Personal Income</u>			
<u>Year</u>	<u>Santa Fe MSA</u>	<u>New Mexico</u>	<u>United States</u>
2019	\$60,276	\$43,803	\$56,469
2018	58,696	41,650	54,601
2017	54,062	39,727	52,114
2016	53,560	39,008	50,004
2015	51,086	38,306	48,998
2014	49,647	37,196	47,050
2013	46,545	35,090	44,826
2012	47,558	35,723	44,588
2011	46,495	34,998	42,713

Source: U.S. Bureau of Economic Analysis.

The following table displays the number of occupations by category and year in the Santa Fe MSA.

Employment By Occupational Category- Santa Fe MSA

Occupation	2016	2017	2018	2019	2020
All Occupations	61,710	61,340	61,590	62,160	57,600
Management	3,880	3,660	3,660	3,680	3,610
Business and Financial Operations	3,960	3,880	4,030	4,280	4,310
Computer and Mathematical	1,290	1,370	1,530	1,580	1,460
Architecture and Engineering	770	780	790	760	710
Life, Physical and Social Science	770	800	830	810	850
Community and Social Service	1,260	1,290	1,290	1,320	1,170
Legal	820	780	760	810	820
Educational, Instructional and Library	3,400	3,630	3,680	3,640	3,540
Arts, Design, Entertainment, Sports, and Media	1,080	1,070	780	1,000	990
Healthcare Practitioners and Technical	3,000	2,980	3,170	3,170	3,000
Healthcare Support	1,550	1,580	1,540	2,740	2,180
Protective Service	2,210	2,100	2,150	2,220	1,780
Food Preparation and Serving Related	7,560	7,430	7,730	7,830	6,300
Building and Grounds Cleaning and Maintenance	2,300	2,420	2,500	2,830	2,490
Personal Care and Service	3,210	3,380	3,190	1,400	1,240
Sales and Related	7,240	6,780	6,570	6,610	6,190
Office and Administrative Support	9,450	9,580	9,620	8,700	8,250
Farming, Fishing and Forestry	40	40	*	*	70
Construction and Extraction	2,520	2,480	2,530	2,550	2,660
Installation, Maintenance and Repair	1,840	1,840	1,870	2,010	1,980
Production	1,290	1,320	1,310	1,180	1,190
Transportation and Material Moving	2,270	2,150	2,060	3,000	2,810

Source: U.S. Bureau of Labor Statistics.

The following table sets forth the average annual employment figures for the Santa Fe MSA.

	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Labor Force	74,060	74,071	74,640	74,198	71,346
Employed	7,0098	70,347	71,548	71,109	65,455
Unemployed	3,962	3,724	3,092	3,089	5,891
Unemployment Rate	5.3%	5.0%	4.1%	4.2%	8.3%

Source: U.S. Bureau of Labor Statistics.

Annual Average Unemployment Per Year

<u>Calendar Year</u>	<u>Santa Fe MSA</u>	<u>New Mexico</u>	<u>United States</u>
2020	8.3%	8.5%	8.1%
2019	4.2%	5.0%	3.7%
2018	4.1%	4.9%	3.9%
2017	5.0%	6.1%	4.4%
2016	5.3%	6.8%	4.9%
2015	5.4%	6.6%	5.3%
2014	5.4%	6.6%	6.2%
2013	5.6%	6.9%	7.4%
2012	5.6%	7.0%	8.1%
2011	6.0%	7.2%	8.9%

Source: U.S. Bureau of Labor Statistics.

Santa Fe MSA--Major Employers

<u>Employer</u>	<u>Business Type</u>	<u>Number of Employees</u>
State of New Mexico	Government	25,984
Christus St. Vincent Hospital	Health Care	2,274
Santa Fe Public Schools	Education	1,913
City of Santa Fe	Government	1,472
WalMart	Retail	1,250
Santa Fe Community College	Education	950
County of Santa Fe	Government	919
Santa Fe Opera	Fine Arts	791
Albertson's	Retail	650
Peters Corporation	Fine Arts	518
Total Top 10		36,721

Source: New Mexico Department of Labor, 2019

Construction Permits

<u>Calendar Year</u>	<u>Issued</u>	<u>Value</u>
2011	4,161	105,449,986
2012	4,751	179,671,299
2013	5,068	125,419,309
2014	4,688	113,830,876
2015	4,771	106,656,654
2016	4,955	162,954,112
2017	4,904	150,608,250
2018	6,337	245,227,939
2019	6,801	289,241,144
2020		

Source: City of Santa Fe Building Inspector's Office (estimated).

Education

Santa Fe Public Schools

The Santa Fe Public School District is a political subdivision of the State organized for the purpose of operating and maintaining an education program for school-age children residing within its boundaries. Currently the District operates and maintains a variety of facilities in meeting its obligation to provide an educational program within its boundaries that cover 1,016 square miles with an estimated population of 125,000. The District is the 5th largest school district in the State with a 2017-2018 120-day enrollment of 12,983 students. The District operates 31 school sites, including 21 elementary schools, 6 middle schools, 3 high schools, and 1 international magnet school. These schools include 5 community schools, 4 charter schools, 1 academy, and 1 early childhood center. The District's educational program includes vocational, technical, and occupational training.

Santa Fe Community College

Santa Fe Community College is a co-educational community college offering 2-year Associate of Arts, Associate of Science, and Associate of Applied Science degrees. The Community College occupies 366 acres within the County of Santa Fe, with a faculty of approximately 395 (full and part-time), serving approximately 5,800 students (credit enrollment).

St. John's College

St. John's College is a private, co-educational 4-year liberal arts college. The College's undergraduate program is an all-required course of study based on the classic works of western civilization. The College has an enrollment of approximately 475 students, with a faculty-student ratio of 1:8. The College offers a graduate degree program leading to a Master of Arts in Liberal Arts degree.

New Mexico School for the Deaf

The New Mexico School for the Deaf is a state institution serving New Mexico children with permanent hearing loss from birth through age 22. The School provides a rigorous academic program that focuses on language and literacy development and critical thinking skills. The School's curriculum conforms to New Mexico state standards and benchmarks. The School's 30-acre campus is located in the City of Santa Fe and provides housing for up to 96 residential students.

LITIGATION AND INSURANCE

At the time of the original delivery of the Bonds, the City will deliver a no-litigation certificate to the effect that no litigation or administrative action or proceeding is pending or, to the knowledge of the appropriate City officials, threatened, restraining or enjoining, or seeking to restrain or enjoin, the issuance and delivery of the Bonds, the levy or collection of the Pledged Revenues, the effectiveness of the Bond Ordinance, or contesting or questioning the proceedings and authority under which the Bonds have been authorized and are to be issued, sold, executed or delivered, or the validity of the Bonds.

The City maintains insurance on its assets and operations and believes its coverages are customary for similar entities insuring similar operations and assets. The City maintains a risk management reserve.

TAX EXEMPTION

General

In the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, to be delivered at the time of original issuance of the Bonds, under existing laws, regulations rulings and judicial decisions,

and assuming compliance with covenants described herein, interest on Bonds is excludable from gross income for federal income tax purposes and is not an item of tax preference under Section 57 of the Code (as defined below) for purposes of the federal alternative minimum tax imposed on individuals. Bond Counsel is also of the opinion, based on existing laws of the State of New Mexico as enacted and construed, that interest on the Bonds is exempt from all taxation by the State of New Mexico or any political subdivision thereof.

The Internal Revenue Code of 1986, as amended (the “Code”), imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal tax purposes of interest on obligations such as the Bonds. The City has made various representations and warranties with respect to, and has covenanted in the Bond Ordinance and other documents, instruments and certificates to comply with the applicable provisions of the Code to assure that interest on the Bonds will not become includable in gross income. Failure to comply with these covenants or the inaccuracy of these representations and warranties may result in interest on the Bonds being included in gross income from the date of issue of the Bonds. The opinion of Bond Counsel assumes compliance with the covenants and the accuracy of such representations and warranties.

Although Bond Counsel will render an opinion that interest on the Bonds is excludable from gross income for federal income tax purposes, the accrual or receipt of interest on the Bonds may otherwise affect the federal income tax liability of the recipient. The extent of these other tax consequences will depend upon the recipient’s particular tax status or other items of income or deduction. Bond Counsel expresses no opinion regarding any such consequences. Before purchasing any of the Bonds, potential purchasers should consult their tax advisors as to the tax consequences of purchasing or owning the Bonds.

The opinions expressed by Bond Counsel are based upon existing law as of the date of issuance and delivery of the Bonds, and Bond Counsel expresses no opinion as of any date subsequent thereto or with respect to any pending legislation.

From time to time, there are legislative proposals in Congress that, if enacted, could alter or amend the federal tax matters referred to above or adversely affect the market value of the Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether if enacted, it would apply to Bonds issued prior to enactment. Each purchaser of the Bonds should consult his or her own tax advisor regarding any pending or proposed federal tax legislation. Bond Counsel expresses no opinion regarding any pending or proposed federal tax legislation.

Internal Revenue Service Audit Program

The Internal Revenue Service (the “Service”) has an ongoing program auditing tax-exempt obligations to determine whether, in the view of the Service, interest on such tax-exempt obligations is includable in the gross income of the owners thereof for federal income tax purposes. No assurances can be given as to whether the Service will commence an audit of the Bonds. If an audit is commenced, under current procedures the Service will treat the City as the taxpayer and the Bond owners may have no right to participate in such procedure. None of Municipal Advisor, the Underwriters, or Bond Counsel is obligated to defend the tax-exempt status of the Bonds. The City has covenanted in the Bond Ordinance not to take any action that would cause the interest on the Bonds to become includable in gross income except to the extent described above for the owners thereof for federal income tax purposes. None of the City, the Municipal Advisor, the Underwriters, or Bond Counsel is responsible to pay or reimburse the costs of any Bond owner with respect to any audit or litigation relating to the Bonds.

Original Issue Discount

The Bonds may be offered at a discount (“original issue discount”) equal generally to the difference between public offering price and principal amount. For federal income tax purposes, original issue

discount on a bond accrues periodically over the term of the bond as interest. The amount of original issue discount deemed received by the holder is excludable from gross income of the holder for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. The accrual of original issue discount increases the holder's tax basis in the bond for determining taxable gain or loss from sale or from redemption prior to maturity. Holders of Bonds offered at an original issue discount should consult their tax advisors for an explanation of the accrual rules.

Original Issue Premium

The Bonds may be offered at a premium ("original issue premium") over their principal amount. For federal income tax purposes, original issue premium is amortizable periodically over the term of a bond through reductions in the holders' tax basis in the bond for determining taxable gain or loss from sale or from redemption prior to maturity. Amortizable premium is accounted for as reducing the tax-exempt interest on the bond rather than creating a deductible expense or loss. Holders of Bonds offered at an original issue premium should consult their tax advisors for an explanation of the amortization rules.

FINANCIAL STATEMENTS

Appendix A contains excerpts from Audited Financial Statements of the City for the fiscal year ended June 30, 2020. The audited financial statements referred to above have been audited by CliftonLarsonAllen LLP, New Mexico, independent certified public accountants (the "Auditor"), whose report with respect thereto (the "Report") also appears in Appendix A hereto. The Report states that, in the Auditor's opinion,

[E]xcept for the effects of the matters described in the "Basis for Qualification on Governmental Activities, Business-Type Activities, Major Enterprise Funds and Aggregate Remaining Fund Information paragraph, the financial statements referred to [in the Report] present fairly, in all material respects the financial position of the governmental activities, the business-type activities and Major Enterprise Funds of the City of Santa Fe as of June 30, 2020, and the respective changes in financial positions and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

The Report states that the basis for the qualification to the Auditor's opinion is as follows:

The City lacks the adequate controls and processes to appropriately track and substantiate costs allocated to a specific capital asset project. As such, we were unable to obtain sufficient appropriate audit evidence related to construction in process. Additionally, the City does not have an adequate close-out process pertaining to the completion of a project and reclassification of the project to depreciable capital assets. The City also could not confirm it had reviewed capital assets for the impairment, substantiate the underlying value for capital assets, or adequately account for the physical location of capital assets.

The City has adopted a Corrective Action Plan (the "CAP") to address the findings in the Report, and is in the process of implementing the steps identified in the CAP. The foregoing information is only a summary of the Auditor's qualified opinion, and readers of this Official Statement are advised to review the Report in its entirety, including the Schedule of Findings and Questioned Costs, as well as the Management Response of the City to each individual finding, which are included in Appendix A hereto.

The Bonds are not payable from any revenues or funds of the City other than as set forth in the Official Statement. The financial statements are included for informational purposes only. The Auditor has not been engaged to perform and has not performed any procedures with respect to the financial information or any other information in this Official Statement. Copies of the City's comprehensive annual financial report may be requested from the City's Finance Department, 200 Lincoln Avenue, P.O. Box 909, Santa Fe, New Mexico 87504.

FINANCIAL ADVISOR

Hilltop Securities Inc. is employed as Financial Advisor to the City in connection with the issuance of the Bonds. The Financial Advisor's fee for services rendered with respect to the sale of the Bonds is contingent upon the issuance and delivery of the Bonds. Hilltop Securities Inc., in its capacity as Financial Advisor, has relied on the opinion of Bond Counsel and does not assume any responsibility for the information, covenants and representations contained in any of the legal documents with respect to the federal income tax status of the Bonds, or the possible impact of any present, pending or future actions taken by any legislative or judicial bodies.

The Financial Advisor to the City has provided the following sentence for inclusion in this Official Statement. The Financial Advisor has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to the City and, as applicable, to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Financial Advisor does not guarantee the accuracy or completeness of such information.

LEGAL MATTERS

Modrall, Sperling, Roehl, Harris & Sisk, P.A., Albuquerque, New Mexico, Bond Counsel, will render an opinion with respect to the validity of the Bonds and with respect to tax matters described above under "TAX EXEMPTION". The proposed form of such opinion is attached hereto as Appendix B. Modrall, Sperling, Roehl, Harris & Sisk, P.A., has also acted as special counsel to the City in connection with the preparation of this Official Statement. Certain legal matters will be passed upon for the City by Erin McSherry, Esq., City Attorney. Certain legal matters will be passed upon for the Underwriters by McCall, Parkhurst & Horton L.L.P., Dallas, Texas

RATINGS

The City has received a rating of "AA+" on the Bonds from Fitch Ratings Group ("Fitch") and has received a rating of "AA+" from S&P Global Ratings, a division of the McGraw-Hill Companies, Inc. ("S&P"). An explanation of the significance of the ratings given by Fitch and S&P, respectively, may be obtained from Fitch at One State Street Plaza, New York, New York 10004, and from S&P at 55 Water Street, 38th Floor, New York, New York 10041.

Such ratings reflect only the view of such rating agencies, and there is no assurance that such ratings will continue for any given period of time after obtained or that such ratings will not be revised downward or withdrawn entirely by the rating agencies if, in their judgment, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the Bonds. Neither the City nor the Underwriters have undertaken any responsibility to bring to the attention of the owners of the Bonds any proposed change in or withdrawal of such rating once received or to oppose any such proposed revision.

CONTINUING DISCLOSURE

In connection with the issuance of the Bonds, the City will execute a Continuing Disclosure Undertaking, in the form attached hereto as Appendix D, under which it will agree for the benefit of the owners of the Bonds to provide audited annual financial statements of the City when available after the end of each Fiscal Year, and to provide certain annual financial information and operating data relating to the City, timely notice of certain events and notice of certain events as required by Rule 15c2-12.

The City previously entered into continuing disclosure agreements in accordance with SEC Rule 15c2-12. The City amended its then-existing continuing disclosure agreements effective December 18, 2008 to change the report date from January 1 to April 1. Updates were not timely filed for fiscal year 2017 for the table entitled "Monthly Residential and Commercial Wastewater Fees" as required by the continuing disclosure agreement executed in connection with the issuance of the City's 2012B Bonds. Updates to the table entitled "Rates for New Meter Installs" for fiscal year 2017 were not timely filed as required by the continuing disclosure agreement executed in connection with the City's 2016 Bonds. Additionally, the audited financials and operating data for fiscal years 2016 and 2017 were not associated with all of the relevant CUSIPs. The City has made corrective filings and has filed a notice of failure to file the required information. Other than as described herein, the City has not been in default under its existing continuing disclosure agreements with respect to the filing of audited annual financial statements and annual financial information and notice of certain events as required by Rule 15c2-12.

UNDERWRITING

_____ (together, the "Underwriters") have agreed, subject to certain customary conditions, to purchase the Bonds at a price equal to the initial offering prices to the public, as shown on the inside cover page hereof, less an Underwriters' discount of \$_____. The Underwriters' obligations are subject to certain conditions precedent, and the Underwriters will be obligated to purchase all of the Bonds, if any Bonds are purchased. The Bonds to be offered to the public may be offered and sold to certain dealers (including the Underwriters and other dealers depositing Bonds into investment trusts) at prices lower than the public offering prices of such Bonds and such public offering prices may be changed, from time to time, by the Underwriters.

The Underwriters have provided the following sentence for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

RBC Capital Markets, LLC ("RBCCM") has provided the following information for inclusion in this Official Statement. RBCCM is a full-service financial institution engaged in various activities that may include securities trading, commercial and investment banking, municipal advisory, brokerage, and asset management. In the ordinary course of business, RBCCM may actively trade debt and, if applicable, equity securities (or related derivative securities) and provide financial instruments (which may include bank loans, credit support or interest rate swaps). RBCCM may engage in transactions for its own accounts involving the securities and instruments made the subject of this securities offering or other offerings of the City. RBCCM may also communicate independent investment recommendations, market color or trading ideas and publish independent research views in respect of this securities offering or other offerings of the City. RBCCM may make a market in credit default swaps with respect to municipal securities in the future.

MISCELLANEOUS

References are made herein to certain laws, ordinances, documents, agreements and reports which are brief summaries thereof and which do not purport to be complete or definitive. Reference is made to such documents and reports for full and complete statements of the content thereof.

Any statement in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the City and the purchasers or owners of any of the Bonds.

OFFICIAL STATEMENT CERTIFICATION

As of the date hereof, to my knowledge and belief, this Official Statement is true, complete and correct in all material respects, and does not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made herein, in light of the circumstances under which they are made, not misleading.

The preparation of this Official Statement and its distribution has been authorized by the City Council of the City of Santa Fe. The Official Statement is hereby duly approved by the Council as of the date on the cover page hereof.

CITY OF SANTA FE, NEW MEXICO

By: _____
Alan Webber, Mayor

APPENDIX A

**EXCERPTS FROM AUDITED FINANCIAL STATEMENTS OF
THE CITY OF SANTA FE, NEW MEXICO
FOR THE YEAR ENDED JUNE 30, 2030**

The City has not requested the consent CliftonLarsonAllen LLP, which performed the audit of the City's financial statements, to the inclusion of the audit report and excerpts thereof in this Official Statement, and the auditor has not conducted a post-audit review of those financial statements.

APPENDIX B

FORM OF BOND COUNSEL OPINION

_____, 2032

City of Santa Fe
Santa Fe, New Mexico

\$ _____
City of Santa Fe, New Mexico
Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds
Series 20121

Ladies and Gentlemen:

We have acted as bond counsel to the City of Santa Fe, New Mexico (the “City”) in connection with the issuance and sale of its \$ _____ Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021 (the “Bonds”). The Bonds are issued pursuant to the Constitution and laws of the State of New Mexico (the “State”) and Ordinance No. 2021-____, adopted on July 28, 2021, as supplemented by the Pricing Certificate executed and delivered on _____, 2021 (as supplemented, the “Bond Ordinance”). Except as expressly defined herein, capitalized terms used herein have the same meanings as such terms have in the Bond Ordinance.

We have examined the laws of the State and the United States of America relevant to the opinions herein, and other proceedings and documents relevant to the issuance by the City of the Bonds. As to the questions of fact material to our opinion, we have relied upon representations of the City contained in the certified proceedings and other certifications furnished to us, without undertaking to verify the same by independent investigation.

Based upon the foregoing, and subject to the assumptions and qualifications set forth below, we are of the opinion that, under existing law on the date of this opinion:

1. The Bonds are valid and binding special, limited obligations of the City under and in accordance with the Bond Ordinance.
2. The Bond Ordinance has been duly authorized, executed and delivered by the City and the provisions of the Bond Ordinance are valid and binding on the City.
3. The Bonds are payable as to principal and interest solely from, and are secured by a pledge (but not an exclusive pledge) of Pledged Revenues of the City, as more fully described in the Bond Ordinance. The owners of the Bonds have no right to have taxes levied by the City for the payment of principal of or interest on the Bonds and the Bonds do not represent or constitute a debt or pledge of, or a charge against, the general credit of the City.
4. The Bond Ordinance creates the lien on the Pledged Revenues that it purports to create.
5. Under existing laws, regulations, rulings and judicial decisions, interest on the Bonds is excludable from gross income for federal income tax purposes. We are also of the opinion that interest on the Bonds is not an item of tax preference for purposes of calculating the alternative minimum tax imposed on individuals under provisions contained in the Internal Revenue Code of 1986, as amended (the “Code”).

Although we are of the opinion that interest on the Bonds is excludable from gross income for federal income tax purposes, the accrual or receipt of interest on the Bonds may otherwise affect the federal income tax liability of the recipient. The extent of these other tax consequences will depend upon the recipient's particular tax status or other items of income or deduction. We express no opinion regarding any such consequences.

6. The Bonds and the income from the Bonds are exempt from all taxation by the State or any political subdivision of the State.

The opinions set forth above in paragraph 5 are subject to continuing compliance by the City with covenants regarding federal tax law contained in the proceedings and other documents relevant to the issuance by the City of the Bonds. Failure to comply with these covenants may result in interest on the Bonds being included in gross income retroactive to their date of issuance.

The opinions expressed herein are based upon existing law as of the date of issuance and delivery of the Bonds. We express no opinion as of any date subsequent hereto, and our engagement with respect to the Bonds has concluded with their issuance. We disclaim any obligation to update this opinion.

The obligations of the City related to the Bonds are subject to the reasonable exercise in the future by the State and its governmental bodies of the police power inherent in the sovereignty of the State and to the exercise by the United States of the powers (including bankruptcy powers) delegated to it by the United States Constitution. The obligations of the City and the security provided therefor, as contained in the Bond Ordinance, may be subject to general principles of equity which permit the exercise of judicial discretion and are subject to the provisions of applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect.

The foregoing opinions represent our legal judgment based upon a review of existing legal authorities as of the date of issuance and delivery of the Bonds that we deem relevant to render such opinions and are not a guarantee of result. We express no opinion with respect to any pending legislation.

As bond counsel, we are passing upon only those matters set forth in this opinion and are not passing upon the accuracy or completeness of any statement made in connection with any sale of the Bonds or upon any tax consequences arising from the receipt or accrual of interest on, or the ownership of, the Bonds except those specifically addressed in Paragraphs 5 and 6 above.

Respectfully submitted,

APPENDIX C

DEFINITIONS OF CERTAIN TERMS IN THE BOND ORDINANCE

Definitions. The terms in this section are defined for all purposes of the Ordinance and of any ordinance amendatory or supplemental, or relating, and of any instrument or document appertaining, except where the context by clear implication otherwise requires, shall have the following meanings:

“Act” means the general laws of the State, including Sections 3-31-1 through 3-31-12 NMSA 1978, as amended, and enactments of the Governing Body relating to the issuance of the Bonds, including this Ordinance.

“Authorized Officer” means the following officers of the City: Mayor, City Manager, City Finance Director, or other officer of the City when designated by a certificate signed by the Mayor of the City from time to time, a certified copy of which shall be delivered to the Paying Agent and the Registrar.

“Bond Counsel” means an attorney or firm of attorneys nationally recognized for expertise in the area of municipal bonds and the exemption of interest on municipal bonds from federal income taxation.

“Bond Purchase Agreement” means the bond purchase agreement between the City and the Underwriters in connection with the negotiated sale of the Bonds, the form of which has been presented to the Governing Body in connection with the Bond Ordinance. been presented to the Governing Body in connection with the Bond Ordinance.

“Bonds”, “2021 Bonds” or “Series 2021 Bonds” means the “City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021”, which are authorized by the Bond Ordinance.

“Business Day” means any day other than (i) a Saturday or Sunday, (ii) any day on which the following offices are authorized or required to remain closed: offices of the City and of banks located in the cities in which the principal offices of the Paying Agent and Registrar are located or (iii) a day on which the New York Stock Exchange is closed.

“City,” “Municipal,” or “Municipality” means the municipal corporation and body corporate and politic known as the City of Santa Fe, Santa Fe County, New Mexico.

“Continuing Disclosure Undertaking” means the continuing disclosure undertaking with respect to the Bonds to be executed on the date of issuance and delivery of the Bonds to the Underwriters, the form of which is included in the Preliminary Official Statement approved pursuant to the Bond Ordinance.

“Costs of Issuance” means all costs relating to issuance of the Bonds, including, without limitation, costs of advertising and publication, costs of preparing the Bonds, fees and expenses of the financial advisor, bond counsel, the Paying Agent, the Registrar, the rating fees and other reasonable and necessary fees and costs, including applicable gross receipts taxes, related to the issuance of the Bonds.

“Credit Facility” means a letter of credit, standby bond purchase agreement, line of credit, bond insurance policy or reserve account insurance policy, guaranty or similar agreement provided by a bank, insurer or other provider of a Credit Facility rated, at the time the Credit Facility is provided, “A” or better by Fitch and S&P (if such rating agencies are then rating the Bonds), including any substitute therefor, to provide support to pay the purchase price of, or the payment of the principal of and interest on, Obligations.

“Cross-over Refunding Bonds” means bonds or obligations issued for the purpose of refunding Obligations if the proceeds thereof are irrevocably deposited in escrow to secure repayment on an applicable redemption date or maturity date of the principal of and redemption premium on the related Obligations being refunded and the earnings on such escrow are required to be used to pay interest on the Cross-over Refunding Bonds.

“Debt Service Requirements” for any period means the sum of: (i) the amount required to pay the interest, or to make reimbursements for payments of interest, becoming due on the applicable Obligations during such period; plus (ii) the amount required to pay the principal or accreted value, or to make reimbursements for the payment of principal or accreted value, becoming due on the applicable Obligations during that period, whether at maturity, an accretion term date or upon mandatory sinking fund redemption dates, plus (iii) any net periodic payments on a notional amount required to be made by the City pursuant to a Qualified Exchange Agreement minus (iv) any net periodic payments on a notional amount to be received by the City pursuant to a Qualified Exchange Agreement.

(a) No payments required on the applicable Obligations shall be included in any computation of Debt Service Requirements for any computation period prior to the maturity or otherwise certain due dates thereof which may occur because of the exercise of an option by the City, or which may otherwise become due by reason of any other circumstance or contingency, including acceleration, which constitute other than regularly scheduled payments of principal, accreted value, interest or other regularly scheduled payments on the applicable Obligations.

(b) Debt Service Requirements required to be made pursuant to a Qualified Exchange Agreement shall be based upon the actual amount required to be paid by the City, if any, to the Qualified Counterparty. In determining that amount, any payments required to be made by either party to the Qualified Exchange Agreement at a Variable Exchange Rate shall be computed, in determining the obligation of the City under the Qualified Exchange Agreement, using the procedures set forth in the applicable sections of this Ordinance.

(c) The computation of interest for the purposes of this definition shall be made without considering the interest rate payable pursuant to a Credit Facility, unless, at the time of computation of Debt Service Requirements, payments on Obligations are owed to, or Obligations are owned or held by, the provider of a Credit Facility pursuant to the provisions of that Credit Facility.

(d) The accreted value of capital appreciation bonds shall be included in the calculation of interest and principal only for the applicable year during which the accreted value becomes payable.

(e) In any computation of Debt Service Requirements relating to the issuance of additional Parity Obligations:

(1) There shall be deducted from that computation (i) amounts on deposit in an escrow account related to an issue of Cross-over Refunding Bonds and (ii) proceeds of a series of Obligations deposited to the credit of an account for the payment of capitalized interest on Obligations included as part of the computation during the applicable period.

(2) There may be made the adjustment to the Debt Service Requirements applicable to Bond Anticipation Notes described in Paragraph E of Sections 21 and 23 of the Ordinance.

(f) Except as provided in Paragraph F of Section 21, the purchase or tender price of Put Obligations resulting from the optional or mandatory tender or presentment for purchase of those Put Obligations shall not be included in any computation of Debt Service Requirements.

“Depository” means The Depository Trust Company, New York, New York, or such other securities depository as may be designated by an officer of the City.

“Environmental Services Gross Receipts Tax” means the environmental services gross receipts tax imposed pursuant to Section 7-19D-10 NMSA 1978 by the Environmental Services Gross Receipts Tax Ordinance on persons engaging in business in the City in the amount of 1/16th of one percent (0.0625%) of the gross receipts of such persons.

“Environmental Services Gross Receipts Tax Ordinance” means City Ordinance No. 1993-20 imposing the Environmental Services Gross Receipts Tax, as amended.

“Environmental Services Gross Receipts Tax Revenue Fund” means the “City of Santa Fe, New Mexico Environmental Services Gross Receipts Tax Revenue Fund,” maintained by the City and continued in Section 17 of this Ordinance, into which the City shall deposit the Environmental Services Gross Receipts Tax Revenues.

“Environmental Services Gross Receipts Tax Revenues” means the environmental services gross receipts tax revenues received by the City pursuant to Section 7-19D-10 NMSA 1978 and the Environmental Services Gross Receipt Tax Ordinance.

“Exchange Act” means Section 6-18-8.1 NMSA 1978, as amended and supplemented.

“Exchange Termination Payment” means the net amount payable pursuant to a Qualified Exchange Agreement by the City or a Qualified Counterparty to compensate the other party for any losses and costs that such other party may incur as a result of the early termination of the obligations, in whole or in part, of the parties under such Qualified Exchange Agreement.

“Federal Securities” means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

“Fiscal Year” for the purposes of this Ordinance means the twelve months commencing on the first day of July of any calendar year and ending on the last day of June of the next calendar year; but it may mean any other 12-month period which the City hereafter may establish.

“Fitch” means Fitch Ratings Group, its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“Fixed Exchange Rate” means a fixed rate of interest payable by the City or a Qualified Counterparty pursuant to a Qualified Exchange Agreement.

“Governing Body” means the members of the governing body designated as councilors who, together with the mayor, are the governing body of the City.

“Government Obligations” means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America or certificates or receipts established by the United States Government or its agencies or instrumentalities representing direct

ownership of future interests or principal payments on direct obligations of, or obligations fully guaranteed by, the United States of America or any of its agencies or instrumentalities the obligations of which are backed by the full faith and credit of the United States.

“Historic Test Period” means any twelve consecutive calendar months designated by an Authorized Officer from time to time out of the eighteen-calendar months next preceding the date of adoption of the City ordinance authorizing the issuance of additional Obligations without regard to any resolution or ordinance supplementing or amending the authorizing ordinance.

“Improvement Project” means constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to public buildings and facilities, or purchasing or improving any ground relating to, or any combination of the foregoing purposes, and reconstructing, resurfacing, maintaining, acquiring rights of way, repairing and otherwise improving municipal alleys, streets, public roads and bridges or any combination of the foregoing purposes and paying the costs of issuance of the Bonds.

“Independent Accountant” means (A) an accountant employed by the State of New Mexico and under supervision of the State Auditor of the State of New Mexico, or (B) any registered or certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State of New Mexico, appointed and paid by the City, who (1) is, in fact, independent and not under the domination of the City, (2) does not have any substantial interest, direct or indirect, with the City, and (3) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

“Infrastructure Gross Receipts Tax” means the infrastructure gross receipts tax imposed pursuant to Section 7-19D-11 NMSA 1978 by the Infrastructure Gross Receipts Tax Ordinance on persons engaged in business in the City in an amount of 1/16th of one percent (0.0625%) of the gross receipts of such persons.

“Infrastructure Gross Receipts Tax Ordinance” means City Ordinance No. 1993-21 imposing the Infrastructure Gross Receipts Tax, as amended.

“Infrastructure Gross Receipts Tax Revenue Fund” means the “City of Santa Fe Infrastructure Gross Receipts Tax Revenue Fund” maintained by the City and continued in Section 17 of the Ordinance, into which the City shall deposit the Infrastructure Gross Receipts Tax Revenues.

“Infrastructure Gross Receipts Tax Revenues” means the infrastructure gross receipts tax revenues received by the City pursuant to Section 7-19D-11 NMSA 1978 and the Infrastructure Gross Receipts Tax Ordinance.

“Insured Bank” means any federally or state-chartered savings and loan association or federally or state-chartered commercial bank, the deposits of which are insured by the Federal Deposit Insurance Corporation and which has, or is the lead bank of a parent holding company which has (i) unsecured, uninsured and unguaranteed obligations which are rated AA or better by Fitch and S&P or (ii) combined capital, surplus and undivided profits of not less than \$10,000,000.

“Moody’s” means Moody’s Investors Service, its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“Obligations” means bonds, notes or any other instrument which evidences a borrowing or other obligation of the City, including Qualified Exchange Agreements, secured by Pledged Gross Receipts Tax

Revenues, issued or incurred for any purpose permitted by the Act or the Exchange Act, as amended from time to time.

“One-Half Percent Municipal Gross Receipts Tax Ordinance” means City of Santa Fe Ordinance No. 1981-45 imposing a one-half of one percent municipal gross receipts tax.

“One-Half Percent Municipal Gross Receipts Tax Revenue Fund” means the “City of Santa Fe, New Mexico One-Half Percent Municipal Gross Receipts Tax Revenue Fund” maintained by the City and continued in Section 17 of this Ordinance, into which the City shall deposit the One-Half Percent Municipal Gross Receipts Tax Revenues.

“One-Half Percent Municipal Gross Receipts Tax Revenues” means those revenues received by the City pursuant to the Municipal Local Option Gross Receipts Taxes Act, Sections 7-19D-1 through 7-19D-12 NMSA 1978, and the One-Half Percent Municipal Gross Receipts Tax Ordinance.

“Ordinance” means City Ordinance 2018-25 as amended or supplemented from time to time.

“Parity Subordinate Lien Gross Receipts Tax Obligations” or “Parity Subordinate Obligations” means the Bonds, the Series 2012B Bonds, the Series 2013B Bonds, the Series 2016C Bonds, and the Series 2016D Bonds, the Series 2017 Taxable Bonds, The Series 2018 Gasoline Tax/Subordinate Lien GRT Bonds, the 2019 Finance Authority Refunding Loan, the 2019 Finance Authority Parking Improvements Loan, any scheduled periodic payments (but not Exchange Termination Payments) required to be made by the City pursuant to a Qualified Exchange Agreement, and any other Obligations hereafter issued or incurred payable from the Pledged Gross Receipts Tax Revenues and issued with a lien on the Pledged Gross Receipts Tax Revenues on parity with the lien thereon of the Bonds.

“Paying Agent” means BOKF, NA, as agent for the City for the payment of the Bonds, the interest thereon, and any successor.

“Permitted Investments” means any of the following which at the time of such investment are legal investments for the City pursuant to adopted City investment policies and the laws of the State:

- (a) Government Obligations;
- (b) Obligations of, or obligations guaranteed as to principal and interest by any agency or instrumentality of the United States which are backed by the full faith and credit of the United States, including, but not limited to: General Services Administration--participation certificates; Government National Mortgage Association (GNMA)--GNMA guaranteed mortgage-backed securities and GNMA guaranteed participation certificates; U.S. Department of Housing & Urban Development--local authority bonds; and U.S. Export-Import Bank--all fully guaranteed obligations;
- (c) Obligations of the following government-sponsored agencies: Federal Home Loan Mortgage Corporation--participation certificates and senior debt obligations; Farm Credit System--consolidated system-wide bonds and notes; Federal Home Loan Banks--consolidated debt obligations; Federal National Mortgage Association--senior debt obligations and mortgage-backed securities (excluding stripped mortgage securities which are valued greater than par on the portion of unpaid principal); Student Loan Marketing Association--senior debt obligations (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date) and letter of credit backed issues; Financing Corporation--debt obligations; and Resolution Funding Corporation--debt obligations;
- (d) Bank time deposits evidenced by certificates of deposit and bankers acceptances issued by an Insured Bank, provided that such time deposits and bankers' acceptances (1) do not exceed at

any one time in the aggregate five percent (5%) of the combined total of the capital, surplus and undivided profits of such Insured Bank, or (2) are secured by obligations described in paragraphs (a), (b), (c) and (h) of this definition which obligations at all times have a market value (exclusive of accrued interest) at least equal to 102% of such time deposits so secured;

(e) Obligations, other than specified private activity bonds (as defined in Section 57(a)(5)(C) of the Internal Revenue Code, as amended (the "Tax Code")), the interest on which is excluded from gross income of the recipient for federal income tax purposes and any other instrument which does not constitute "investment property" under Section 148 of the Tax Code (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date), as amended from time to time, which is rated in the highest major Rating Category by S&P and Fitch (if such rating agency is then rating the Bonds);

(f) Money market instruments and other securities of commercial banks, broker-dealers or recognized financial institutions, which securities or instruments are rated in the highest Rating Category by S&P and Fitch, (if such rating agency is then rating the Bonds), or which securities are guaranteed by a person or entity whose long-term debt obligations are rated in the highest Rating Category by S&P and Fitch (if such rating agency is then rating the Bonds) including, without limitation, securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the provisions or 15 U.S.C. Sections 80(a)-1 et. seq., which invest only in, or whose securities are secured only by, obligations of the type set forth in paragraphs (a), (b), (c) and (h) of this definition;

(g) Stripped Securities: (1) U.S. Treasury STRIPS and (2) REFCORP STRIPS (stripped by Federal Reserve Bank of New York);

(h) Repurchase agreements involving the purchase and sale of, and guaranteed investment contracts, the par value of which is collateralized by a perfected first pledge of, or security interest in, or the payments of which are unconditionally guaranteed by, securities described in parts (a), (b), (c) and (h) of this definition, which collateral is held by the City, or for the benefit of the City, by a party other than the provider of the guaranteed investment contract or repurchase agreement, with a collateralized value of at least 102% of the par value of such repurchase agreement or guaranteed investment contract or 102% of the market value thereof, valued at intervals of no less than monthly and which collateral is not subject to any other pledge or security interest; and

(i) Such other investments as are now or may be hereafter authorized as legal investments for the City by the legislature of the State under Section 6-10-10 NMSA 1978, or a similar statutory provision applicable to the City, provided that such investment is rated, at the time of purchase, "A" or better by Fitch and "A" or better by S&P (if such rating agency is then rating the Bonds).

"Pledged Gross Receipts Tax Revenues" means, collectively, (1) the State-Shared Gross Receipts Tax Revenues; (2) the One-Half Percent Municipal Gross Receipts Tax Revenues; (3) the Infrastructure Gross Receipts Tax Revenues; (4) the portion of the gross receipts tax distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, which represents the amount of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues, and Infrastructure Gross Receipts Tax Revenues that would have been remitted to the City but for the deductions provided by Section 7-9-92 and 7-9-93 NMSA 1978 and any similar distributions made to the City in lieu of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues and Infrastructure Gross Receipts Tax Revenues pursuant to law; and (5) any other gross receipts tax revenues received by the City, whether from distribution by the State or pursuant to gross receipts taxes imposed by the City, and hereafter (i.e. after the adoption of this Ordinance) pledged to the payment of the Bonds by affirmative act

of the Governing Body.

“Pledged Revenues” means the Pledged Gross Receipts Tax Revenues.

“Preliminary Official Statement” and “Official Statement” means the disclosure documents utilized by the Purchaser in connection with the offer and sale of the Bonds to investors.

“Pricing Certificate” means the certificate setting forth the maturity dates, principal amounts, prices, redemption features and other final terms of the Bonds.

“Purchaser” means the Underwriters.

“Put Obligations” means any Obligations which have put or similar features requiring the City to purchase such Obligations upon notice from the owners thereof.

“Qualified Counterparty” means, with respect to a Qualified Exchange Agreement, any party whose senior long term debt obligations, or whose obligations under a Qualified Exchange Agreement are guaranteed by a party whose senior long term debt obligations, are rated (at the time of execution of the Qualified Exchange Agreement) in one of the top two Rating Categories by Fitch and S&P.

“Qualified Exchange Agreement” means any financial arrangement between the City and a Qualified Counterparty which satisfies the requirements of the Exchange Act at the time the agreement is entered into.

“Rating Category” means a generic securities rating category, without regard, in the case of a long-term rating category, to any refinement or gradation of such long-term rating category by a numerical modifier or otherwise.

“Refunded Bonds” means the Refunded Series 2010B Bonds and the Refunded Series 2012A Bonds.

“Refunded Series 2010B Bonds” means the Series 2010B Bonds maturing on and after June 1, 2022.

“Refunded Series 2012A Bonds” means the Series 2010A Bonds maturing on and after June 1, 2022.

“Refunding Account” means the “City of Santa Fe, New Mexico Senior Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021, Refunding Project Account” established in Section 17 hereof and to be maintained by the City.

“Refunding Project” means (1) refunding, discharging and paying the Refunded Series 2010B Bonds, including interest accrued to the date on which the Refunded Series 2010B Bonds are refunded, (2) refunding, discharging and paying the Refunded Series 2012A Bonds, including interest accrued to the date on which the Refunded Series 2012A Bonds are refunded, and (3) paying the Costs of Issuance allocable to the Refunding Project.

“Registrar” means BOKF, N.A., as registrar and transfer agent for the Bonds, and any successor.

“Regular Record Date” means the 15th day of the calendar month (whether or not a business day) preceding each regularly scheduled interest payment date on the Bonds.

“Related Documents” means the Pricing Certificate, the Bond Purchase Agreement, the Continuing Disclosure Undertaking, the Preliminary Official Statement, the Official Statement, and any other document or agreement containing an obligation of the City as may be required in connection with the issuance of the

Bonds.

“S&P” means S&P Global, its successors and their assigns, and, if such entity is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“Sale Price” means the amount paid by the Purchaser for its purchase of the Bonds, set forth in the Pricing Certificate and the Bond Purchase Agreement.

“Series 2021 Bond Fund” means the “City of Santa Fe Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021, Bond Fund,” established in Section 17 of the Bond Ordinance.

“Series Date” means the date of issuance and delivery of the Bonds to the Purchaser.

“Special Record Date” means a special date fixed to determine the names and addresses of registered owners of the Bonds for purposes of paying interest on a special interest payment date for the payment of defaulted interest thereon, all as further provided in Section 5B of the Ordinance.

“State-Shared Gross Receipts Tax Revenues” means the revenues distributed to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Sections 7-1-6 and 7-1-6.4 NMSA 1978, at the rate authorized (currently 1.225% of the gross receipts of persons doing business within the City) from the proceeds of a state-wide gross receipts tax imposed pursuant to Chapter 7, Article 9, NMSA 1978.

“State-Shared Gross Receipts Tax Revenue Fund” means the “City of Santa Fe, New Mexico State-Shared Gross Receipts Tax Revenue Fund” maintained by the City and continued in Section 17 of the Ordinance, into which the City shall deposit the State-Shared Gross Receipts Tax Revenues.

“Superior Lien Gross Receipts Tax Obligations”, “Superior Tax Obligations” or “Superior Obligations” means the Series 2013A Bonds, the Series 2014 Bonds, the Series 2016A Bonds, and the Series 2016B Bonds, the Series 2018A Bonds and any other Obligations hereafter issued or incurred payable from the Pledged Gross Receipts Tax Revenues and issued with a lien on the Pledged Gross Receipts Tax Revenues superior to the lien thereon of the Bonds.

“Underwriters” means _____, as senior manager, and _____, as co-manager, the original purchasers of the Bonds, and their successors and assigns.

“Variable Exchange Rate” means a Variable Interest Rate payable by the City or a Qualified Counterparty pursuant to a Qualified Exchange Agreement.

“Variable Interest Rate” means an interest rate which varies or fluctuates from time to time.

Any provision of the Ordinance regarding a Qualified Counterparty shall be deemed to be of no effect if no Qualified Exchange Agreement is in effect or if a Qualified Counterparty is in default in its obligations under a Qualified Exchange Agreement and no amount is due and owing under a Qualified Exchange Agreement.

APPENDIX D

FORM OF CONTINUING DISCLOSURE UNDERTAKING

Section 1. Recitals. This Continuing Disclosure Undertaking (this “Undertaking”) is executed and delivered by the City of Santa Fe, New Mexico (the “City”) in connection with the issuance by the City of \$_____ City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021(the “Bonds”). The Bonds are being issued pursuant to the Ordinance No. 2021-__ adopted by the City on July 28, 2021 (the “Ordinance”). In order to allow the Underwriters of the Bonds to comply with the Rule (defined below), the City is required to make certain continuing disclosure undertakings for the benefit of owners (including beneficial owners) of the Bonds (the “Owners”). This Undertaking is intended to satisfy the requirements of the Rule.

Section 2. Definitions.

(a) “Annual Financial Information” means the financial information (which will be based on financial statements prepared in accordance with generally accepted accounting principles, as in effect from time to time (“GAAP”), for governmental units as prescribed by the Governmental Accounting Standards Board (“GASB”) or operating date with respect to the City) delivered at least annually pursuant to Sections 3(a) and 3(b), consisting of information of the type included in the following headings of the Official Statement entitled: “INFORMATION CONCERNING GROSS RECEIPTS TAXES AND REVENUES – Historical Pledged Gross Receipts Tax Revenues and Coverages –Combined Pledged Gross Receipts Tax Revenues Report.” Annual Financial Information may, but is not required to, include Audited Financial Statements.

(b) “Audited Financial Statements” means the City’s annual financial statements, prepared in accordance with GAAP for governmental units as prescribed from time to time by GASB, which financial statements have been audited by such auditor as may then be required or permitted by the laws of the State.

(c) “EMMA” means the MSRB’s Electronic Municipal Market Access system located on its website at emma.msrb.org.

(d) “Event Information” means the information delivered pursuant to Section 3(d).

(e) “MSRB” means the Municipal Securities Rulemaking Board. The current address of the MSRB is 1900 Duke Street, Suite 600, Alexandria, Virginia 22314, telephone (703) 797-6600, fax (703) 797-6708.

(f) “Official Statement” means the Official Statement delivered in connection with the original issue and sale of the Bonds.

(g) “Report Date” means April 1 of each year, beginning in 2022.

(h) “Rule” means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended (17 C.F.R. Part 240, § 240.15c2-12), as the same may be amended from time to time.

(i) “SEC” means the United States Securities and Exchange Commission.

(j) “State” means the State of New Mexico.

Section 3. Provision of Annual Information and Reporting of Event Information.

(a) The City, or its designated agent, will provide the Annual Financial Information for the preceding fiscal year to EMMA on or before each Report Date while the Bonds are outstanding.

(b) If Audited Financial Statements are not provided as a part of the Annual Financial Information, the City, or its designated agent, will provide unaudited financial statements as part of the Annual Financial Information. In such cases, Audited Financial Statements will be provided to EMMA when and if available.

(c) The City, or its designated agent, may provide Annual Financial Information by specific reference to other documents, including information reports and official statements relating to other debt issues of the City, which have been submitted to EMMA or filed with the SEC; provided, however, that if the document so referenced is a “final official statement” within the meaning of the Rule, such final official statement must also be available from the MSRB.

(d) The City, or its designated agent, will provide, to EMMA, notice of any of the following events with respect to the Bonds in a timely manner not in excess of ten (10) business days after the occurrence of the event:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (vii) modifications to rights of security holders, if material;
- (viii) bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution or sale of property securing repayment of the securities, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or a similar event with respect to the City or an obligated person;

(xiii) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(xiv) appointment of a successor or additional trustee, or a change of name of a trustee, if material;

(xv) the incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and

(xvi) a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

(e) The City, or its designated agent, will provide to EMMA notice in a timely manner of the City's failure to timely provide the Annual Financial Information as specified in Sections 3(a) and 3(b) herein.

Section 4. Method of Transmission. Unless otherwise required by law and subject to technical and economic feasibility, the City, or its designated agent, will employ such methods of electronic or physical information transmission as are requested or recommended from time to time by EMMA, the MSRB and the SEC.

Section 5. Enforcement. The obligations of the City under this Undertaking are for the benefit of the Owners. Each Owner is authorized to take action to seek specific performance by court order to compel the City to comply with its obligations under this Undertaking, which action will be the exclusive remedy available to it or any other Owner. The City's breach of its obligations under this Undertaking will not constitute an event of default under the Ordinance and none of the rights and remedies provided by the Ordinance will be available to the Owners with respect to such a breach.

Section 6. Term. The City's obligations under this Undertaking will be in effect from and after the issuance and delivery of the Bonds and will extend to the earliest of (i) the date all principal and interest on the Bonds have been paid or legally defeased pursuant to the terms of the Ordinance; (ii) the date on which the City is no longer an "obligated person" with respect to the Bonds within the meaning of the Rule; or (iii) the date on which those portions of the Rule which require this Undertaking are determined to be invalid or unenforceable by a court of competent jurisdiction in a non-appealable action, have been repealed retroactively or otherwise do not apply to the Bonds.

Section 7. Amendments. The City may amend this Undertaking from time to time, without the consent of any Owner upon the City's receipt of an opinion of independent counsel experienced in federal securities laws to the effect that such amendment:

(a) is made in connection with a change in circumstances that arises from a change in legal requirements, a change in law, a change in the identity, nature or status of the City or a change in the availability or character of financial information for the City;

(b) this Undertaking, as amended, would have complied with the Rule at the time of the initial issue and sale of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any changes in circumstances; and

(c) the amendment does not materially impair the interests of the Owners.

Any Annual Financial Information containing amended operating data or financial information will explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided. If an amendment changes the accounting principles to be followed in preparing financial statements, the Annual Financial Information and Audited Financial Statements for the year in which the change is made will present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Section 8. Beneficiaries. This Undertaking binds and inures to the sole benefit of the City and the Owners, and creates no rights in any other person or entity.

Section 9. Special Funds. This Undertaking is subject to the availability of necessary funds from annual Pledged Revenues (as defined by the Ordinance).

Section 10. Governing Law. This Undertaking is governed by and is to be construed in accordance with the law of the State.

Date: _____, 2021

CITY OF SANTA FE, NEW MEXICO

By: _____
Alan Webber, Mayor

REFUNDING ANALYSIS
Santa Fe, New Mexico
Refund Series 2010B and 2012A
Preliminary / Subject to Change

Year	Refunded Debt Service	New Refunding Debt Service	Savings
2022	\$ 3,533,425	\$ 3,530,333	\$ 3,092
2023	3,529,825	3,190,250	339,575
2024	3,531,875	3,197,250	334,625
2025	3,101,925	2,767,250	334,675
2026	3,101,850	2,766,750	335,100
	<u>\$ 16,798,900</u>	<u>\$ 15,451,833</u>	<u>\$ 1,347,067</u>

Refunded Series:

Refunded Principal	\$ 14,745,000
Average Rate of Refunded Bonds	4.64%
True Interest Cost (TIC) on Refunding Bonds	0.92%
Net Present Value Savings	\$ 1,296,270

Percentage Savings of Refunded Bonds = 8.791%

SUMMARY OF REFUNDED BONDS
Santa Fe, New Mexico
Refund Series 2010B and 2012A
Preliminary / Subject to Change

Series 2010B

Date	Par Amount	Rate	Call Date
6/1/2022	\$ 890,000	5.000%	6/1/2020
6/1/2023	935,000	5.000%	6/1/2020
6/1/2024	980,000	4.000%	6/1/2020
6/1/2025	590,000	4.000%	6/1/2020
6/1/2026	615,000	4.000%	6/1/2020
	<u>\$ 4,010,000</u>		

Series 2012A

Date	Par Amount	Rate	Call Date
6/1/2022	\$ 470,000	3.000%	6/1/2021
6/1/2022	1,500,000	4.000%	6/1/2021
6/1/2023	540,000	3.000%	6/1/2021
6/1/2023	1,500,000	5.000%	6/1/2021
6/1/2024	50,000	3.000%	6/1/2021
6/1/2024	2,085,000	5.000%	6/1/2021
6/1/2025	30,000	3.250%	6/1/2021
6/1/2025	2,210,000	5.000%	6/1/2021
6/1/2026	350,000	3.500%	6/1/2021
6/1/2026	2,000,000	5.000%	6/1/2021
	<u>\$ 10,735,000</u>		

ACTION SHEET
/ITEM FROM FINANCE COMMITTEE MEETING OF 07/19/21
FOR CITY COUNCIL MEETING OF 07/28/21

a) CONSIDERATION OF BILL NO 2021-15. (Mayor Webber)
 An Ordinance Authorizing the Issuance and Sale of the City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2021 in an Aggregate Principal Amount not to Exceed \$14,745,000 for the Purpose of (1) Refunding, Discharging and Paying the City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2010B and Maturing On and After June 1, 2022; (2) Refunding, Discharging and Paying the City of Santa Fe, New Mexico Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2012A and Maturing On and After June 1, 2022; and (3) Paying Costs of Issuance of the Series 2021 Bonds; Calling for the Redemption of the Outstanding Series 2010B Bonds and Series 2012A Bonds; Providing that the Bonds Will be Payable and Collectible from Certain Gross Receipts Tax Revenues Distributed to the City; Approving the Selection of an Underwriter and Forms of a Preliminary Official Statement and a Paying Agent Registrar and Depositary Agent Agreement; Delegating Authority to the Mayor or, in the Mayor's Absence, the City Manager or Finance Director, to Approve the Final Principal Amount, Interest Rates and Other Details of the Bonds Within the Parameters Set Forth in this Authorizing Ordinance, and to Execute and Deliver a Bond Purchase Agreement for the Sale of the Bonds to the Underwriter; Proving for the Collection of Certain Gross Receipts Tax Revenues; Approving Certain Other Agreements and Documents in Connection with the Bonds; Ratifying Action Previously Taken in Connection with the Bonds; Repealing all Ordinances in Conflict Herewith; and Related Matters. (Mayor Webber) (Brad Fluetsch, Planning and Investment Officer: bjfluetsch@santafenm.gov, 955-6885)

Committee	Review:
Introduced:	06/30/21
Governing Body (request to publish):	07/14/21
Finance Committee:	07/19/21
Public Works and Utilities Committee:	07/26/21
Governing Body (public hearing):	08/11/21

FINANCE COMMITTEE ACTION:

Approved on Consent

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

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

01/13/21

**CITY OF SANTA FE
AMENDMENT No. 1 TO
PROFESSIONAL SERVICES AGREEMENT**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated July 8, 2020 (the "Agreement"), between the City of Santa Fe (the "City") and Santa Fe Civic Housing Authority (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 shall utilize funds for rehabilitation and maintenance costs associated with County Club Apartments, which contains 62-2 and 3 bedroom units currently housing a majority of renters earning less than 30% AMI.

B. Pursuant to Article 13 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. TERM AND EFFECTIVE DATE.

Article 3 of the Agreement is hereby deleted. A new Article 3 of the Agreement is inserted to extend the term of the Agreement, so that Article 3 reads in its entirety as follows:

This Agreement shall become effective when signed by the City. This Agreement shall terminate on June 30, 2022 unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

2. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of Santa Fe Professional Services Agreement as of the date signed by the City set forth below.

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

Date: _____

ATTEST:

KRISTINE BUSTOS MIHELICIC
CITY CLERK

CONTRACTOR:
SANTA FE CIVIC HOUSING AUTHORITY

By: 
ed romero (Jun 18, 2021 15:07 MDT)
ED ROMERO
EXECUTIVE DIRECTOR

CITY ATTORNEY'S OFFICE:
Marcos Martinez
Marcos Martinez (Jun 18, 2021 13:46 MDT)
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

MARY MCCOY
FINANCE DIRECTOR
2402750.510500
ORG/OBJ


AJH






Amendment - Country Club apts

Final Audit Report

2021-06-18

Created:	2021-06-18
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAbCgBza3iTqsosFnwfpJlftuyvTLiFwrP

"Amendment - Country Club apts" History

-  Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-06-18 - 8:59:31 PM GMT - IP address: 63.232.20.2
-  Document emailed to ed romero (edromero@sfcha.com) for signature
2021-06-18 - 8:59:48 PM GMT
-  Email viewed by ed romero (edromero@sfcha.com)
2021-06-18 - 9:06:36 PM GMT - IP address: 65.141.78.186
-  Document e-signed by ed romero (edromero@sfcha.com)
Signature Date: 2021-06-18 - 9:07:29 PM GMT - Time Source: server- IP address: 65.141.78.186
-  Agreement completed.
2021-06-18 - 9:07:29 PM GMT

CITY OF SANTA FE
AFFORDABLE HOUSING TRUST FUND (AHTF)
PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and Santa Fe Civic Housing Authority hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

A. Use AHTF funds for rehabilitation and maintenance costs associated with Country Club Apartments, which contains 62 – 2 and 3 bedroom units currently housing a majority of renters earning less than 30% AMI. Eligible rehabilitation activities may include:

1. Asphalt parking and driveway overlays;
2. Installation of accessible handicap parking spaces, van and car;
3. Roofing about parking spaces;
4. Landscape improvements, including refurbishing basketball court;
5. Installation of smoke detectors in proximity to bedroom spaces;
6. Replacement of door handle hardware to be compliant with ADA.

B. Follow procurement processes consistent with the state procurement code, including 3 bids for proposed scope of work.

C. Report to the City on a quarterly basis the use of funds, including project status updates.

D. Provide accurate and thorough recordkeeping copies on file for annual monitoring that

specifically demonstrates compliance with proposed affordability criteria.

E. Performance Measures.

1. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

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

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed, such compensation shall not exceed one hundred forty thousand dollars (\$140,000). The total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed (\$140,000). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the

City no later than thirty (30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

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

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on June 30, 2021 unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

A. **Termination.** This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the

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

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

5. **Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations

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

6. Status of Contractor.

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

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

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

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

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

13. Amendment.

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

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

14. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and

understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement,

Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

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

19. Professional Liability Insurance.

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

20. Other Insurance

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

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

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

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

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

21. Records and Financial Audit.

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

22. Indemnification.

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

23. 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.

24. 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.

25. 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.

26. Notices. shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City: Office of Affordable Housing
PO Box 909
Santa Fe, NM 87504-0909
rlcatanach@ci.santa-fenm.us

To the Contractor: Santa Fe Civic Housing Authority
664 Alta Vista St.
Santa Fe, NM 87505

27. Authority.

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

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

CITY OF SANTA FE:

AW

ALAN WEBBER
MAYOR

DATE: _____

ATTEST:

Yolanda Y. Vigil
YOLANDA Y. VIGIL, CITY CLERK
GB 07/08/20

CITY ATTORNEY'S OFFICE:

Marcos Martinez
MARCOS MARTINEZ (May 17, 2021)
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Mary McCoy

MARY MCCOY
FINANCE DIRECTOR

2402750.510500
Business Unit/Line Item

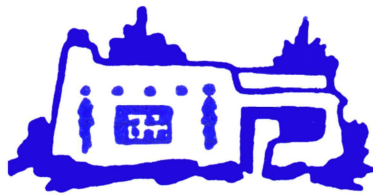
SANTA FE CIVIC HOUSING
AUTHORITY:

ed romero

ED ROMERO
EXECUTIVE DIRECTOR

DATE: _____

CRS# 01-505902-00-2
Registration # 67971



Santa Fe Civic Housing Authority

Serving the community since 1961

MEMO

TO: City of Santa Fe
FROM: David Martinez
DATE: June 18, 2021
SUBJECT: Country Club, AHTF Award 2020-2021, PO #22101111

This affordable housing project, constructed in 1964 consists of 62 units. This entire site is in need of upgrades but the essential infrastructure repairs are the most glaring need at this time, particularly the sewer line system that will require replacing and rerouting. We plan on this award money going toward asphalt and landscape improvements but we want to make sure the underground work is finished first, thus the request for an extension on expending the award funds. We anticipate invoicing for our 2020-2021 AHTF funds in the next 4 months.

Please let me know if you have any questions.

Thank you for your consideration,



Dave Martinez, Deputy Director



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Santa Fe Civic Housing Authority

Procurement Title: 20/15/P

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting OAH Staff Name Roberta Catanach/Alexandra Ladd

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES N/A

- Approved Procurement Checklist (by Purchasing)
- Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
- State Price Agreement
- RFP
- Evaluation Committee Report
- ITB
- Bib Tab
- Quotes (3 valid current quotes)
- Cooperative Agreement
- Sole Source Request and Determination Form
- Contractors Exempt Letter
- Purchasing Officers approval for exempt procurement
- BAR
- FIR
- Executed Contract, Agreement or Amendment
- Current Business Registration and CRS numbers on contract or agreement
- Summary of Contracts and Agreements form
- Certificate of Insurance
- All documentation presented to Committees
- Other:

Roberta Catanach Contract Administrator 06/17/2021

Department Rep Printed Name (attesting that all information included) Title Date

Jan Duraway

Purchasing Officer (attesting that all information is reviewed) Title Date

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



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3201905

Contractor: Santa Fe Civic Housing Authority

Description: **Agreement delivers funds for rehabilitation and maintenance costs associated with Country Club Apartments, which contains 62 units currently housing a majority of renters earning less than 30% AMI**

Contract Agreement Lease / Rent Amendment

Term Start Date: 07/01/2020 Term End Date: 06/30/2021

Approved by Council Date: 07/08/2020

Contract / Lease: Contract for \$140,000

Amendment # 1 to the Original Contract / Lease # 20-0324

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: 06/30/2022

Approved by Council Date: _____

Amendment is for: To extend term to 06/30/2022

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)

Original: \$140,000 to expire 06/30/2021

Amendment: To Extend term to 06/30/2022

3. **Procurement History: RFP #201/15/P**

Jan Duraway

Purchasing Officer Review: _____

Jun 30, 2021

Date: _____

Comment & Exceptions: Award from RFP

4. **Funding Source: 240**

Andy Hopkins

Andy Hopkins (Jun 30, 2021 17:37 MDT)

Budget Officer Approval: _____

Org / Object: 2402750.510500

Jun 30, 2021

Date: _____

Comment & Exceptions: _____

Staff Contact who completed this form: Roberta Catanach Phone # 505-955-6421

Email: rlcatanach@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

City of Santa Fe, New Mexico

memo

Date: July 2, 2021

To: Finance Committee – July 19, 2021
Quality of Life Committee – July 21, 2021
Public Works Committee – July 26, 2021
City Council – July 28, 2021

Via: Rich Brown, Community Development Director *Richard Brown*

From: Alexandra Ladd, Director, Office of Affordable Housing *Alexandra Ladd*
Alexandra Ladd (Jul 7, 2021 08:56 MDT)

Re. Amendment #1 to SFCHA – Country Club Apartments Rehabilitation

ACTION REQUESTED:

Approve amendment #1 to the Santa Fe Civic Housing Authority's (SFCHA) contract for Country Club Apartments rehabilitation project awarded through RFP# 20/15/P. The purpose of the amendment is to extend the term of performance through June 30, 2022 to allow extra time for project completion. The amount of compensation remains the same.

BACKGROUND

Affordable Housing Trust Funds (AHTF) are generated from development activity (developer fees, pre-inclusionary housing agreements), payoffs of City-held liens, and land sales from Tierra Contenta. When the funds reach a threshold balance, the City funds affordable housing projects and activities to benefit income-qualified grantees. Eligible housing activities are outlined in SFCC Chapter 26-3. Uses of funds are determined by the housing needs identified in the City's Five Year Strategic Housing Plan and regulated by the NM Mortgage Finance Authority for compliance with the NM Affordable Housing Act.

In April of 2021, the Governing Body approved allocating an additional amount of \$1,800,000 into the AHTF to provide direct support for affordable housing within the current fiscal year. This amount was added to the AHTF allocation for 2021-22 (\$1,200,000) for a total of \$3,000,000.

ITEM and ISSUE

The attached amendment extends the contract term through June 30, 2022. This amendment does NOT increase compensation but provides additional time for the SFCHA to complete the proposed scope of work. Delays were attributable to supply chain and labor shortage issues, as well as other projects having priority due to pandemic conditions. The funds are anticipated to be fully expended within 6 months of this extension.






1-Council_Packet_Memo_AHTF_SFCHA

Final Audit Report

2021-07-06

Created:	2021-07-06
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAU5_6NIqu6qTAFIjuap87hHjobyEV40Lv

"1-Council_Packet_Memo_AHTF_SFCHA" History

-  Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-07-06 - 7:35:42 PM GMT- IP address: 63.232.20.2
-  Document emailed to rich brown (rdbrown@santafenm.gov) for signature
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-  Email viewed by rich brown (rdbrown@santafenm.gov)
2021-07-06 - 9:01:07 PM GMT- IP address: 71.228.116.134
-  Document e-signed by rich brown (rdbrown@santafenm.gov)
Signature Date: 2021-07-06 - 9:01:23 PM GMT - Time Source: server- IP address: 71.228.116.134
-  Agreement completed.
2021-07-06 - 9:01:23 PM GMT






Memo - SF Civic Housing Authority

Final Audit Report

2021-07-07

Created:	2021-07-07
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAABAW1xXX5ocbcmu0TSAwKlwLI7_bVw2DuWa

"Memo - SF Civic Housing Authority" History

-  Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
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-  Email viewed by Alexandra Ladd (agladd@santafenm.gov)
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-  Document e-signed by Alexandra Ladd (agladd@santafenm.gov)
Signature Date: 2021-07-07 - 2:56:35 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.
2021-07-07 - 2:56:35 PM GMT



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/2/2021

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 Berger Briggs Insurance & Risk Solutions, Inc. An ISU Network Member 4333 Pan American Fwy NE, Suite A Albuquerque, NM 87107	CONTACT NAME: Barbara Stierwalt	
	PHONE (A/C, No, Ext): (505) 247-0444	FAX (A/C, No):
	E-MAIL ADDRESS: bstierwalt@bbirs.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Travelers Casualty Insurance Company of Americ	40282
INSURED Country Club Apartments LP Santa Fe Civic Housing Authority 664 Alta Vista St Santa Fe, NM 87505	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE		ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			680-4R86896A-20-22	11/1/2020	11/1/2021	EACH OCCURRENCE	\$ 1,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
								MED EXP (Any one person)	\$ Excluded
								PERSONAL & ADV INJURY	\$ 1,000,000
								GENERAL AGGREGATE	\$ 2,000,000
								PRODUCTS - COMP/OP AGG	\$ 2,000,000
A	<input checked="" type="checkbox"/>	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			680-4R86896A-20-22	11/1/2020	11/1/2021	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
								BODILY INJURY (Per person)	\$
								BODILY INJURY (Per accident)	\$
								PROPERTY DAMAGE (Per accident)	\$
									\$
		UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						EACH OCCURRENCE	\$
		DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>						AGGREGATE	\$
									\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				PER STATUTE	OTH-ER
								E.L. EACH ACCIDENT	\$
								E.L. DISEASE - EA EMPLOYEE	\$
								E.L. DISEASE - POLICY LIMIT	\$

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

SEE ATTACHED ACORD 101

CERTIFICATE HOLDER

CANCELLATION

City of Santa Fe PO Box 909 Santa Fe, NM 87504-0909	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

**ADDITIONAL REMARKS SCHEDULE**

AGENCY Berger Briggs Insurance & Risk Solutions, Inc. An ISU Network Member		NAMED INSURED Country Club Apartments LP Santa Fe Civic Housing Authority 664 Alta Vista St Santa Fe, NM 87505	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

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

Description of Operations/Locations/Vehicles:

The policy includes an additional insured and/or waiver of subrogation endorsement (or provision) that provides additional insured and/or waiver of subrogation status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. See forms attached.

POLICY NUMBER: 680-4R86896A-20-42

COMMERCIAL GENERAL LIABILITY
ISSUE DATE: 10/19/2020

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED-DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of person or organization:

CITY OF SANTA FE

**OFFICE OF AFFORDABLE HOUSING
500 MARKET STREET, SUITE 200
SANTA FE NM 87505**

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your acts or omissions.

CATANACH, ROBERTA L.

From: LUJAN, BARBARA J.
Sent: Wednesday, July 7, 2021 11:46 AM
To: CATANACH, ROBERTA L.
Cc: LOVATO, MELANIE Y.
Subject: RE: WC

Hi:

We are in the process of finalizing a RFP and have an extension for ninety days so it is ok to use the current one until the new one is sent.

Barbara
690-2854

From: CATANACH, ROBERTA L. <rlcatanach@santafenm.gov>
Sent: Wednesday, July 7, 2021 10:21 AM
To: LUJAN, BARBARA J. <bjlujan@santafenm.gov>
Subject: WC

Barbara,

You sent me this policy for SF Civic Housing Authority, but I just realized that it has expired. Can you please send me a current Certificate.

Thank you

Roberta Catanach
Office of Affordable Housing
500 Market Street, Ste 200
(505) 955-6421

From: LUJAN, BARBARA J. <bjlujan@santafenm.gov>
Sent: Wednesday, June 23, 2021 3:36 PM
To: CATANACH, ROBERTA L. <rlcatanach@santafenm.gov>
Subject: FW:

Hi,
Here you go.

Barbara
690-2854

From: WILLIAMS, BRIAN G. <bgwilliams@santafenm.gov>
Sent: Wednesday, June 23, 2021 3:17 PM
To: LUJAN, BARBARA J. <bjlujan@santafenm.gov>
Subject:

Brian Williams

Director

City of Santa Fe Emergency Management and Safety

bgwilliams@santafenm.gov

C: 505-469-1484



REQUEST FOR WAIVER OF INSURANCE

Date: 06/25/2021 Division/department: Office of Affordable Housing

Project manager: Alexandra Ladd Phone: 303-9868

Requested for: **Waiver of Professional Liability coverage**

- General liability Auto liability Professional liability
- Workers compensation (Mandatory unless sole proprietor) Other insurance

Scope of services: **Provide rehabilitation services for a minimum of 20 owner-occupied homes for households with incomes below 80% AMI. Maximum assistance per household is \$14,000**

Why the request for waiver: **This is a repair program, therefore they cannot purchase Professional Liability Coverage**

Division evaluation of risk:

What is the term and annual dollar amount of the contract: 1 Year term - \$90,000

- Is our standard contract being used: Yes No
- Was the contractor asked if they carry insurance: Yes No
- Is there construction/demolition: Yes No
- Is there potential for bodily injury or property damage: Yes No
- Are crowds or children likely to be involved: Yes No
- Will the contractor be working on site in the City: Yes No
- Is the contractor a professional (licensed, certified): Yes No
- Will the City rely on information to make future decisions: Yes No
- Could poor, non-performance or the product cause loss: Yes No
- Office of Risk Management recommendation: Yes No

Melanie Lovato

Insurance Waiver Approved Insurance Waiver Not Approved

Jarel LaPan Hill, City Manager

Date

**CITY OF SANTA FE
AMENDMENT No. 1 TO
PROFESSIONAL SERVICES AGREEMENT
ITEM #20-0372**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated July 29, 2020 (the "Agreement"), between the City of Santa Fe (the "City") and New Mexico Coalition to End Homelessness (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 shall utilize funds to implement the Homeless Early Intervention Project to provide financial assistance.

B. Pursuant to Article 13 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 WORK

Article 1, Section B of this Agreement is hereby deleted. A new Article 1, Section B of the Agreement is inserted so that Article 1, Section B reads in its entirety as follows:

B. Increase staffing capacity to administer the financial assistance provided through this contract. Reimbursement for additional staff will be documented through payroll reports and timesheets. This staff will be responsible for the following:

1) Work with partner agencies (including but not limited to Life Link, St. Elizabeth Shelter, Youth Shelters and Family Services and the Santa Fe Interfaith Shelter) to

identify households and individuals in need of assistance, with particular focus on those currently living in temporary situations, such as hotels and the Midtown Shelter.

2) Determine housing instability or risk of homelessness and document household's eligibility for assistance;

3) Approve payment to cover rent, deposits, utilities, and arrears directly to the utility company, landlord or services provider.

4) Participate in the NM Coordinated Entry System (CES) and support the participation of partner agencies to complete an assessment for all persons experiencing homelessness or at risk of homelessness and to assess the impact of Covid-19 and other social determinants of health.

5) Participate in case conferencing regarding high priority clients so that the process moves beyond status updates to focus on action-oriented housing outcomes.

2. COMPENSATION

Article 2, Section A of the Agreement is hereby deleted. A new Article 2, Section A of this Agreement is inserted to increase the amount of compensation by a total of two hundred fifty thousand dollars (\$250,000) so that Article 2, Section A reads in its entirety as follows:

A. The City shall pay to the Contractor in full payment for services satisfactorily performed, such compensation shall not exceed four hundred thirty thousand dollars (\$430,000). **The total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed (\$430,000). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor**

is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

3. TERM AND EFFECTIVE DATE.

Article 3 of the Agreement is hereby deleted. A new Article 3 of the Agreement is inserted to extend the term of the Agreement, so that Article 3 reads in its entirety as follows:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30, 2022** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of Santa Fe Professional Services Agreement as of the date signed by the City set forth below.

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

Date: _____

ATTEST:

KRISTINE BUSTOS MIHELICIC
CITY CLERK

CONTRACTOR:
NEW MEXICO COALITION TO
END HOMELESSNESS

By: 
HANK HUGHES
EXECUTIVE DIRECTOR

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jun 8, 2021 14:18 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

MARY MCCOY
FINANCE DIRECTOR

2400223.510500 - \$200,000 – (AHTF)
1002750.510500 - \$50,000 (GF)
ORG/OBJ #

AJH
AJH



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3201908

Contractor: New Mexico Coalition to End Homelessness (NMCEH)

Description: **To deliver rental assistance to residents in Santa Fe who are experiencing housing instability or homelessness**

Contract Agreement Lease / Rent Amendment

Term Start Date: 07/01/2020 Term End Date: 06/30/2021

Approved by Council Date: _____

Contract / Lease: Emergency contract

Amendment # 1 to the Original Contract / Lease # 20-0372

Increase/(Decrease) Amount \$ 250,000 (\$200,000 from AHTF 2400223.510500 & \$50,000 from GF 1002750.510500)

Extend Termination Date to: 06/30/2022

Approved by Council Date: _____

Amendment is for: Increase compensation by \$200,000 and to extend term to 06/30/2022

2. **HISTORY** of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)

Original contract - \$180,000

Amend #1 - Increasing compensation by \$250,000 for a total of \$430,000; extending term to 06/30/2022 (Funds split: \$200,000 from AHTF 2400223.510500; \$50,000 from GF 1002750.510500)

3. Procurement History: General Fund and AHTF

Fran D. Haway
Fran D. Haway (Jun 29, 2021 13:15 MDT)

Jun 29, 2021

Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: Amend and extend term for an existing contract.

4. Funding Source: _____ Org / Object: 2400223.510500; 1002750

Andy Hopkins
Andy Hopkins (Jun 29, 2021 12:00 MDT)

Jun 29, 2021

Budget Officer Approval: _____ Date: _____

Comment & Exceptions: _____

Staff Contact who completed this form: Roberta Catanach Phone # 505-955-6421

Email: rlcatanach@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: New Mexico Coalition To End Homelessness

Procurement Title: 20/15/P (GF)

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting OAH Staff Name Roberta Catanach

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES N/A

- Approved Procurement Checklist (by Purchasing)
- Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
- State Price Agreement
- RFP
- Evaluation Committee Report
- ITB
- Bib Tab
- Quotes (3 valid current quotes)
- Cooperative Agreement
- Sole Source Request and Determination Form
- Contractors Exempt Letter
- Purchasing Officers approval for exempt procurement
- BAR
- FIR
- Executed Contract, Agreement or Amendment
- Current Business Registration and CRS numbers on contract or agreement
- Summary of Contracts and Agreements form
- Certificate of Insurance
- All documentation presented to Committees
- Other:

Roberta Catanach Contract Administrator 06/02/2021

Department Rep Printed Name (attesting that all information included) Title Date
Stacy Dunaway Chief Procurement Officer Jun 29, 2021

Purchasing Officer (attesting that all information is reviewed) Title Date

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

Fran D. Laway (Jun 29, 2021 13:15 MDT)






Council_Packet_Memo_AHTF_amendments

Final Audit Report

2021-06-23

Created:	2021-06-23
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAC7xDgueC3j0t3qwMzkv9T8grDmVF8WL

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2021-06-23 - 9:36:46 PM GMT






Memo For Packet

Final Audit Report

2021-06-23

Created:	2021-06-23
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZmJJGsm83VB7_CKLfc91ewH-olSnVHNNH

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-  Email viewed by Alexandra ladd (agladd@santafenm.gov)
2021-06-23 - 9:45:41 PM GMT- IP address: 63.232.20.2
-  Document e-signed by Alexandra ladd (agladd@santafenm.gov)
Signature Date: 2021-06-23 - 9:46:00 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.
2021-06-23 - 9:46:00 PM GMT



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/2/2021

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PRODUCER ZIA INS AGENCY INC/CAPITOL INS SERVICES LLC 810 CALLE MEJIA SUITE 106 SANTA FE NM 87501	CONTACT NAME: CONRAD SCHOTT	PHONE (A/C, No, Ext): 505.983.7329	FAX (A/C, No): 505.986.6116	
	E-MAIL ADDRESS:			
INSURED NEW MEXICO COALITION TO END HOMELESSNESS P O BOX 865 SANTA FE NM 87504-0865	INSURER(S) AFFORDING COVERAGE		NAIC #	
	INSURER A: AMERICAN HALLMARK INSURANCE CO			
	INSURER B: NEW MEXICO MUTUAL CASUALTY CO.			
	INSURER C: GEMINI INSURANCE CO.			
	INSURER D:			
	INSURER E:			
INSURER F:				

COVERAGES CERTIFICATE NUMBER: 2021-01 REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	X		44PB428730-18	06/03/2021	06/03/2022	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X					MED EXP (Any one person)	\$ 5,000
C	<input checked="" type="checkbox"/> PROFESSIONAL LIABILITY	X		VNPL07457	06/02/2021	06/02/2022	PERSONAL & ADV INJURY	\$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COM/POP AGG	\$ 2,000,000
							PROFESSIONAL LIAB	\$ 1,000,000
A	AUTOMOBILE LIABILITY	X		44PB428730-18	06/03/2021	06/03/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS		X				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS						BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB			44PB428730-18	06/03/2021	06/03/2022	EACH OCCURRENCE	\$ 1,000,000
	<input type="checkbox"/> EXCESS LIAB						AGGREGATE	\$ 1,000,000
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE							\$
	DED <input type="checkbox"/> RETENTION \$							\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			27309.119	10/01/2020	10/01/2021	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				E.L. EACH ACCIDENT	\$ 100,000
							E.L. DISEASE - EA EMPLOYEE	\$ 100,000
							E.L. DISEASE - POLICY LIMIT	\$ 500,000

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

CERTIFICATE HOLDER CANCELLATION

CITY OF SANTA FE P O BOX 909 SANTA FE, NM 87504-0909	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 <i>Conrad Schott by C.S.E</i>

Item # 20-0372

CITY OF SANTA FE AFFORDABLE HOUSING TRUST FUND (GENERAL FUND)

PROFESSIONAL SERVICES CONTRACT

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

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

A. Implement the Homeless Early Intervention Project to provide financial assistance, which may be distributed over the course of several months in the form of rental assistance (includes rent payments, utilities, deposits and costs in arrears) to a minimum of three hundred sixty (360) households earning less than 60% AMI, or meet a definition of homelessness including those who are living in a shelter, living in a place not meant for human habitation or those at risk of homelessness because they will lose their current housing situation within 14 days.

B. Create partnership networks with services providers including Life Link, St. Elizabeth Shelter, Youth Shelters and Family Services and the Santa Fe Interfaith Shelter. Partner agencies will identify households and individuals in need of the assistance, conduct a needs assessment using the Unite Us platform, the impact of COVID-19, as well as documenting other social determinants of health. After receiving documentation of housing instability or risk of homelessness, NMCEH will review the requests for eligibility and if approved, issue checks to the appropriate party such as landlords and utility companies.

C. Report to the City on a quarterly basis the use of funds, including documentation of housing instability, AMI of assisted renter, address, house hold size and other demographic information as requested.

D. Provide accurate and thorough recordkeeping copies on file for annual monitoring to include documentation of income verification, certification of eligibility, receipts, and other supporting documentation for rental assistance provided.

E. Performance Measures.

1. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

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

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed, such compensation shall not exceed one hundred eighty thousand dollars (\$180,000).

The total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed (\$180,000). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess

of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

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

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

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30, 2021** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

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

B **Termination Management.** Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and

records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. Appropriations.

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

6. Status of Contractor.

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

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

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

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

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

13. Amendment.

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

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

14. Merger.

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

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

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

18. Workers Compensation.

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

19. Professional Liability Insurance.

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

20. Other Insurance

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

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

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

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

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.

21. Records and Financial Audit.

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

22. Indemnification.

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

23. 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.

24. 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.

25. 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.

26. Notices. shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City: Office of Affordable Housing
PO Box 909
Santa Fe, NM 87504-0909
rlcatanach@ci.santa-fenm.us

To the Contractor: New Mexico Coalition to End Homelessness
440 Cerrillos Road
Santa Fe, NM 87501

27. **Authority.**

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

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

CITY OF SANTA FE:



ALAN WEBBER
MAYOR

DATE: 8/14/2020

ATTEST:



YOLANDA Y. VIGIL 
CITY CLERK

CC Mtg 07/29/2020

CITY ATTORNEY'S OFFICE:



Marcos Martinez (May 17, 2020)

SENIOR ASSISTANT CITY ATTORNEY

CONTRACTOR:
NM COALITION TO END
HOMELESSNESS



HANK HUGHES
EXECUTIVE DIRECTOR

DATE: _____

CRS# 02-937190-00-2
Registration # 225192

1002750.510500
Org # / Line Item

APPROVED FOR FINANCE:



MARY MCCOY
FINANCE DIRECTOR



City of Santa Fe
Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: NM COALITION TO END HOMELESS
DBA: NM COALITION TO END
HOMELESS

Business Location: 440 CERRILLOS RD
SANTA FE, NM 87501

Owner: NM COALITION TO END HOMELESS

License Number: 225192

Issued Date: April 12, 2021

Expiration Date: April 12, 2022

Description: NON-PROFIT

CRS Number: 02937190002

License Type: Business License - Renewable

Classification: Business Registration - Standard

Fees Paid: \$35.00

NM COALITION TO END HOMELESS
PO BOX 865
SANTA FE, NM 87504

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERRABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE

City of Santa Fe, New Mexico

memo

Date: July 2, 2021

To: Finance Committee – July 19, 2021
Quality of Life Committee – July 21, 2021
Public Works Committee – July 26, 2021
City Council – July 28, 2021

Via: Rich Brown, Community Development Director *Richard Brown*

From: Alexandra Ladd, Director, Office of Affordable Housing *Alexandra Ladd*
Alexandra Ladd (Jul 7, 2021 11:28 MDT)

Re. Amendment #1 to NMCEH Contract for Homeless Early Intervention Project

ACTION REQUESTED:

Approve amendment #1 to the New Mexico Coalition to End Homelessness (NMCEH) Contract for the Homeless Early Intervention Project awarded through RFP# 20/15/P. The purpose of the amendment is to extend the term of performance through June 30, 2022 and to add compensation from the Affordable Housing Trust Fund in the amount of \$250,000 for a total contract amount of \$430,000.

BACKGROUND

Affordable Housing Trust Funds (AHTF) are generated from development activity (developer fees, pre-inclusionary housing agreements), payoffs of City-held liens, and land sales from Tierra Contenta. When the funds reach a threshold balance, the City funds affordable housing projects and activities to benefit income-qualified grantees. Eligible housing activities are outlined in SFCC Chapter 26-3. Uses of funds are determined by the housing needs identified in the City's Five Year Strategic Housing Plan and regulated by the NM Mortgage Finance Authority for compliance with the NM Affordable Housing Act.

In April of 2021, the Governing Body approved allocating an additional amount of \$1,800,000 into the AHTF to provide direct support for affordable housing within the current fiscal year. This amount was added to the AHTF allocation for 2021-22 (\$1,200,000) for a total of \$3,000,000.

ITEM and ISSUE

In order to ensure that funds are allocated quickly and efficiently, staff recommends adding funds to this existing contract and extending the term of performance through June 30, 2022. An additional rationale is that pandemic-caused housing issues continue to affect the ability residents to cover their housing costs. People experiencing homelessness who were housed in

area hotels to reduce population densities at shelters are not yet in permanent housing. The increase in funds will serve to “bridge” the gap for those exiting hotel stays or the Midtown Shelter, or currently on waiting lists for permanent housing situations. The flexibility of these funds, in comparison to HUD funds and other subsidy funds and the fact that they can be deployed without a waiting list makes them ideal for re-housing or keeping housed those who are otherwise at immediate risk of homelessness. An additional 100 – 200 households will be assisted through the extension of this contract.

Additionally, the City will compensate NMCEH for the operational burden of administering the funds in the amount of \$50,000 using General Funds. The scope is amended to add the requirement of using the coordinated entry system to support the City’s goal to end chronic homelessness as part of the Built for Zero initiative.

1-Council_Packet_Memo_AHTF_NMCEH_Early Intervention


Final Audit Report


2021-07-07


Created:	2021-07-06
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZ2MmYNOpMGSPis_PgeFWoiCiM8Pe9HVi


"1-Council_Packet_Memo_AHTF_NMCEH_Early Intervention" History

 Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-07-06 - 7:37:38 PM GMT- IP address: 63.232.20.2

 Document emailed to rich brown (rdbrown@santafenm.gov) for signature
2021-07-06 - 7:37:57 PM GMT

 Email viewed by rich brown (rdbrown@santafenm.gov)
2021-07-06 - 9:01:02 PM GMT- IP address: 71.228.116.134

 Document e-signed by rich brown (rdbrown@santafenm.gov)
Signature Date: 2021-07-07 - 0:30:42 AM GMT - Time Source: server- IP address: 71.228.116.134

 Agreement completed.
2021-07-07 - 0:30:42 AM GMT






NMCEH - Rental Assistance (amendment)

Final Audit Report

2021-07-07

Created:	2021-07-07
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAsNOGj1-PNvS-pETqyjQKM3NsQ4gL7yNV

"NMCEH - Rental Assistance (amendment)" History

-  Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-07-07 - 5:25:57 PM GMT- IP address: 63.232.20.2
-  Document emailed to Alexandra Ladd (agladd@santafenm.gov) for signature
2021-07-07 - 5:26:17 PM GMT
-  Email viewed by Alexandra Ladd (agladd@santafenm.gov)
2021-07-07 - 5:28:21 PM GMT- IP address: 76.113.87.1
-  Document e-signed by Alexandra Ladd (agladd@santafenm.gov)
Signature Date: 2021-07-07 - 5:28:43 PM GMT - Time Source: server- IP address: 76.113.87.1
-  Agreement completed.
2021-07-07 - 5:28:43 PM GMT

**CITY OF SANTA FE
AMENDMENT No. 1 TO
PROFESSIONAL SERVICES AGREEMENT**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated July 8, 2020 (the "Agreement"), between the City of Santa Fe (the "City") and Santa Fe Civic Housing Authority (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 shall utilize funds for rehabilitation and maintenance costs associated with County Club Apartments, which contains 62-2 and 3 bedroom units currently housing a majority of renters earning less than 30% AMI.

B. Pursuant to Article 13 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. TERM AND EFFECTIVE DATE.

Article 3 of the Agreement is hereby deleted. A new Article 3 of the Agreement is inserted to extend the term of the Agreement, so that Article 3 reads in its entirety as follows:

This Agreement shall become effective when signed by the City. This Agreement shall terminate on June 30, 2022 unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

2. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of Santa Fe Professional Services Agreement as of the date signed by the City set forth below.

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

Date: _____

ATTEST:

KRISTINE BUSTOS MIHELICIC
CITY CLERK

CONTRACTOR:
SANTA FE CIVIC HOUSING AUTHORITY

By: 
ed romero (Jun 18, 2021 15:07 MDT)
ED ROMERO
EXECUTIVE DIRECTOR

CITY ATTORNEY'S OFFICE:

Marcos Martinez (Jun 18, 2021 13:46 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

MARY MCCOY
FINANCE DIRECTOR
2402750.510500

ORG/OBJ


AJH






Amendment - Country Club apts

Final Audit Report

2021-06-18

Created:	2021-06-18
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAbCgBza3iTqsosFnwfpJlftuyvTLiFwrP

"Amendment - Country Club apts" History

-  Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-06-18 - 8:59:31 PM GMT - IP address: 63.232.20.2
-  Document emailed to ed romero (edromero@sfcha.com) for signature
2021-06-18 - 8:59:48 PM GMT
-  Email viewed by ed romero (edromero@sfcha.com)
2021-06-18 - 9:06:36 PM GMT - IP address: 65.141.78.186
-  Document e-signed by ed romero (edromero@sfcha.com)
Signature Date: 2021-06-18 - 9:07:29 PM GMT - Time Source: server- IP address: 65.141.78.186
-  Agreement completed.
2021-06-18 - 9:07:29 PM GMT

CITY OF SANTA FE
AFFORDABLE HOUSING TRUST FUND (AHTF)
PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and Santa Fe Civic Housing Authority hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

A. Use AHTF funds for rehabilitation and maintenance costs associated with Country Club Apartments, which contains 62 – 2 and 3 bedroom units currently housing a majority of renters earning less than 30% AMI. Eligible rehabilitation activities may include:

1. Asphalt parking and driveway overlays;
2. Installation of accessible handicap parking spaces, van and car;
3. Roofing about parking spaces;
4. Landscape improvements, including refurbishing basketball court;
5. Installation of smoke detectors in proximity to bedroom spaces;
6. Replacement of door handle hardware to be compliant with ADA.

B. Follow procurement processes consistent with the state procurement code, including 3 bids for proposed scope of work.

C. Report to the City on a quarterly basis the use of funds, including project status updates.

D. Provide accurate and thorough recordkeeping copies on file for annual monitoring that

specifically demonstrates compliance with proposed affordability criteria.

E. Performance Measures.

1. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

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

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed, such compensation shall not exceed one hundred forty thousand dollars (\$140,000). The total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed (\$140,000). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the

City no later than thirty (30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

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

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on June 30, 2021 unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

A. **Termination.** This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the

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

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

5. **Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations

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

6. Status of Contractor.

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

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

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

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

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

13. Amendment.

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

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

14. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and

understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement,

Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

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

19. Professional Liability Insurance.

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

20. Other Insurance

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

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

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

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

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

21. Records and Financial Audit.

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

22. Indemnification.

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

23. 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.

24. 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.

25. 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.

26. Notices. shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City: Office of Affordable Housing
PO Box 909
Santa Fe, NM 87504-0909
rlcatanach@ci.santa-fenm.us

To the Contractor: Santa Fe Civic Housing Authority
664 Alta Vista St.
Santa Fe, NM 87505

27. Authority.

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

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

CITY OF SANTA FE:

AW

ALAN WEBBER
MAYOR

DATE: _____

ATTEST:

Yolanda Y. Vigil
YOLANDA Y. VIGIL, CITY CLERK
GB 07/08/20

CITY ATTORNEY'S OFFICE:

Marcos Martinez
MARCOS MARTINEZ (May 17, 2021)
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Mary McCoy

MARY MCCOY
FINANCE DIRECTOR

2402750.510500
Business Unit/Line Item

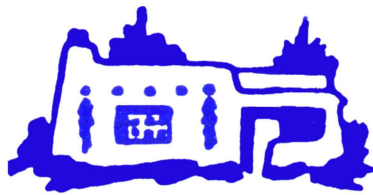
SANTA FE CIVIC HOUSING
AUTHORITY:

ed romero

ED ROMERO
EXECUTIVE DIRECTOR

DATE: _____

CRS# 01-505902-00-2
Registration # 67971



Santa Fe Civic Housing Authority

Serving the community since 1961

MEMO

TO: City of Santa Fe
FROM: David Martinez
DATE: June 18, 2021
SUBJECT: Country Club, AHTF Award 2020-2021, PO #22101111

This affordable housing project, constructed in 1964 consists of 62 units. This entire site is in need of upgrades but the essential infrastructure repairs are the most glaring need at this time, particularly the sewer line system that will require replacing and rerouting. We plan on this award money going toward asphalt and landscape improvements but we want to make sure the underground work is finished first, thus the request for an extension on expending the award funds. We anticipate invoicing for our 2020-2021 AHTF funds in the next 4 months.

Please let me know if you have any questions.

Thank you for your consideration,



Dave Martinez, Deputy Director



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Santa Fe Civic Housing Authority

Procurement Title: 20/15/P

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting OAH Staff Name Roberta Catanach/Alexandra Ladd

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES N/A

- Approved Procurement Checklist (by Purchasing)
- Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
- State Price Agreement
- RFP
- Evaluation Committee Report
- ITB
- Bib Tab
- Quotes (3 valid current quotes)
- Cooperative Agreement
- Sole Source Request and Determination Form
- Contractors Exempt Letter
- Purchasing Officers approval for exempt procurement
- BAR
- FIR
- Executed Contract, Agreement or Amendment
- Current Business Registration and CRS numbers on contract or agreement
- Summary of Contracts and Agreements form
- Certificate of Insurance
- All documentation presented to Committees
- Other:

Roberta Catanach Contract Administrator 06/17/2021

Department Rep Printed Name (attesting that all information included) Title Date

Jan Duraway

Purchasing Officer (attesting that all information is reviewed) Title Date

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



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3201905

Contractor: Santa Fe Civic Housing Authority

Description: **Agreement delivers funds for rehabilitation and maintenance costs associated with Country Club Apartments, which contains 62 units currently housing a majority of renters earning less than 30% AMI**

Contract Agreement Lease / Rent Amendment

Term Start Date: 07/01/2020 Term End Date: 06/30/2021

Approved by Council Date: 07/08/2020

Contract / Lease: Contract for \$140,000

Amendment # 1 to the Original Contract / Lease # 20-0324

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: 06/30/2022

Approved by Council Date: _____

Amendment is for: To extend term to 06/30/2022

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)

Original: \$140,000 to expire 06/30/2021

Amendment: To Extend term to 06/30/2022

3. **Procurement History: RFP #201/15/P**

Jan Duraway

Purchasing Officer Review: _____

Jun 30, 2021

Date: _____

Comment & Exceptions: Award from RFP

4. **Funding Source: 240**

Andy Hopkins

Andy Hopkins (Jun 30, 2021 17:37 MDT)

Budget Officer Approval: _____

Org / Object: 2402750.510500

Jun 30, 2021

Date: _____

Comment & Exceptions: _____

Staff Contact who completed this form: Roberta Catanach Phone # 505-955-6421

Email: rlcatanach@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

City of Santa Fe, New Mexico

memo

Date: July 2, 2021

To: Finance Committee – July 19, 2021
Quality of Life Committee – July 21, 2021
Public Works Committee – July 26, 2021
City Council – July 28, 2021

Via: Rich Brown, Community Development Director *Richard Brown*

From: Alexandra Ladd, Director, Office of Affordable Housing *Alexandra Ladd*
Alexandra Ladd (Jul 7, 2021 08:56 MDT)

Re. Amendment #1 to SFCHA – Country Club Apartments Rehabilitation

ACTION REQUESTED:

Approve amendment #1 to the Santa Fe Civic Housing Authority's (SFCHA) contract for Country Club Apartments rehabilitation project awarded through RFP# 20/15/P. The purpose of the amendment is to extend the term of performance through June 30, 2022 to allow extra time for project completion. The amount of compensation remains the same.

BACKGROUND

Affordable Housing Trust Funds (AHTF) are generated from development activity (developer fees, pre-inclusionary housing agreements), payoffs of City-held liens, and land sales from Tierra Contenta. When the funds reach a threshold balance, the City funds affordable housing projects and activities to benefit income-qualified grantees. Eligible housing activities are outlined in SFCC Chapter 26-3. Uses of funds are determined by the housing needs identified in the City's Five Year Strategic Housing Plan and regulated by the NM Mortgage Finance Authority for compliance with the NM Affordable Housing Act.

In April of 2021, the Governing Body approved allocating an additional amount of \$1,800,000 into the AHTF to provide direct support for affordable housing within the current fiscal year. This amount was added to the AHTF allocation for 2021-22 (\$1,200,000) for a total of \$3,000,000.

ITEM and ISSUE

The attached amendment extends the contract term through June 30, 2022. This amendment does NOT increase compensation but provides additional time for the SFCHA to complete the proposed scope of work. Delays were attributable to supply chain and labor shortage issues, as well as other projects having priority due to pandemic conditions. The funds are anticipated to be fully expended within 6 months of this extension.






1-Council_Packet_Memo_AHTF_SFCHA

Final Audit Report

2021-07-06

Created:	2021-07-06
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAU5_6NIqu6qTAFIjuap87hHjobyEV40Lv

"1-Council_Packet_Memo_AHTF_SFCHA" History

-  Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-07-06 - 7:35:42 PM GMT- IP address: 63.232.20.2
-  Document emailed to rich brown (rdbrown@santafenm.gov) for signature
2021-07-06 - 7:36:01 PM GMT
-  Email viewed by rich brown (rdbrown@santafenm.gov)
2021-07-06 - 9:01:07 PM GMT- IP address: 71.228.116.134
-  Document e-signed by rich brown (rdbrown@santafenm.gov)
Signature Date: 2021-07-06 - 9:01:23 PM GMT - Time Source: server- IP address: 71.228.116.134
-  Agreement completed.
2021-07-06 - 9:01:23 PM GMT






Memo - SF Civic Housing Authority

Final Audit Report

2021-07-07

Created:	2021-07-07
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAABAW1xXX5ocbcmu0TSAwKlwLI7_bVw2DuWa

"Memo - SF Civic Housing Authority" History

-  Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-07-07 - 2:16:32 PM GMT- IP address: 63.232.20.2
-  Document emailed to Alexandra Ladd (agladd@santafenm.gov) for signature
2021-07-07 - 2:17:02 PM GMT
-  Email viewed by Alexandra Ladd (agladd@santafenm.gov)
2021-07-07 - 2:56:15 PM GMT- IP address: 63.232.20.2
-  Document e-signed by Alexandra Ladd (agladd@santafenm.gov)
Signature Date: 2021-07-07 - 2:56:35 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.
2021-07-07 - 2:56:35 PM GMT



ADDITIONAL REMARKS SCHEDULE

AGENCY Berger Briggs Insurance & Risk Solutions, Inc. An ISU Network Member		NAMED INSURED Country Club Apartments LP Santa Fe Civic Housing Authority 664 Alta Vista St Santa Fe, NM 87505	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

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

Description of Operations/Locations/Vehicles:

The policy includes an additional insured and/or waiver of subrogation endorsement (or provision) that provides additional insured and/or waiver of subrogation status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. See forms attached.

POLICY NUMBER: 680-4R86896A-20-42

COMMERCIAL GENERAL LIABILITY
ISSUE DATE: 10/19/2020

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED-DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of person or organization:

CITY OF SANTA FE

**OFFICE OF AFFORDABLE HOUSING
500 MARKET STREET, SUITE 200
SANTA FE NM 87505**

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your acts or omissions.

CATANACH, ROBERTA L.

From: LUJAN, BARBARA J.
Sent: Wednesday, July 7, 2021 11:46 AM
To: CATANACH, ROBERTA L.
Cc: LOVATO, MELANIE Y.
Subject: RE: WC

Hi:

We are in the process of finalizing a RFP and have an extension for ninety days so it is ok to use the current one until the new one is sent.

Barbara
690-2854

From: CATANACH, ROBERTA L. <rlcatanach@santafenm.gov>
Sent: Wednesday, July 7, 2021 10:21 AM
To: LUJAN, BARBARA J. <bjlujan@santafenm.gov>
Subject: WC

Barbara,

You sent me this policy for SF Civic Housing Authority, but I just realized that it has expired. Can you please send me a current Certificate.

Thank you

Roberta Catanach
Office of Affordable Housing
500 Market Street, Ste 200
(505) 955-6421

From: LUJAN, BARBARA J. <bjlujan@santafenm.gov>
Sent: Wednesday, June 23, 2021 3:36 PM
To: CATANACH, ROBERTA L. <rlcatanach@santafenm.gov>
Subject: FW:

Hi,
Here you go.

Barbara
690-2854

From: WILLIAMS, BRIAN G. <bgwilliams@santafenm.gov>
Sent: Wednesday, June 23, 2021 3:17 PM
To: LUJAN, BARBARA J. <bjlujan@santafenm.gov>
Subject:

Brian Williams

Director

City of Santa Fe Emergency Management and Safety

bgwilliams@santafenm.gov

C: 505-469-1484



REQUEST FOR WAIVER OF INSURANCE

Date: 06/25/2021 Division/department: Office of Affordable Housing

Project manager: Alexandra Ladd Phone: 303-9868

Requested for: **Waiver of Professional Liability coverage**

- General liability Auto liability Professional liability
- Workers compensation (Mandatory unless sole proprietor) Other insurance

Scope of services: **Provide rehabilitation services for a minimum of 20 owner-occupied homes for households with incomes below 80% AMI. Maximum assistance per household is \$14,000**

Why the request for waiver: **This is a repair program, therefore they cannot purchase Professional Liability Coverage**

Division evaluation of risk:

What is the term and annual dollar amount of the contract: 1 Year term - \$90,000

- Is our standard contract being used: Yes No
- Was the contractor asked if they carry insurance: Yes No
- Is there construction/demolition: Yes No
- Is there potential for bodily injury or property damage: Yes No
- Are crowds or children likely to be involved: Yes No
- Will the contractor be working on site in the City: Yes No
- Is the contractor a professional (licensed, certified): Yes No
- Will the City rely on information to make future decisions: Yes No
- Could poor, non-performance or the product cause loss: Yes No
- Office of Risk Management recommendation: Yes No

Melanie Lovato

Insurance Waiver Approved Insurance Waiver Not Approved

Jarel LaPan Hill, City Manager

Date

ACTION SHEET
/ITEM FROM FINANCE COMMITTEE MEETING OF 07/19/21
FOR CITY COUNCIL MEETING OF 07/28/21

d) Request for Approval of Amendment #1 to the Santa Fe Civic Housing Authority's Country Club Apartments Rehabilitation Project to extend the term of performance through June 30, 2022. Alexandra Ladd, Director of Office of Affordable Housing: agladd@santafenm.gov, 505-303-9868).

COMMITTEE REVIEW:

Finance		Committee:	07/19/2021
Quality	of	Life	Committee:
Public	Works	and	Utilities
Governing Body:	07/28/2021	Committee:	07/26/2021

FINANCE COMMITTEE ACTION:

Approved on Consent

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

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

01/13/21

**CITY OF SANTA FE
AMENDMENT No. 1 TO
PROFESSIONAL SERVICES AGREEMENT
ITEM #20-0372**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated July 29, 2020 (the "Agreement"), between the City of Santa Fe (the "City") and New Mexico Coalition to End Homelessness (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 shall utilize funds to implement the Homeless Early Intervention Project to provide financial assistance.

B. Pursuant to Article 13 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 WORK

Article 1, Section B of this Agreement is hereby deleted. A new Article 1, Section B of the Agreement is inserted so that Article 1, Section B reads in its entirety as follows:

B. Increase staffing capacity to administer the financial assistance provided through this contract. Reimbursement for additional staff will be documented through payroll reports and timesheets. This staff will be responsible for the following:

1) Work with partner agencies (including but not limited to Life Link, St. Elizabeth Shelter, Youth Shelters and Family Services and the Santa Fe Interfaith Shelter) to

identify households and individuals in need of assistance, with particular focus on those currently living in temporary situations, such as hotels and the Midtown Shelter.

2) Determine housing instability or risk of homelessness and document household's eligibility for assistance;

3) Approve payment to cover rent, deposits, utilities, and arrears directly to the utility company, landlord or services provider.

4) Participate in the NM Coordinated Entry System (CES) and support the participation of partner agencies to complete an assessment for all persons experiencing homelessness or at risk of homelessness and to assess the impact of Covid-19 and other social determinants of health.

5) Participate in case conferencing regarding high priority clients so that the process moves beyond status updates to focus on action-oriented housing outcomes.

2. COMPENSATION

Article 2, Section A of the Agreement is hereby deleted. A new Article 2, Section A of this Agreement is inserted to increase the amount of compensation by a total of two hundred fifty thousand dollars (\$250,000) so that Article 2, Section A reads in its entirety as follows:

A. The City shall pay to the Contractor in full payment for services satisfactorily performed, such compensation shall not exceed four hundred thirty thousand dollars (\$430,000). **The total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed (\$430,000). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor**

is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

3. TERM AND EFFECTIVE DATE.

Article 3 of the Agreement is hereby deleted. A new Article 3 of the Agreement is inserted to extend the term of the Agreement, so that Article 3 reads in its entirety as follows:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30, 2022** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of Santa Fe Professional Services Agreement as of the date signed by the City set forth below.

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

Date: _____

ATTEST:

KRISTINE BUSTOS MIHELICIC
CITY CLERK

CONTRACTOR:
NEW MEXICO COALITION TO
END HOMELESSNESS

By: 
HANK HUGHES
EXECUTIVE DIRECTOR

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jun 8, 2021 14:18 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

MARY MCCOY
FINANCE DIRECTOR

2400223.510500 - \$200,000 – (AHTF)
1002750.510500 - \$50,000 (GF)
ORG/OBJ #

AJH
AJH



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3201908

Contractor: New Mexico Coalition to End Homelessness (NMCEH)

Description: **To deliver rental assistance to residents in Santa Fe who are experiencing housing instability or homelessness**

Contract Agreement Lease / Rent Amendment

Term Start Date: 07/01/2020 Term End Date: 06/30/2021

Approved by Council Date: _____

Contract / Lease: Emergency contract

Amendment # 1 to the Original Contract / Lease # 20-0372

Increase/(Decrease) Amount \$ 250,000 (\$200,000 from AHTF 2400223.510500 & \$50,000 from GF 1002750.510500)

Extend Termination Date to: 06/30/2022

Approved by Council Date: _____

Amendment is for: Increase compensation by \$200,000 and to extend term to 06/30/2022

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)

Original contract - \$180,000

Amend #1 - Increasing compensation by \$250,000 for a total of \$430,000; extending term to 06/30/2022 (Funds split: \$200,000 from AHTF 2400223.510500; \$50,000 from GF 1002750.510500)

3. **Procurement History: General Fund and AHTF**

Fran D. Roway
Fran D. Roway (Jun 29, 2021 13:15 MDT)

Jun 29, 2021

Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: Amend and extend term for an existing contract.

4. **Funding Source:** _____ **Org / Object:** 2400223.510500; 1002750

Andy Hopkins
Andy Hopkins (Jun 29, 2021 12:00 MDT)

Jun 29, 2021

Budget Officer Approval: _____ Date: _____

Comment & Exceptions: _____

Staff Contact who completed this form: Roberta Catanach Phone # 505-955-6421

Email: rlcatanach@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: New Mexico Coalition To End Homelessness

Procurement Title: 20/15/P (GF)

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting OAH Staff Name Roberta Catanach

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES N/A

- Approved Procurement Checklist (by Purchasing)
- Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
- State Price Agreement
- RFP
- Evaluation Committee Report
- ITB
- Bib Tab
- Quotes (3 valid current quotes)
- Cooperative Agreement
- Sole Source Request and Determination Form
- Contractors Exempt Letter
- Purchasing Officers approval for exempt procurement
- BAR
- FIR
- Executed Contract, Agreement or Amendment
- Current Business Registration and CRS numbers on contract or agreement
- Summary of Contracts and Agreements form
- Certificate of Insurance
- All documentation presented to Committees
- Other:

Roberta Catanach Contract Administrator 06/02/2021

Department Rep Printed Name (attesting that all information included) Title Date
Frank D. Hawley Chief Procurement Officer Jun 29, 2021

Purchasing Officer (attesting that all information is reviewed) Title Date

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






Council_Packet_Memo_AHTF_amendments

Final Audit Report

2021-06-23

Created:	2021-06-23
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAC7xDgueC3j0t3qwMzkv9T8grDmVF8WL

"Council_Packet_Memo_AHTF_amendments" History

-  Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-06-23 - 6:04:50 PM GMT- IP address: 63.232.20.2
-  Document emailed to Richard Brown (rdbrown@ci.santa-fe.nm.us) for signature
2021-06-23 - 6:05:07 PM GMT
-  Email viewed by Richard Brown (rdbrown@ci.santa-fe.nm.us)
2021-06-23 - 9:36:32 PM GMT- IP address: 71.228.116.134
-  Document e-signed by Richard Brown (rdbrown@ci.santa-fe.nm.us)
Signature Date: 2021-06-23 - 9:36:46 PM GMT - Time Source: server- IP address: 71.228.116.134
-  Agreement completed.
2021-06-23 - 9:36:46 PM GMT






Memo For Packet

Final Audit Report

2021-06-23

Created:	2021-06-23
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZmJJGsm83VB7_CKLfc91ewH-olSnVHNNH

"Memo For Packet" History

-  Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-06-23 - 9:43:21 PM GMT- IP address: 63.232.20.2
-  Document emailed to Alexandra ladd (agladd@santafenm.gov) for signature
2021-06-23 - 9:43:37 PM GMT
-  Email viewed by Alexandra ladd (agladd@santafenm.gov)
2021-06-23 - 9:45:41 PM GMT- IP address: 63,232,20,2
-  Document e-signed by Alexandra ladd (agladd@santafenm.gov)
Signature Date: 2021-06-23 - 9:46:00 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.
2021-06-23 - 9:46:00 PM GMT



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/2/2021

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 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).

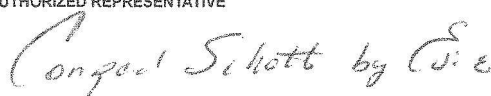
PRODUCER ZIA INS AGENCY INC/CAPITOL INS SERVICES LLC 810 CALLE MEJIA SUITE 106 SANTA FE NM 87501	CONTACT NAME: CONRAD SCHOTT	
	PHONE (A/C, No, Ext): 505.983.7329	FAX (A/C, No): 505.986.6116
INSURED NEW MEXICO COALITION TO END HOMELESSNESS P O BOX 865 SANTA FE NM 87504-0865	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: AMERICAN HALLMARK INSURANCE CO	
	INSURER B: NEW MEXICO MUTUAL CASUALTY CO.	
	INSURER C: GEMINI INSURANCE CO.	
	INSURER D:	
INSURER E:		
INSURER F:		

COVERAGES CERTIFICATE NUMBER: 2021-01 REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	X		44PB428730-18	06/03/2021	06/03/2022	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X					MED EXP (Any one person) \$ 5,000
	<input type="checkbox"/>						PERSONAL & ADV INJURY \$ 1,000,000
C	<input checked="" type="checkbox"/> PROFESSIONAL LIABILITY	X		VNPL07457	06/02/2021	06/02/2022	GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PROFESSIONAL LIAB \$ 1,000,000
A	AUTOMOBILE LIABILITY	X		44PB428730-18	06/03/2021	06/03/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS		X				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS		X				PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB			44PB428730-18	06/03/2021	06/03/2022	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> EXCESS LIAB						AGGREGATE \$ 1,000,000
	DED RETENTION \$						\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			27309.119	10/01/2020	10/01/2021	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		N/A				E.L. EACH ACCIDENT \$ 100,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 100,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000

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

CERTIFICATE HOLDER CITY OF SANTA FE P O BOX 909 SANTA FE, NM 87504-0909	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 

CITY OF SANTA FE
AFFORDABLE HOUSING TRUST FUND (GENERAL FUND)

PROFESSIONAL SERVICES CONTRACT

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

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

A. Implement the Homeless Early Intervention Project to provide financial assistance, which may be distributed over the course of several months in the form of rental assistance (includes rent payments, utilities, deposits and costs in arrears) to a minimum of three hundred sixty (360) households earning less than 60% AMI, or meet a definition of homelessness including those who are living in a shelter, living in a place not meant for human habitation or those at risk of homelessness because they will lose their current housing situation within 14 days.

B. Create partnership networks with services providers including Life Link, St. Elizabeth Shelter, Youth Shelters and Family Services and the Santa Fe Interfaith Shelter. Partner agencies will identify households and individuals in need of the assistance, conduct a needs assessment using the Unite Us platform, the impact of COVID-19, as well as documenting other social determinants of health. After receiving documentation of housing instability or risk of homelessness, NMCEH will review the requests for eligibility and if approved, issue checks to the appropriate party such as landlords and utility companies.

C. Report to the City on a quarterly basis the use of funds, including documentation of housing instability, AMI of assisted renter, address, house hold size and other demographic information as requested.

D. Provide accurate and thorough recordkeeping copies on file for annual monitoring to include documentation of income verification, certification of eligibility, receipts, and other supporting documentation for rental assistance provided.

E. Performance Measures.

1. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

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

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed, such compensation shall not exceed one hundred eighty thousand dollars (\$180,000).

The total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed (\$180,000). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess

of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

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

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

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30, 2021** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

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

B. **Termination Management.** Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and

records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. Appropriations.

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

6. Status of Contractor.

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

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

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

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

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

13. Amendment.

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

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

14. Merger.

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

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

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

18. Workers Compensation.

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

19. Professional Liability Insurance.

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

20. Other Insurance

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

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

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

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

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.

21. Records and Financial Audit.

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

22. Indemnification.

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

23. 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.

24. 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.

25. 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.

26. Notices. shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City: Office of Affordable Housing
PO Box 909
Santa Fe, NM 87504-0909
rlcatanach@ci.santa-fenm.us

To the Contractor: New Mexico Coalition to End Homelessness
440 Cerrillos Road
Santa Fe, NM 87501

27. **Authority.**

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

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

CITY OF SANTA FE:



ALAN WEBBER
MAYOR

DATE: 8/14/2020

ATTEST:



YOLANDA Y. VIGIL 
CITY CLERK

CC Mtg 07/29/2020

CITY ATTORNEY'S OFFICE:



Marcos Martinez (Chair 17, 2020)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCE:



MARY MCCOY
FINANCE DIRECTOR

CONTRACTOR:
NM COALITION TO END
HOMELESSNESS



HANK HUGHES
EXECUTIVE DIRECTOR

DATE: _____

CRS# 02-937190-00-2
Registration # 225192

1002750.510500
Org # / Line Item



City of Santa Fe
Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: NM COALITION TO END HOMELESS
DBA: NM COALITION TO END
HOMELESS

Business Location: 440 CERRILLOS RD
SANTA FE, NM 87501

Owner: NM COALITION TO END HOMELESS

License Number: 225192

Issued Date: April 12, 2021

Expiration Date: April 12, 2022

Description: NON-PROFIT

CRS Number: 02937190002

License Type: Business License - Renewable

Classification: Business Registration - Standard

Fees Paid: \$35.00

NM COALITION TO END HOMELESS
PO BOX 865
SANTA FE, NM 87504

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERRABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE

City of Santa Fe, New Mexico

memo

Date: July 2, 2021

To: Finance Committee – July 19, 2021
Quality of Life Committee – July 21, 2021
Public Works Committee – July 26, 2021
City Council – July 28, 2021

Via: Rich Brown, Community Development Director *Richard Brown*

From: Alexandra Ladd, Director, Office of Affordable Housing *Alexandra Ladd*
Alexandra Ladd (Jul 7, 2021 11:28 MDT)

Re. Amendment #1 to NMCEH Contract for Homeless Early Intervention Project

ACTION REQUESTED:

Approve amendment #1 to the New Mexico Coalition to End Homelessness (NMCEH) Contract for the Homeless Early Intervention Project awarded through RFP# 20/15/P. The purpose of the amendment is to extend the term of performance through June 30, 2022 and to add compensation from the Affordable Housing Trust Fund in the amount of \$250,000 for a total contract amount of \$430,000.

BACKGROUND

Affordable Housing Trust Funds (AHTF) are generated from development activity (developer fees, pre-inclusionary housing agreements), payoffs of City-held liens, and land sales from Tierra Contenta. When the funds reach a threshold balance, the City funds affordable housing projects and activities to benefit income-qualified grantees. Eligible housing activities are outlined in SFCC Chapter 26-3. Uses of funds are determined by the housing needs identified in the City's Five Year Strategic Housing Plan and regulated by the NM Mortgage Finance Authority for compliance with the NM Affordable Housing Act.

In April of 2021, the Governing Body approved allocating an additional amount of \$1,800,000 into the AHTF to provide direct support for affordable housing within the current fiscal year. This amount was added to the AHTF allocation for 2021-22 (\$1,200,000) for a total of \$3,000,000.

ITEM and ISSUE

In order to ensure that funds are allocated quickly and efficiently, staff recommends adding funds to this existing contract and extending the term of performance through June 30, 2022. An additional rationale is that pandemic-caused housing issues continue to affect the ability residents to cover their housing costs. People experiencing homelessness who were housed in

area hotels to reduce population densities at shelters are not yet in permanent housing. The increase in funds will serve to “bridge” the gap for those exiting hotel stays or the Midtown Shelter, or currently on waiting lists for permanent housing situations. The flexibility of these funds, in comparison to HUD funds and other subsidy funds and the fact that they can be deployed without a waiting list makes them ideal for re-housing or keeping housed those who are otherwise at immediate risk of homelessness. An additional 100 – 200 households will be assisted through the extension of this contract.

Additionally, the City will compensate NMCEH for the operational burden of administering the funds in the amount of \$50,000 using General Funds. The scope is amended to add the requirement of using the coordinated entry system to support the City’s goal to end chronic homelessness as part of the Built for Zero initiative.


1-Council_Packet_Memo_AHTF_NMCEH_Early Intervention


Final Audit Report


2021-07-07


Created:	2021-07-06
By:	Roberta Catanach (rlcatanach@ci.santa-fe,nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZ2MmYNOpMGSPis_PgeFWoiCiM8Pe9HVi


"1-Council_Packet_Memo_AHTF_NMCEH_Early Intervention" History

 Document created by Roberta Catanach (rlcatanach@ci.santa-fe,nm.us)
2021-07-06 - 7:37:38 PM GMT- IP address: 63.232.20.2

 Document emailed to rich brown (rdbrown@santafenm.gov) for signature
2021-07-06 - 7:37:57 PM GMT

 Email viewed by rich brown (rdbrown@santafenm.gov)
2021-07-06 - 9:01:02 PM GMT- IP address: 71.228.116.134

 Document e-signed by rich brown (rdbrown@santafenm.gov)
Signature Date: 2021-07-07 - 0:30:42 AM GMT - Time Source: server- IP address: 71.228.116.134

 Agreement completed.
2021-07-07 - 0:30:42 AM GMT






NMCEH - Rental Assistance (amendment)

Final Audit Report

2021-07-07

Created:	2021-07-07
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAsNOGj1-PNvS-pETqyjK3NsQ4gL7yNV

"NMCEH - Rental Assistance (amendment)" History

-  Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-07-07 - 5:25:57 PM GMT- IP address: 63.232.20.2
-  Document emailed to Alexandra Ladd (agladd@santafenm.gov) for signature
2021-07-07 - 5:26:17 PM GMT
-  Email viewed by Alexandra Ladd (agladd@santafenm.gov)
2021-07-07 - 5:28:21 PM GMT- IP address: 76.113.87.1
-  Document e-signed by Alexandra Ladd (agladd@santafenm.gov)
Signature Date: 2021-07-07 - 5:28:43 PM GMT - Time Source: server- IP address: 76.113.87.1
-  Agreement completed.
2021-07-07 - 5:28:43 PM GMT

ACTION SHEET
/ITEM FROM FINANCE COMMITTEE MEETING OF 07/19/21
FOR CITY COUNCIL MEETING OF 07/28/21

e) Request for Approval of contract amendment No. 1 to the New Mexico Coalition to End Homelessness – Early Intervention Project contract to extend the term of performance through June 30, 2022 and increase the amount of compensation by \$250,000.00 for a total contract amount of \$430,000.00. (Alexandra Ladd, Director of Office of Affordable Housing: agladd@santafenm.gov, 505-303-9868).

COMMITTEE	REVIEW:
Finance Committee:	07/19/2021
Quality of Life Committee:	07/21/2021
Public Works and Utilities Committee:	07/26/2021
Governing Body:	07/28/2021

FINANCE COMMITTEE ACTION:

Approved on Discussion

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

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

01/13/21

CITY OF SANTA FE
AFFORDABLE HOUSING TRUST FUND (AHTF)
PROFESSIONAL SERVICES CONTRACT

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

WHEREAS, On March 23, 2020, Mayor Alan M Webber announced a proclamation of emergency as a direct effect of the emergence of the COVID-19 virus and the resulting global pandemic; and

WHEREAS, the further spread of COVID-19 in the City of Santa Fe poses a threat to the health, safety, well-being and property of the residents of the City, including the potential of serious illness and loss of life; and

WHEREAS, the negative impacts on the social, economic and overall quality of life of the residents of Santa Fe requires the expansion of necessary housing services; and

WHEREAS, it is the City’s intention to support the housing situations of those currently housed, those in need of safe shelter, and those in danger of losing their homes because of inability to pay their rent, mortgage, utilities or HOA dues.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

- A. Contractor will work with City staff to establish a Governing Board for the Midtown Shelter that will review expenditures related to the Shelter operations, approve staffing

reports, analyze data, and guide decision making related to the Shelter. Members may be composed of City and County staff, the board and staff of the Contractor, and other services providers or advocates whose expertise and affiliations will support the Shelter's operations.

B. Contractor will recruit, interview and hire two (2) independent contractors to provide shelter management services and case management to the residents of the Midtown Shelter. Job descriptions are summarized as follows:

a. Shelter Manager: manages all aspects of direct services and operations to ensure that the Midtown Shelter offers unified programming with an immediate goal of sheltering individuals and families who do not have a safe place to stay or self-isolate during the COVID-19 pandemic and with a longer-term goal of moving individuals and families into permanent supported housing as quickly as possible.

b. Case Manager: provides case management and crisis intervention services to shelter guests including immediate needs related to shelter, medical services, food, clothing, hygiene, and referral to services to meet longer term needs (job skills training and placement, literacy and life skills, legal support and advocacy), using the Unite Us platform and other coordinated entry systems.

C. The Contractor will maintain all financial records relating to the Midtown Shelter, according to generally accepted accounting principles, and will establish and maintain a designated account, segregated on its books, in which all disbursements will be used in support of the Midtown Shelter, less a 10% administrative charge. All disbursements are subject to the Governing Board's approval and accompanied by documentation such as timesheets, accomplishment narratives, invoices and receipts.

D. Contractor will report to the City on a quarterly basis the use of funds, program

outcomes achieved, AMI% of assisted household, size of household, addresses of assisted homes, and other demographic information as required by the City's CDBG quarterly reporting form.

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed, such compensation not to exceed nine hundred sixty five thousand dollars (\$965,000). **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$965,000). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

D. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the

City no later than thirty (30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

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

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on June 30, 2022 unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the

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

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

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations

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

6. Status of Contractor.

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

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

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

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

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

13. Amendment.

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

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

14. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or

understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

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

18. Workers Compensation.

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

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

20. Other Insurance

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

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

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

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

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

21. Records and Financial Audit.

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

22. Indemnification.

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the

negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City.

23. 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.

24. 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.

25. 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.

26. Notices. shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City: Office of Affordable Housing
PO Box 909
Santa Fe, NM 87504-0909
rlcatanach@ci.santa-fenm.us

To the Contractor: NM Coalition To End Homelessness
440 Cerrillos Road
Santa Fe, NM 87501

27. Authority.

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

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

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

NEW MEXICO COALITION TO END
HOMELESSNESS



HANK HUGHES
EXECUTIVE DIRECTOR

CRS# 02-937190-00-2
Registration # 225192



**CITY OF SANTA FE
EMERGENCY DETERMINATION FORM**

The emergency procurement method (NMSA 1978, Section 13-1-127) may only be used when there exists a threat to public health, welfare, safety or property requiring procurement under emergency conditions. The existence of the emergency condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten:

1. the functioning of government;
2. the preservation or protection of property; or
3. the health or safety of any person.

I. Name of Department: Office of Affordable Housing

Requestors Name: Alexandra Ladd

Telephone Number: X6346 (303-9868, remotely)

II. Name of Contractor: Homewise

Address of Contractor: 1301 Siler Road, Suite D, Santa Fe, NM 87507

Amount of prospective contract: \$150,000

Term of prospective contract: expire June 30, 2022

III. Please thoroughly list the services (scope of work), construction or items of tangible personal property of the contract:

Contractor will provide assistance to income-certified homeowners who are unable to pay their mortgages or at risk of foreclosure as a direct result of the COVID-19 pandemic. Eligible costs include: mortgage payments, utilities, HOA payments, and mortgage/utility arrears. Contractor will also provide foreclosure prevention services such as financial counseling and refinancing resources. Households earning up to 120% of area median income (AMI) are eligible to receive assistance.

IV. Provide an explanation for the justification of the procurement including a description of the emergency condition(s) requiring use of emergency procurement and the practicable

competition utilized in compliance with NMSA 1978, Section 13-1-127.

At the onset of the public health emergency posed by COVID-19, layoffs and cutbacks in hours affected many low- and moderate-income Santa Feans employed in the services and tourism sector of the economy. In turn, many got behind on their contractual obligations to pay their mortgages and/or utility costs. While many government lenders including Freddie Mac, Fannie Mae, and the Federal Housing Administration (FHA), as well as national lenders and major banks provided forbearance on mortgage payments – an important provision to keep homeowners out of foreclosure – some homeowners now find themselves with several months’ worth of mortgage payments.

Assisting with mortgage payments ensures that homeowners won’t be faced with unsurmountable debt in the form of arrears. Supporting the financial viability of homeowners not only keeps homes out of foreclosure also maintains the economic stability and social fabric of neighborhoods.

- V. Please describe what measures are being taken to minimize the duration and effect of this particular emergency procurement (for example: is the emergency only in place until a competitive process can be completed, etc.).

This emergency procurement is proposed to be in place through June 30, 2022, although it’s expected that most funds will be expended within the next 3 – 4 months. Providing assistance to homeowners to support housing stability will continue to be a priority for the City’s housing funds. Some homeowners are likely to need continued support beyond the time at which the pandemic is controlled as the economic ripple effects from the early shutdown continue to affect them.

- VI. Describe what measures the Agency will take in the future to prevent/mitigate use of an emergency procurement under similar circumstances.

This emergency procurement is necessary because of a once in a lifetime situation and is not likely to be repeated.

Certified and Approved by:


Fran Dunaway (Jul 14, 2021 09:18 MDT)

Procurement Officer

Date: Jul 14, 2021

City of Santa Fe Approval by:

Mary McCoy
Finance Director - City of Santa Fe Chief Financial Officer

Date

Mayor Alan M. Webber or City Manager Jarel Lapan Hill

Date

City of Santa Fe, New Mexico

memo

Date: July 9, 2021

To: Finance Committee – July 19, 2021
Quality of Life Committee – July 21, 2021
Public Works Committee – July 26, 2021
City Council – July 28, 2021

Via: Rich Brown, Community Development Director

Richard Brown

From: Alexandra Ladd, Director, Office of Affordable Housing

Alexandra Ladd
Alexandra Ladd (Jul 9, 2021 15:26 MDT)

Re: NMCEH Contract for Consuelo's Place/Midtown Shelter – Emergency Procurement

ACTION REQUESTED:

Approve the New Mexico Coalition to End Homelessness (NMCEH) Contract for Consuelo's Place/Midtown Shelter awarded through emergency procurement and funded from the Affordable Housing Trust Fund in the amount of \$965,000.

BACKGROUND

Affordable Housing Trust Funds (AHTF) are generated from development activity (developer fees, pre-inclusionary housing agreements), payoffs of City-held liens, and land sales from Tierra Contenta. When the funds reach a threshold balance, the City funds affordable housing projects and activities to benefit income-qualified grantees. Eligible housing activities are outlined in SFCC Chapter 26-3. Uses of funds are determined by the housing needs identified in the City's Five Year Strategic Housing Plan and regulated by the NM Mortgage Finance Authority for compliance with the NM Affordable Housing Act.

In April of 2021, the Governing Body approved allocating an additional amount of \$1,800,000 into the AHTF to provide direct support for affordable housing within the current fiscal year. This amount was added to the AHTF allocation for 2021-22 (\$1,200,000) for a total of \$3,000,000.

ITEM and ISSUE

The contract is necessary to ensure that the residents of the Midtown Shelter remain housed for the duration of pandemic conditions. People experiencing homelessness who were housed in area hotels to reduce population densities at shelters are not yet in permanent housing. And the Midtown Shelter continues to play an important role in the community to provide an alternate to congregate shelter. Until more permanent supportive housing opportunities are provided, the people housed at Midtown or in hotels are at risk of returning to homelessness or precarious housing situations.

The estimated cost of the shelter operations is summarized below. This amount represents 12-months of operations for the Shelter to support fully the transition of residents from Midtown to permanent housing solutions. Consuelo's Place, a newly formed nonprofit affiliate of the NMCEH that was set up specifically to run the shelter, manages these operations. The organization reports to a board of Directors, composed of organizations representing housing and services providers in the community. City staff attends all board meetings and serves in an advisory capacity. This extension also enables the continued development of the capacity of the nonprofit. The services provided by the nonprofit are robust and likely to add value at a different location(s) once the Shelter ceases operations at Midtown.

Description	Expense
Insurance	\$ 37,000.00
Repairs & Maintenance	\$ 252,500.00
Public Relations	\$ 820.00
Security Services	\$ 150,183.76
Telephone	\$ 1,808.92
Office Supplies	\$ 5,209.56
Payroll Expenses	\$ 684.08
Salaries and Wages	\$ 424,366.36
Payroll Taxes	\$ 36,453.04
Employee Benefits	\$ 33,108.80
Program Expense	\$ 21,149.44
Total Expense	\$ 963,283.96






Council_Packet_Memo_AHTF_NMCEH_Midtown_revised

Final Audit Report

2021-07-09

Created:	2021-07-09
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAxXgh-ogb6d-JKKfvhtR2OIQumrB35tyP

"Council_Packet_Memo_AHTF_NMCEH_Midtown_revised" History

-  Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-07-09 - 9:25:22 PM GMT- IP address: 63.232.20.2
-  Document emailed to Alexandra Ladd (agladd@santafenm.gov) for signature
2021-07-09 - 9:25:39 PM GMT
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2021-07-09 - 9:26:15 PM GMT- IP address: 63.232.20.2
-  Document e-signed by Alexandra Ladd (agladd@santafenm.gov)
Signature Date: 2021-07-09 - 9:26:32 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.
2021-07-09 - 9:26:32 PM GMT






Memo NMCEH - (Alex)

Final Audit Report

2021-07-09

Created:	2021-07-09
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAA9lbyjCGRkYO-qrU4U-OGZYsDZr6oc8pl

"Memo NMCEH - (Alex)" History

-  Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-07-09 - 9:34:18 PM GMT- IP address: 63.232.20.2
-  Document emailed to rich brown (rdbrown@santafenm.gov) for signature
2021-07-09 - 9:34:34 PM GMT
-  Email viewed by rich brown (rdbrown@santafenm.gov)
2021-07-09 - 9:47:26 PM GMT- IP address: 63.232.20.2
-  Document e-signed by rich brown (rdbrown@santafenm.gov)
Signature Date: 2021-07-09 - 9:47:40 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.
2021-07-09 - 9:47:40 PM GMT



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3202824

Contractor: NMCEH - CONSUELO'S PLACE

Description: **Provide foreclosure prevention funds for homeowners unable to pay their mortgage and utility costs in the amount of \$965,000**

Contract Agreement Lease / Rent Amendment

Term Start Date: 07/014/2021 Term End Date: 06/30/2022

Approved by Council Date: _____

Contract / Lease:

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)
Original contract: \$965,000

3. Procurement History: Emergency procurement

Fran D'Amico (Jul 14, 2021 9:18 MDT)

Jul 14, 2021

Purchasing Officer Review:

Date:

Comment & Exceptions: Operations to continue -emergency services for affordable housing.

4. Funding Source: _____ Org / Object: 2400223.510500

Andy Hopkins (Jul 13, 2021 15:28 MDT)

Jul 13, 2021

Budget Officer Approval:

Date:

Comment & Exceptions: _____

Staff Contact who completed this form: Roberta Catanach Phone # 505-955-6421

Email: rlcatanach@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/2/2021

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 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 ZIA INS AGENCY INC/CAPITOL INS SERVICES LLC 810 CALLE MEJIA SUITE 106 SANTA FE NM 87501	CONTACT NAME: CONRAD SCHOTT PHONE (A/C, No, Ext): 505.983.7329 E-MAIL ADDRESS:	FAX (A/C, No): 505.986.6116	
	INSURER(S) AFFORDING COVERAGE INSURER A : AMERICAN HALLMARK INSURANCE CO INSURER B : NEW MEXICO MUTUAL CASUALTY CO. INSURER C : GEMINI INSURANCE CO. INSURER D : INSURER E : INSURER F :		NAIC #
INSURED NEW MEXICO COALITION TO END HOMELESSNESS P O BOX 865 SANTA FE NM 87504-0865			

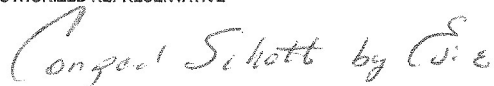
COVERAGES CERTIFICATE NUMBER: 2021-01 REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	X		44PB428730-18	06/03/2021	06/03/2022	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
C	<input checked="" type="checkbox"/> PROFESSIONAL LIABILITY	X		VNPL07457	06/02/2021	06/02/2022	MED EXP (Any one person)	\$ 5,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PERSONAL & ADV INJURY	\$ 1,000,000
A	AUTOMOBILE LIABILITY	X		44PB428730-18	06/03/2021	06/03/2022	GENERAL AGGREGATE	\$ 2,000,000
	<input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS <input checked="" type="checkbox"/>	X					PRODUCTS - COMP/OP AGG	\$ 2,000,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			44PB428730-18	06/03/2021	06/03/2022	PROFESSIONAL LIAB	\$ 1,000,000
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			27309.119	10/01/2020	10/01/2021	BODILY INJURY (Per person)	\$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A				BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$

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

CERTIFICATE HOLDER CANCELLATION

CITY OF SANTA FE P O BOX 909 SANTA FE, NM 87504-0909	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: NMCEH - Consuelo's Place

Procurement Title: Emergency Procurement

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting OAH Staff Name Roberta Catanach

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES N/A

- Approved Procurement Checklist (by Purchasing)
- Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
- State Price Agreement
- RFP
- Evaluation Committee Report
- ITB
- Bib Tab
- Quotes (3 valid current quotes)
- Cooperative Agreement
- Sole Source Request and Determination Form
- Contractors Exempt Letter
- Purchasing Officers approval for exempt procurement
- BAR
- FIR
- Executed Contract, Agreement or Amendment
- Current Business Registration and CRS numbers on contract or agreement
- Summary of Contracts and Agreements form
- Certificate of Insurance
- All documentation presented to Committees
- Other:

Roberta Catanach Contract Administrator 07/09/2021

Department Rep Printed Name (attesting that all information included) Title Date
Steve Denny Chief Procurement Officer Jul 14, 2021

Purchasing Officer (attesting that all information is reviewed) Title Date

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



City of Santa Fe
Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: NM COALITION TO END HOMELESS
DBA: NM COALITION TO END
HOMELESS

Business Location: 440 CERRILLOS RD
SANTA FE, NM 87501

Owner: NM COALITION TO END HOMELESS

License Number: 225192

Issued Date: April 12, 2021

Expiration Date: April 12, 2022

Description: NON-PROFIT

CRS Number: 02937190002

License Type: Business License - Renewable

Classification: Business Registration - Standard

Fees Paid: \$35.00

NM COALITION TO END HOMELESS
PO BOX 865
SANTA FE, NM 87504

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERRABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE

ACTION SHEET
/ITEM FROM FINANCE COMMITTEE MEETING OF 07/19/21
FOR CITY COUNCIL MEETING OF 07/28/21

f) Request for Approval of Emergency Procurement of Consuelo's Place/NMCEH Midtown Shelter in the amount of \$965,000 to cover 12 months of operations through June 30, 2022. (Alexandra Ladd, Director of Office Of Affordable Housing: agladd@santafenm.gov, 505-303-9868).

COMMITTEE	REVIEW:
Finance Committee:	07/19/2021
Quality of Life Committee:	07/21/2021
Public Works and Utilities Committee:	07/26/2021
Governing Body: 07/28/2021	

FINANCE COMMITTEE ACTION:

Approved on Consent

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

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

01/13/21



City of Santa Fe New Mexico

Memorandum



DATE: July 9, 2021

TO: Finance Committee

VIA: Alexis C. Lotero ^{AL}
Acting Finance Director

FROM: Andy Hopkins ^{AJH}
Acting Budget Officer

ITEM AND ISSUE:

Request for Approval of a Budget Amendment Resolution for the Quarter Ending June 30, 2021 (Fourth Quarter).

BACKGROUND AND SUMMARY:

Attached is a Resolution listing increases/decreases to the FY 2020/21 operating and CIP budget. All of these amendments are included in this amendment Resolution because they result in a net increase or decrease to the various funds affected, and thus require approval by the New Mexico Department of Finance and Administration/Local Government Division (DFA/LGD) as part of the quarterly budget Resolution. The schedule of detail supporting these increases/decreases is presented in five sections:

- A. Amendments to FY 2020/21 Budget That Have Previously Been Approved by City Council: these budget amendments have been previously approved by the Governing Body, and reflect amendments that exceed \$60,000 and that result in a net increase or decrease to any funds (and do not represent re-appropriations of unspent budget amounts from the prior year); per City ordinance, such amendments require Governing Body approval. They are included in this Resolution for the purpose of summarizing all quarterly budget amendments on a single resolution to provide to DFA/LGD for their review and approval. Presentation of these amendments on a single resolution in this way is much more efficient than the alternative of presenting a revised resolution to DFA/LGD for each and every individual budget amendment approved by City Council.
- B. Amendments to FY 2020/21 Budget That Have Not Previously Been Approved by City Council: these amendments were approved by and executed under the authority of the Finance Director (if the net budgetary change to any fund was under \$5,000) or the City Manager (if the net budgetary change was between \$5,000 and \$60,000), as per City ordinance. Also included are purely technical corrections and re-appropriations of unspent prior year budget amounts (including amounts over \$60,000), which, per City ordinance,

are approved and entered based on the prior year's City Council-approved budget authority, and subsequently submitted on a quarterly basis for City Council review and approval.

- C. Joint Operations (Buckman Direct Diversion & Santa Fe Solid Waste Management Agency) – Board-Approved Amendments to FY 2020/21 Budget: as the title of this section attests, these amendments reflect net changes to the Buckman Direct Diversion (BDD) and SF Solid Waste Management Agency (SFSWMA) joint operations budgets, approved and entered under the authority of the governing boards of those entities. Like the amendments outlined above, these budgetary changes are included in this Resolution for the purpose of presenting all quarterly net budgetary fund changes to DFA/LGD for their approval as required.
- D. Summary of All Quarterly Amendments to FY 2020/21 Budget by Fund: this section summarizes the net changes to all City funds detailed in the previous three sections (A-C). As shown at the bottom of this section, these amendments result in a net increase to the City's overall expenditure budget of \$37,842,908 and a net increase to the overall revenue budget of \$34,223,652. The resulting net revenue increase of \$3,619,256 (over and above additional expenditures) is supported by current revenues and/or available fund balances.
- E. Summary Schedule – Quarterly Budget Amendments Resolution (BAR) – LGBMS Reconciliation: as required by DFA/LGD, this section summarizes the City's submittal of 4th quarter budget amendments to DFA/LGD, expressed in both the City of Santa Fe fund structure and the DFA/LGD Local Government Budget Management System (LGBMS) fund structure.

The Budget Office submits all amendments resulting in net budgetary fund changes on a quarterly basis for Finance Committee consideration and City Council approval, and subsequently submits said amendments to DFA/LGD after approval by the Governing Body.

ACTION RECOMMENDED:

Recommend these amendments to the Governing Body for approval. After City Council approval, the Resolution will be forwarded to DFA/LGD for their approval as required.

ATTACHMENTS:

Resolution
Resolution Detail by Fund
Fiscal Impact Report

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CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2021-__

INTRODUCED BY:

Mayor Alan Webber

A RESOLUTION

REQUESTING APPROVAL OF FOURTH QUARTER BUDGET AMENDMENTS AND ASSOCIATED NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION/LOCAL GOVERNMENT DIVISION (DFA/LGD) SCHEDULE FOR FISCAL YEAR 2020/2021.

WHEREAS, a Fourth Quarter Review of the Fiscal Year 2020/2021 Budget shows a need to address significant budget adjustment priorities.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE that the Governing Body requests authorization for budget amendments as detailed on the attached Resolution Detail by Fund (see Attachment), hereby incorporated as part of this resolution.

BE IT FURTHER RESOLVED that the Governing Body respectfully requests authorization from the Local Government Division of the New Mexico Department of Finance and Administration to implement the Fourth Quarter Budget Amendments and associated DFA/LGD schedule be granted by the Local Government Division of the New Mexico Department of Finance

1 and Administration.

2 PASSED, APPROVED, and ADOPTED the ___ day of _____, 2021.

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ALAN WEBBER, MAYOR

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ATTEST:

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KRISTINE MIHELICIC, CITY CLERK

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APPROVED AS TO FORM:

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ERIN K. MCSHERRY, CITY ATTORNEY

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LOCAL GOVERNMENT DIVISION

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N.M. DEPARTMENT OF FINANCE

20

AND ADMINISTRATION

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Legislation/2021/Resolutions/Fourth Quarter Budget Adjustments FYE21

CITY OF SANTA FE
4TH QUARTER FY 2020/21

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SUB-SECTION [A]
AMENDMENTS TO FY 2020/21 BUDGET
THAT HAVE PREVIOUSLY BEEN
APPROVED BY CITY COUNCIL

CITY OF SANTA FE - FOURTH QUARTER FY 2020/2021
SUB-SECTION [A]: BUDGET AMENDMENTS PREVIOUSLY APPROVED BY CITY COUNCIL

<i>Fund</i>	<i>Fund Title</i>	<i>Amendment Description</i>	<i>Expenditure Increase (Decrease)</i>	<i>Revenue Increase (Decrease)</i>	<i>Budgeted Net Fund Increase (Decrease)</i>
<i>Council-Approved Capital Improvements Program (CIP) Budget Amendments:</i>					
232	Impact Fees Fund	Allocation of Roads Impact Fees to the Sandoval/Montezuma Intersection Improvements project [CC apvd. 4/14/21, #10-d]	\$ 750,000	\$ -	\$ (750,000)
315	CIP Resource Conservation	Appropriation of funding from various sources for the LED/Solar Streetlights Conversion project [CC apvd. 6/30/21, #11-b]	18,410,804	18,929,879	519,075
320	CIP Facilities	Appropriation of NM DFA Severance Tax Bond grant for the Southside Teen & Resource Center project [CC apvd. 4/14/21, #10-l]	3,870,900	3,870,900	-
320	CIP Facilities	Appropriation of NM DFA Severance Tax Bond grant to support the Municipal Court Roofing & Renovations project [CC apvd. 4/14/21, #10-k]	360,063	360,063	-
330	CIP Streets & Roadways	Allocation of Roads Impact Fees to the Sandoval/Montezuma Intersection Improvements project [CC apvd. 4/14/21, #10-d]	750,000	750,000	-
335	CIP Bond Acquisition	Appropriation of available GRT bond premiums for the Train Depot Renovation project [CC apvd. 6/30/21, #10-ae]	1,000,000	1,000,000	-
335	CIP Bond Acquisition	Appropriation of available GRT bond premiums for the Library, GCCC and Parks Tennis/Pickle Ball Courts improvements projects [CC apvd. 6/30/21, #11-a]	725,000	725,000	-
345	CIP Community Development	Appropriation of NM DFA Severance Tax Bond grant to support the SF Supportive Housing Renovation project [CC apvd. 6/9/21, #11-a]	844,470	844,470	-
345	CIP Community Development	Appropriation of NM DFA Severance Tax Bond grant to support the Electric Vehicles project [CC apvd. 4/14/21, #10-j]	750,000	750,000	-
355	CIP Parks and Trails	Appropriation of NM DOT grant to support the Canada Rincon Trail CIP project [CC apvd. 4/28/21, #10-b]	768,960	768,960	-
400	Debt Service Fund	Appropriation of available GRT bond premiums for the Train Depot Renovation project [CC apvd. 6/30/21, #10-ae]	1,000,000	-	(1,000,000)
400	Debt Service Fund	Appropriation of available GRT bond premiums for the Library, GCCC and Parks Tennis/Pickle Ball Courts improvements projects [CC apvd. 6/30/21, #11-a]	725,000	-	(725,000)
400	Debt Service Fund	Appropriation of available GRT bond premiums for the LED/Solar Streetlights Conversion project [CC apvd. 6/30/21, #11-b]	421,185	-	(421,185)
500	Waste Water Management	Appropriations from available revenue for the Wastewater Aeration System project [CC apvd. 5/26/21, #10-g, 10-h]	431,461	-	(431,461)
500	Waste Water Management	Appropriation for Wastewater Digester CIP project engineering/construction services [CC apvd. 4/28/21, #10-e]	190,579	-	(190,579)
505	Water Management	Appropriation from available balance for on-call project engineering assistance services [CC apvd. 6/9/21, #11-e]	1,084,376	-	(1,084,376)
505	Water Management	Transfer of funding to the CIP Resource Conservation Fund to provide the Water Utility cost share for the LED/Solar Streetlights Conversion project [CC apvd. 6/30/21, #11-b]	302,654	-	(302,654)
505	Water Management	Appropriation from available balance for water resource planning/modeling services per MOA with the US Bureau of Reclamation [CC apvd. 6/9/21, #11-h]	298,448	-	(298,448)

<i>Fund</i>	<i>Fund Title</i>	<i>Amendment Description</i>	<i>Expenditure Increase (Decrease)</i>	<i>Revenue Increase (Decrease)</i>	<i>Budgeted Net Fund Increase (Decrease)</i>
505	Water Management	Appropriation for the Nichols Reservoir and Aquifer Storage and Recovery projects [CC apvd. 4/14/21, #10-g]	93,683	-	(93,683)
Subtotal - Council-Approved Capital Improvements Program (CIP) Budget Amendments			\$ 32,777,583	\$ 27,999,272	\$ (4,778,311)
<u>Other Council-Approved Budget Amendments:</u>					
221	Emergency Services	Appropriation of US DHS Emergency Preparedness Grant [CC apvd. 6/9/21, #11-j]	\$ 262,749	\$ 262,749	\$ -
232	Impact Fees Fund	Allocation of Parks Impact Fees for replacement of fitness equipment at City facilities [CC apvd. 6/30/21, #10-s]	250,000	-	(250,000)
233	Transportation Grants	Appropriation of FTA/NMHTD Section 112 and Section 5303 Grants to support MPO transportation planning activities [CC apvd. 6/9/21, #11-i]	299,811	299,811	-
355	CIP Parks and Trails	Allocation of Parks Impact Fees for replacement of fitness equipment at City facilities [CC apvd. 6/30/21, #10-s]	250,000	250,000	-
365	½% GRT Income Fund	Appropriation of additional GRT revenue in excess of budget estimates to support the Public Safety radio system project [CC apvd. 5/12/21, #10-e]	273,677	273,677	-
520	Santa Fe Convention Center	Appropriation of NM Dept. of Tourism grant to support efforts to increase Santa Fe tourism business [CC apvd. 5/26/21, #11-a]	300,000	300,000	-
545	Airport	Appropriation of NM DOT Coronavirus Response Grant to support Airport operations [CC Apvd. 5/12/21, #10-g]	-	1,570,927	1,570,927
Subtotal - Other Council-Approved Budget Amendments			\$ 1,636,237	\$ 2,957,164	\$ 1,320,927
TOTAL - Budget Amendments Previously Approved by City Council			\$ 34,413,820	\$ 30,956,436	\$ (3,457,384)

CITY OF SANTA FE
4TH QUARTER FY 2020/21

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SUB-SECTION [B]
AMENDMENTS TO FY 2020/21 BUDGET
THAT HAVE NOT PREVIOUSLY BEEN
APPROVED BY CITY COUNCIL

CITY OF SANTA FE - FOURTH QUARTER FY 2020/2021
SUB-SECTION [B]: BUDGET AMENDMENTS NOT PREVIOUSLY APPROVED BY CITY COUNCIL

<i>Fund</i>	<i>Fund Title</i>	<i>Amendment Description</i>	<i>Expenditure Increase (Decrease)</i>	<i>Revenue Increase (Decrease)</i>	<i>Budgeted Net Fund Increase (Decrease)</i>
100	General Fund	SF County reimbursement grant for DWI program staff overtime	\$ 25,000	\$ 25,000	\$ -
100	General Fund	Appropriation of NM Humanities Council grant to support library staff salary costs	7,500	7,500	-
221	Emergency Services	Appropriation of SF Community College reimbursement for paramedic training	7,306	7,306	-
223	Law Enforcement	Appropriation of US Dept. of Justice Edward Byrne Grants for Police equipment, training and supplies	49,607	49,607	-
400	Debt Service Fund	Transfer of 2018 GRT Bond Premiums to appropriate funding to projects	2,146,185	2,146,185	-
620	Services to Other Departments	Adjustment of ITT internal service charges to Library Division for computer hardware purchases	29,000	29,000	-
620	Services to Other Departments	Adjustment of ITT internal service charges to Planning & Land Use for computer hardware purchases	2,618	2,618	-
<i>TOTAL - Budget Amendments Not Previously Approved by City Council</i>			\$ 2,267,216	\$ 2,267,216	\$ -

CITY OF SANTA FE

4TH QUARTER FY 2020/21

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SUB-SECTION [C]

**JOINT OPERATIONS
(BUCKMAN DIRECT DIVERSION & SF SOLID
WASTE MANAGEMENT AGENCY) –
BOARD-APPROVED AMENDMENTS TO
FY 2020/21 BUDGET**

CITY OF SANTA FE - FOURTH QUARTER FY 2020/2021
SUB-SECTION [C]: JOINT OPERATIONS - BOARD-APPROVED BUDGET AMENDMENTS

<i>Fund</i>	<i>Fund Title</i>	<i>Amendment Description</i>	<i>Expenditure Increase (Decrease)</i>	<i>Revenue Increase (Decrease)</i>	<i>Budgeted Net Fund Increase (Decrease)</i>
810	SF Solid Waste Mgmt Agency	Appropriations from available revenue to maintain necessary reserve balances in SWMA reserve funds	\$ 1,000,000	\$ -	\$ (1,000,000)
810	SF Solid Waste Mgmt Agency	Appropriation for on-call engineering services for the landfill	161,872	-	(161,872)
811	SWMA Equip Replacement Fund	Appropriation from available revenue to maintain necessary reserve balance in the SWMA Equipment Replacement Fund	-	1,000,000	1,000,000
TOTAL - Joint Operations - Board Approved Budget Amendments			\$ 1,161,872	\$ 1,000,000	\$ (161,872)

CITY OF SANTA FE
4TH QUARTER FY 2020/21

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SUB-SECTION [D]
SUMMARY OF ALL QUARTERLY
AMENDMENTS TO FY 2020/21 BUDGET BY
FUND

CITY OF SANTA FE - FOURTH QUARTER FY 2020/2021
SUB-SECTION [D]: TOTAL QUARTERLY AMENDMENTS BY FUND

<i>Fund</i>	<i>Fund Title</i>	<i>Expenditure Increase (Decrease)</i>	<i>Revenue Increase (Decrease)</i>	<i>Budgeted Net Fund Increase (Decrease)</i>
100	General Fund	\$ 32,500	\$ 32,500	\$ -
221	Emergency Services	270,055	270,055	-
223	Law Enforcement	49,607	49,607	-
232	Impact Fees Fund	1,000,000	-	(1,000,000)
233	Transportation Grants	299,811	299,811	-
315	CIP Resource Conservation	18,410,804	18,929,879	519,075
320	CIP Facilities	4,230,963	4,230,963	-
330	CIP Streets & Roadways	750,000	750,000	-
335	CIP Bond Acquisition	1,725,000	1,725,000	-
345	CIP Community Development	1,594,470	1,594,470	-
355	CIP Parks and Trails	1,018,960	1,018,960	-
365	½% GRT Income Fund	273,677	273,677	-
400	Debt Service Fund	4,292,370	2,146,185	(2,146,185)
500	Waste Water Management	622,040	-	(622,040)
505	Water Management	1,779,161	-	(1,779,161)
520	Santa Fe Convention Center	300,000	300,000	-
545	Airport	-	1,570,927	1,570,927
620	Services to Other Departments	31,618	31,618	-
810	SF Solid Waste Mgmt Agency	1,161,872	-	(1,161,872)
811	SWMA Equip Replacement Fund	-	1,000,000	1,000,000
QUARTERLY TOTAL - ALL FUNDS		\$ 37,842,908	\$ 34,223,652	\$ (3,619,256)

CITY OF SANTA FE
4TH QUARTER FY 2020/21

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SUB-SECTION [E]
SUMMARY SCHEDULE –
QUARTERLY BUDGET AMENDMENTS
RESOLUTION (BAR) –
LGBMS RECONCILIATION

Sub-Section E: City of Santa Fe - 4th Quarter FY 2020/21 Budget Amendments Resolution (BAR) - DFA LGBMS Reconciliation

CoSF Fund	CoSF Fund Title	LGBMS Fund #	LGBMS Fund Title	Type	3rd Quarter	4th Quarter	Net Change
100	General Fund	11000	General Operating Fund	Expenditures	88,882,625	88,915,125	32,500
100	General Fund	11000	General Operating Fund	Revenues	87,094,670	87,127,170	32,500
221	Emergency Services	29900	Other Special Revenue	Expenditures	11,169,847	11,439,902	270,055
221	Emergency Services	29900	Other Special Revenue	Revenues	10,045,157	10,315,212	270,055
223	Law Enforcement	21100	Law Enforcement Protection	Expenditures	2,993,749	3,043,356	49,607
223	Law Enforcement	21100	Law Enforcement Protection	Revenues	2,734,124	2,783,731	49,607
232	Impact Fees Fund	29900	Other Special Revenue	Transfers Out	114,000	1,114,000	1,000,000
233	Transportation Grants	21800	Intergovernmental Grants	Expenditures	497,866	797,677	299,811
233	Transportation Grants	21800	Intergovernmental Grants	Revenues	445,386	745,197	299,811
315	CIP Resource Conservation	30100	Bond Proceeds Project	Expenditures	-	18,410,804	18,410,804
315	CIP Resource Conservation	30100	Bond Proceeds Project	Revenues	-	18,206,040	18,206,040
315	CIP Resource Conservation	30100	Bond Proceeds Project	Transfers In	-	723,839	723,839
320	CIP Facilities	30100	Bond Proceeds Project	Expenditures	3,683,315	7,914,278	4,230,963
320	CIP Facilities	30100	Bond Proceeds Project	Revenues	2,725,500	6,956,463	4,230,963
330	CIP Streets & Roadways	30400	Road/Street Projects	Expenditures	7,399,358	8,149,358	750,000
330	CIP Streets & Roadways	30400	Road/Street Projects	Transfers In	54,000	804,000	750,000
335	CIP Bond Acquisition	30100	Bond Proceeds Project	Expenditures	11,569,567	13,294,567	1,725,000
335	CIP Bond Acquisition	30100	Bond Proceeds Project	Transfers In	309,772	2,034,772	1,725,000
345	CIP Community Development	30100	Bond Proceeds Project	Expenditures	482,234	2,076,704	1,594,470
345	CIP Community Development	30100	Bond Proceeds Project	Revenues	50,000	1,644,470	1,594,470
355	CIP Parks and Trails	30100	Bond Proceeds Project	Expenditures	2,940,783	3,959,743	1,018,960
355	CIP Parks and Trails	30100	Bond Proceeds Project	Revenues	256,320	1,025,280	768,960
355	CIP Parks and Trails	30100	Bond Proceeds Project	Transfers In	-	250,000	250,000
365	1/2% GRT Income Fund	30500	Gross Receipts Tax Proceeds Project	Expenditures	3,600,689	3,874,366	273,677
365	1/2% GRT Income Fund	30500	Gross Receipts Tax Proceeds Project	Revenues	14,834,870	15,108,547	273,677
400	Debt Service Fund	40200	GRT Revenue Bond Debt Service	Transfers Out	2,653,336	4,799,521	2,146,185
400	Debt Service Fund	49900	Other Debt Service	Transfers In	2,653,336	4,799,521	2,146,185
400	Debt Service Fund	49900	Other Debt Service	Transfers Out	250,471	2,396,656	2,146,185
500	Waste Water Management	50300	Wastewater/Sewer Enterprise	Expenditures	33,550,963	34,173,003	622,040
505	Water Management	50100	Water Enterprise	Expenditures	35,295,970	36,772,477	1,476,507
505	Water Management	50100	Water Enterprise	Transfers Out	2,954,719	3,257,373	302,654
520	Santa Fe Convention Center	51300	Convention/Events Center	Expenditures	6,086,149	6,386,149	300,000
520	Santa Fe Convention Center	51300	Convention/Events Center	Revenues	346,884	646,884	300,000
545	Airport	50400	Airport Enterprise	Revenues	22,997,832	24,568,759	1,570,927
620	Services to Other Depts	69900	Other Internal Service	Expenditures	9,908,405	9,940,023	31,618
620	Services to Other Depts	69900	Other Internal Service	Revenues	9,908,405	9,940,023	31,618
810	SF Solid Waste Mgmt Agency	52100	Joint Utility	Expenditures	9,610,056	9,771,928	161,872
810	SF Solid Waste Mgmt Agency	52100	Joint Utility	Transfers Out	409,935	1,409,935	1,000,000
811	SWMA Equip Replacement Fund	52100	Joint Utility	Transfers In	68,816	1,068,816	1,000,000

FISCAL IMPACT REPORT

General Information:

(Check) Bill: _____ Resolution: X

Short Title(s): Fourth Quarter Budget Amendments, Fiscal Year 2020/2021

Sponsor(s): Mayor Webber

Reviewing Department(s): Finance

Staff Completing FIR: Andy Hopkins Date: 7/9/2021 Phone: 955-6177

Reviewed by City Attorney:  Date: Jul 16, 2021

Reviewed by Finance Director: Alexis Lotero, Assistant Finance Director Date: Jul 15, 2021
Alexis Lotero, Assistant Finance Director (Jul 15, 2021 17:00 MDT)

Summary:

The purpose of the Resolution is to make 4th Quarter FY 2020/2021 budget amendments, increases and decreases to various funds, including adjustments for department priorities, grant adjustments, prior year encumbrances and increases supported by available revenue.

Departments Affected:

Various.

Consequences of Not Enacting Legislation:

The budget will not sufficiently reflect actual revenues and expenditures. Necessary adjustments cannot be submitted for NM DFA approval as required by the State.

Conflict, Duplication, Companionship, or Relationship to Other Legislation:

None identified.

Performance and Administrative Implications:

None; staff have already performed necessary actions to comport with the purpose of the budget amendments.

Fiscal Implications:

See Resolution attachments – Resolution Detail by Fund

Fiscal Impact

_____ Check here if no fiscal impact

Expenditures

Expenditure Type	FYE 21	FYE 22	FYE 23	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
Personnel and	\$ †	\$ 0	\$ 0	N	NR	†	
Benefits*							
Capital Outlay	\$ †	\$ 0	\$ 0	N	NR		
Contractual/	\$ †	\$ 0	\$ 0				
Professional Services							
Operating	\$ †	\$ 0	\$ 0			†	\$ †
Total:	\$ †	\$ 0	\$ 0				\$ †

* This includes all staff time associated with executing the job functions of the proposed legislation.

Expenditure Narrative:

Governing Body approval is required for all of the previous quarter's changes to budgeted expenditures and transfers out.

Revenue

Revenue Type	FYE 21	FYE 22	FYE 23	Recurring (R) or Non-recurring (NR)	Fund
General Fund	\$ †	\$ 0	\$ 0	NR	
Special Revenue	\$ †	\$ 0	\$ 0	NR	
CIP	\$ †	\$ 0	\$ 0	NR	
Enterprise	\$ †	\$ 0	\$ 0	NR	
Internal Service	\$ †	\$ 0	\$ 0	NR	
Trust and Agency	\$ †	\$ 0	\$ 0	NR	
Federal	\$ †	\$ 0	\$ 0	NR	
Other	\$ †	\$ 0	\$ 0	NR	†
Total	\$ †	\$ 0	\$ 0		

Revenue Narrative:

Governing Body approval is required for all of the previous quarter's changes to budgeted revenues and transfers in.

† See Attachments – Resolution Detail by Fund

Signature: Andy Hopkins
Andy Hopkins (Jul 15, 2021 16:55 MDT)

Email: ajhopkins@santafenm.gov

ACTION SHEET
/ITEM FROM FINANCE COMMITTEE MEETING OF 07/19/21
FOR CITY COUNCIL MEETING OF 07/28/21

h) CONSIDERATION OF RESOLUTION NO. 2021-___. (Mayor Webber)
 A Resolution Requesting Approval of Fourth Quarter Budget Amendments and Associated New Mexico Department of Finance and Administration/Local Government Division (DFA/GD) Schedule for Fiscal Year 2020/2021. (Andy Hopkins, Acting Budget Officer, ajhopkins@santafenm.gov, 955-6177)

Committee	Review
Introduced:	07/14/21
Finance Committee:	07/19/2021
Public Works Committee:	07/26/2021
Governing Body: 07/28/2021	

FINANCE COMMITTEE ACTION:
 Approved on Consent

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

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

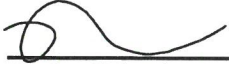
01/13/21


City of Santa Fe New Mexico

MEMO

DATE: July 14, 2021

TO: Mayor and Governing Body

VIA: 
Regina Wheeler, Public Works Director

FROM: Mark Baca, Airport Manager 

ACTION

Request approval of acceptance of FAA Grant SAF 3-35-0037-054-2021 in the amount of \$607,296 for the Runway 2 Safety Area Grading Improvement project. (Mark Baca, Airport Manager, mdbaca@santafenm.gov 505-955-2901)

Action 1. Request approval of FAA Grant SAF 3-35-0037-054-2021 in the amount of \$607,296.

Action 2. Request for Approval of BAR to Budget Grant Funding of \$607,296.

SUMMARY

On March 5, 2020 the Airport received notice from the FAA that, during the annual safety inspection, the FAA found that the runway safety area (RSA) on runway 2-20 approach was out of compliance and required immediate action to continue operating that airport runway.

Runway 2-20 is the airport's longest most utilized landing surface. Runway 2-20 also provides the flying public with an Instrument Landing System that helps locate the runway during difficult landing conditions. Completing repairs on the RSA is essential in order to keep the airport's Part 139 Operating Certificate in compliance allowing the airport to provide commercial air service.

The reimbursement grant will cover 100% of the cost of design and construction of the improvements.

An invitation to bid was completed in June 2021 and once the agreement is executed by both parties and BAR processed to make funds available, the contract to award the bid will be brought to governing body for approval.



U.S. Department
of Transportation
Federal Aviation
Administration

Airports Division
Southwest Region
Louisiana, New Mexico

10101 Hillwood Parkway
Fort Worth, TX 76177

July 9, 2021

Ms. Jarel Lapan Hill
City Manager, Santa Fe
P.O. Box 909
Santa Fe, NM 87504

Dear Ms. Lapan Hill:

We are transmitting to you for execution the Grant Offer for Airport Improvement Program (AIP) Project No. **3-35-0037-054-2021** at Santa Fe Municipal Airport in Santa Fe, NM. This letter outlines expectations for success. Please read the conditions and assurances carefully.

To properly enter into this agreement, you must do the following **on or before July 16, 2021**:

- a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- b. The sponsor's authorized representative must execute the grant by providing their electronic signature.
- c. Once the sponsor's authorized representative has electronically signed the grant, the sponsor's attorney will automatically be sent via email the grant to provide their electronic signature.
- d. You may not make any modification to the text, terms or conditions of the grant offer.
- e. Following the attorney's action, the executed grant will be automatically sent to all parties as an attachment to an email.

Subject to the requirements in 2 CFR §200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

The terms and conditions of this agreement require you to complete the project without undue delay. We will be monitoring your progress to ensure proper stewardship of these Federal funds. **We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress.** Should you fail to make draws on a regular basis, your grant may be placed in "inactive" status, which will affect your ability to receive future grant offers.

Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- A signed/dated SF-270 (non-construction projects) or SF-271 or equivalent (construction projects) and SF-425 annually, due 90 days after the end of each federal fiscal year in which this grant is open (due December 31 of each year this grant is open); and
- Performance Reports, which are due within 30 days of the end of a reporting period as follows:
 1. Non-construction project: Due annually at end of the Federal fiscal year.
 2. Construction project: Submit FAA form 5370-1, Construction Progress and Inspection Report at the end of each fiscal quarter.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

Once the project(s) is completed and all costs are determined, we ask that you close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

Noemi Cuevas, (817) 222-5352, is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,


Lacey D Spriggs (Jul 9, 2021 11:44 CDT)

Lacey D. Spriggs
Manager



U.S. Department
of Transportation
Federal Aviation
Administration

FAA Airport Improvement Program (AIP)

GRANT AGREEMENT

Part I - Offer

Federal Award Offer Date	July 9, 2021
Airport/Planning Area	Santa Fe Municipal Airport
FY2021 AIP Grant Number	3-35-0037-054-2021
Unique Entity Identifier	069420818
TO:	City of Santa Fe
	(herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated June 30, 2021, for a grant of Federal funds for a project at or associated with the Santa Fe Municipal Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Santa Fe Municipal Airport (herein called the "Project") consisting of the following:

Improve Safety Area RW 02 (Grading)

which is more fully described in the Project Application.

NOW THEREFORE, Pursuant to and for the purpose of carrying out the FAA Reauthorization Act of 2018 (Public Law Number 115-254); Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L), as further amended by the American Rescue Plan Act of 2021 (Public Law 117-2); and the representations contained in the Project Application; and in consideration of: (a) the Sponsor's adoption and ratification of the Grant Assurances attached hereto (b) the Sponsor's acceptance of this Offer; and (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurance and conditions as herein provided;

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100 percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is **\$607,296.**

The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

\$ 0 for planning

\$ 607,296 airport development or noise program implementation; and,

\$ 0 for land acquisition.

2. **Grant Performance.** This Grant Agreement is subject to the following Federal award requirements:
 - a. Period of Performance:
 1. Shall start on the date the Sponsor formally accepts this Agreement and is the date signed by the last Sponsor signatory to the Agreement. The end date of the Period of Performance is 4 years (1,460 calendar days) from the date of acceptance. The Period of Performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
 2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions or budget periods. (2 Code of Federal Regulations (CFR) § 200.1).
 - b. Budget Period:
 1. For this Grant is 4 years (1,460 calendar days) and follows the same start and end date as the period of performance provided in Paragraph a.1. Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period.
 2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.
 - c. Close Out and Termination
 1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the grant within one year of the period of performance end date with the information available at the end of 120 days. (2 CFR § 200.344).

2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with 49 U.S.C. § 47109, the regulations, policies, and procedures of the Secretary, and any superseding legislation. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this Agreement, 49 U.S.C. Chapters 471 and 475, and the regulations, policies, and procedures of the Secretary of Transportation ("Secretary"). Per 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from performing the project that exceeds three months or a 25 percent reduction in time devoted to the project, and request prior approval from FAA. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the grant assurances, which are part of this Agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor **on or before July 16, 2021**, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Grant Agreement.
11. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**

- a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
 - b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/SAM/pages/public/index.jsf>.
12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this Agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.
- The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1.
- The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.
- An informal letter amendment has the same force and effect as a formal grant amendment.
14. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.
15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
16. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.
17. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b)(3), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:
- a. May not be increased for a planning project;
 - b. May be increased by not more than 15 percent for development projects if funds are available;
 - c. May be increased by not more than the greater of the following for a, land project, if funds are available:

1. 15 percent; or
2. 25 percent of the total increase in allowable project costs attributable to acquiring an interest in the land.

If the sponsor requests an increase, any eligible increase in funding will be subject to the United States Government share as provided in 49 U.S.C. § 47110, or other superseding legislation if applicable, for the fiscal year appropriation with which the increase is funded. The FAA is not responsible for the same Federal share provided herein for any amount increased over the initial grant amount. The FAA may adjust the Federal share as applicable through an informal letter of amendment.

18. Audits for Sponsors.

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA.

19. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
 2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or
 3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. Sub-contracts).
- c. Immediately disclose to the FAA whenever the Sponsor (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debar a contractor, person, or entity.

20. Ban on Texting While Driving.

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

- b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
 - b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.
- 21. **Trafficking in Persons.**
 - a. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not –
 - 1. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;
 - 2. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or
 - 3. Use forced labor in the performance of the Grant or any subgrants under this Grant.
 - b. We as the Federal awarding agency, may unilaterally terminate this Grant, without penalty, if you or a subrecipient that is a private entity –
 - 1. Is determined to have violated a prohibition in paragraph a. of this condition; or
 - 2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph a. of this condition through conduct that is either –
 - a. Associated with performance under this Grant; or
 - b. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
 - c. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a. of this condition.
 - d. Our right to terminate unilaterally that is described in paragraph a. of this condition:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this Grant Agreement.
- 22. **AIP Funded Work Included in a PFC Application.** Within 90 days of acceptance of this Grant Agreement, the Sponsor must submit to the FAA an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this Grant Agreement as described in the project application. The airport sponsor may not make any expenditure under this Grant Agreement until project work addressed under this Grant Agreement is removed from an approved PFC application by amendment.
- 23. **Exhibit "A" Property Map.** The Exhibit "A" Property Map dated 12/10/2018, is incorporated herein by reference or is submitted with the project application and made part of this Grant Agreement.
- 24. **Employee Protection from Reprisal.**
 - a. Prohibition of Reprisals —

1. In accordance with 41 U.S.C. § 4712, an employee of a Sponsor, grantee, subgrantee, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph a.2. below, information that the employee reasonably believes is evidence of:
 - i. Gross mismanagement of a Federal grant;
 - ii. Gross waste of Federal funds;
 - iii. An abuse of authority relating to implementation or use of Federal funds;
 - iv. A substantial and specific danger to public health or safety; or
 - v. A violation of law, rule, or regulation related to a Federal grant.
2. Persons and bodies covered. The persons and bodies to which a disclosure by an employee is covered are as follows:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency;
 - v. A court or grand jury;
 - vi. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
 - vii. An authorized official of the Department of Justice or other law enforcement agency.
3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph a of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this condition more than three years after the date on which the alleged reprisal took place.
5. Required Actions of the Inspector General — Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
6. Assumption of Rights to Civil Remedy — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).

SPECIAL CONDITIONS

25. **Plans and Specifications Prior to Bidding.** The Sponsor agrees that it will submit plans and specifications for FAA review prior to advertising for bids.
26. **Buy American Executive Orders.** The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the Grant Assurances, terms, and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.¹

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**


Lacey D Spriggs (Jul 9, 2020 11:44 CDT)

(Signature)

Lacey D Spriggs

(Typed Name)

Manager LA/NM Airports District Office

(Title of FAA Official)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the Grant Assurances, terms, and conditions in this Offer and in the Project Application.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.²

Dated July 12, 2021

City of Santa Fe

(Name of Sponsor)

Jarel LaPan Hill

Jarel LaPan Hill (Jul 12, 2021 08:11 MDT)

(Signature of Sponsor's Authorized Official)

By: Jarel LaPan Hill

(Typed Name of Sponsor's Authorized Official)

Title: City Manager

(Title of Sponsor's Authorized Official)

² Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of New Mexico. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State, the FAA Reauthorization Act of 2018 (Public Law Number 115-254); Title 49 U.S.C., Chapters 471 and 475; 49 U.S.C. §§ 40101, et seq., and 48103; and the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L), as further amended by the American Rescue Plan Act of 2021 (Public Law 117-2). In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.³

Dated at _____

By: _____
(Signature of Sponsor's Attorney)

ASSURANCES

AIRPORT SPONSORS

A. General.

- a. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
- b. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
- c. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

FEDERAL LEGISLATION

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act — 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1 2}
- f. National Historic Preservation Act of 1966 – Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 – Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 – Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.¹
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity¹
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 – Environmental Justice

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Non-procurement Suspension and Debarment.
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures
- e. 14 CFR Part 16 – Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- f. 14 CFR Part 150 – Airport noise compatibility planning.
- g. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.
- h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- i. 29 CFR Part 1 – Procedures for predetermination of wage rates.¹
- j. 29 CFR Part 3 – Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- k. 29 CFR Part 5 – Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- m. 49 CFR Part 18 – Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- n. 49 CFR Part 20 – New restrictions on lobbying.
- o. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- p. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.

- q. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.^{1 2}
- r. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- s. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- t. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- u. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- v. 49 CFR Part 32 – Government-wide Requirements for Drug-Free Workplace (Financial Assistance).
- w. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- x. 49 CFR Part 41 – Seismic safety of Federal and federally assisted or regulated new building construction.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

FOOTNOTES TO ASSURANCE C.1.

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.
- ⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.**a. Public Agency Sponsor:**

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or

document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United

States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-
 - 1. Operating the airport's aeronautical facilities whenever required;
 - 2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3. Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and

purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
 - 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
 - b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
 - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
 1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
 3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
 4. all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
 1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.
- c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
2. So long as the sponsor retains ownership or possession of the property.

- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The (**City of Santa Fe**), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

- e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2)

transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

Engineering and Design Services. If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U. S. C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out any project funded under an Airport Improvement Program Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars for AIP projects as of June 30, 2021.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or

operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 1. Describes the requests;
 2. Provides an explanation as to why the requests could not be accommodated; and
 3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

View the most current versions of FAA's Advisory Circulars (A/Cs) here:

https://www.faa.gov/regulations_policies/advisory_circulars/

Airports A/Cs are found in the 150 series. In addition Airspace A/Cs, found in the 70 series, also may apply for certain projects.

Signature: *Andy Hopkins*

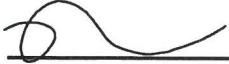
Email: ajhopkins@ci.santa-fe.nm.us


City of Santa Fe New Mexico

MEMO

DATE: July 14, 2021

TO: Mayor and Governing Body

VIA: 
Regina Wheeler, Public Works Director

FROM: Mark Baca, Airport Manager 

ACTION

Request approval of acceptance of FAA Grant SAF 3-35-0037-054-2021 in the amount of \$607,296 for the Runway 2 Safety Area Grading Improvement project. (Mark Baca, Airport Manager, mdbaca@santafenm.gov 505-955-2901)

Action 1. Request approval of FAA Grant SAF 3-35-0037-054-2021 in the amount of \$607,296.

Action 2. Request for Approval of BAR to Budget Grant Funding of \$607,296.

SUMMARY

On March 5, 2020 the Airport received notice from the FAA that, during the annual safety inspection, the FAA found that the runway safety area (RSA) on runway 2-20 approach was out of compliance and required immediate action to continue operating that airport runway.

Runway 2-20 is the airport's longest most utilized landing surface. Runway 2-20 also provides the flying public with an Instrument Landing System that helps locate the runway during difficult landing conditions. Completing repairs on the RSA is essential in order to keep the airport's Part 139 Operating Certificate in compliance allowing the airport to provide commercial air service.

The reimbursement grant will cover 100% of the cost of design and construction of the improvements.

An invitation to bid was completed in June 2021 and once the agreement is executed by both parties and BAR processed to make funds available, the contract to award the bid will be brought to governing body for approval.



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3202843

Contractor: USDOT/FAA

Description: Runway Safety Area (RSA) for Runway 2 grading

Contract Agreement Lease / Rent Amendment

Term Start Date: 07/12/2021 Term End Date: 07/11/2025

Approved by Council Date: _____

Contract / Lease: Grant agreement for RSA 2 grading

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

Amendment is for:

2. **HISTORY** of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)

3. Procurement History: _____

Fran D. Haway
Fran D. Haway (Jul 16, 2021 10:25 MDT)

Jul 16, 2021

Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: Grant funding

4. Funding Source: Federal Grant Org / Object: 5450407.572960/572970

Andy Hopkins
Andy Hopkins (Jul 16, 2021 10:21 MDT)

Jul 16, 2021

Budget Officer Approval: _____ Date: _____

Comment & Exceptions: project string AIR22545OA

Staff Contact who completed this form: Mark Baca Phone # ext 2901

Email: mdbaca@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



U.S. Department
of Transportation
Federal Aviation
Administration

Airports Division
Southwest Region
Louisiana, New Mexico

10101 Hillwood Parkway
Fort Worth, TX 76177

July 9, 2021

Ms. Jarel Lapan Hill
City Manager, Santa Fe
P.O. Box 909
Santa Fe, NM 87504

Dear Ms. Lapan Hill:

We are transmitting to you for execution the Grant Offer for Airport Improvement Program (AIP) Project No. **3-35-0037-054-2021** at Santa Fe Municipal Airport in Santa Fe, NM. This letter outlines expectations for success. Please read the conditions and assurances carefully.

To properly enter into this agreement, you must do the following **on or before July 16, 2021**:

- a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- b. The sponsor's authorized representative must execute the grant by providing their electronic signature.
- c. Once the sponsor's authorized representative has electronically signed the grant, the sponsor's attorney will automatically be sent via email the grant to provide their electronic signature.
- d. You may not make any modification to the text, terms or conditions of the grant offer.
- e. Following the attorney's action, the executed grant will be automatically sent to all parties as an attachment to an email.

Subject to the requirements in 2 CFR §200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

The terms and conditions of this agreement require you to complete the project without undue delay. We will be monitoring your progress to ensure proper stewardship of these Federal funds. **We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress.** Should you fail to make draws on a regular basis, your grant may be placed in "inactive" status, which will affect your ability to receive future grant offers.

Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- A signed/dated SF-270 (non-construction projects) or SF-271 or equivalent (construction projects) and SF-425 annually, due 90 days after the end of each federal fiscal year in which this grant is open (due December 31 of each year this grant is open); and
- Performance Reports, which are due within 30 days of the end of a reporting period as follows:
 1. Non-construction project: Due annually at end of the Federal fiscal year.
 2. Construction project: Submit FAA form 5370-1, Construction Progress and Inspection Report at the end of each fiscal quarter.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

Once the project(s) is completed and all costs are determined, we ask that you close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

Noemi Cuevas, (817) 222-5352, is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,


Lacey D Spriggs (Jul 9, 2021 11:44 CDT)

Lacey D. Spriggs
Manager



U.S. Department
of Transportation
Federal Aviation
Administration

FAA Airport Improvement Program (AIP)

GRANT AGREEMENT

Part I - Offer

Federal Award Offer Date	July 9, 2021
Airport/Planning Area	Santa Fe Municipal Airport
FY2021 AIP Grant Number	3-35-0037-054-2021
Unique Entity Identifier	069420818

TO: City of Santa Fe
(herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated June 30, 2021, for a grant of Federal funds for a project at or associated with the Santa Fe Municipal Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Santa Fe Municipal Airport (herein called the "Project") consisting of the following:

Improve Safety Area RW 02 (Grading)

which is more fully described in the Project Application.

NOW THEREFORE, Pursuant to and for the purpose of carrying out the FAA Reauthorization Act of 2018 (Public Law Number 115-254); Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L), as further amended by the American Rescue Plan Act of 2021 (Public Law 117-2); and the representations contained in the Project Application; and in consideration of: (a) the Sponsor's adoption and ratification of the Grant Assurances attached hereto (b) the Sponsor's acceptance of this Offer; and (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurance and conditions as herein provided;

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100 percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is **\$607,296.**

The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

\$ 0 for planning

\$ 607,296 airport development or noise program implementation; and,

\$ 0 for land acquisition.

2. **Grant Performance.** This Grant Agreement is subject to the following Federal award requirements:
 - a. Period of Performance:
 1. Shall start on the date the Sponsor formally accepts this Agreement and is the date signed by the last Sponsor signatory to the Agreement. The end date of the Period of Performance is 4 years (1,460 calendar days) from the date of acceptance. The Period of Performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
 2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions or budget periods. (2 Code of Federal Regulations (CFR) § 200.1).
 - b. Budget Period:
 1. For this Grant is 4 years (1,460 calendar days) and follows the same start and end date as the period of performance provided in Paragraph a.1. Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period.
 2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.
 - c. Close Out and Termination
 1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the grant within one year of the period of performance end date with the information available at the end of 120 days. (2 CFR § 200.344).

2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with 49 U.S.C. § 47109, the regulations, policies, and procedures of the Secretary, and any superseding legislation. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this Agreement, 49 U.S.C. Chapters 471 and 475, and the regulations, policies, and procedures of the Secretary of Transportation ("Secretary"). Per 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from performing the project that exceeds three months or a 25 percent reduction in time devoted to the project, and request prior approval from FAA. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the grant assurances, which are part of this Agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor **on or before July 16, 2021**, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Grant Agreement.
11. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**

- a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
 - b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/SAM/pages/public/index.jsf>.
12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this Agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.
- The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1.
- The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.
- An informal letter amendment has the same force and effect as a formal grant amendment.
14. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.
15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
16. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.
17. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b)(3), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:
- a. May not be increased for a planning project;
 - b. May be increased by not more than 15 percent for development projects if funds are available;
 - c. May be increased by not more than the greater of the following for a, land project, if funds are available:

1. 15 percent; or
2. 25 percent of the total increase in allowable project costs attributable to acquiring an interest in the land.

If the sponsor requests an increase, any eligible increase in funding will be subject to the United States Government share as provided in 49 U.S.C. § 47110, or other superseding legislation if applicable, for the fiscal year appropriation with which the increase is funded. The FAA is not responsible for the same Federal share provided herein for any amount increased over the initial grant amount. The FAA may adjust the Federal share as applicable through an informal letter of amendment.

18. Audits for Sponsors.

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA.

19. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
 2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or
 3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. Sub-contracts).
- c. Immediately disclose to the FAA whenever the Sponsor (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debar a contractor, person, or entity.

20. Ban on Texting While Driving.

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

- b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
 - b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.
21. **Trafficking in Persons.**
- a. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not –
 - 1. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;
 - 2. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or
 - 3. Use forced labor in the performance of the Grant or any subgrants under this Grant.
 - b. We as the Federal awarding agency, may unilaterally terminate this Grant, without penalty, if you or a subrecipient that is a private entity –
 - 1. Is determined to have violated a prohibition in paragraph a. of this condition; or
 - 2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph a. of this condition through conduct that is either –
 - a. Associated with performance under this Grant; or
 - b. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
 - c. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a. of this condition.
 - d. Our right to terminate unilaterally that is described in paragraph a. of this condition:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this Grant Agreement.
22. **AIP Funded Work Included in a PFC Application.** Within 90 days of acceptance of this Grant Agreement, the Sponsor must submit to the FAA an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this Grant Agreement as described in the project application. The airport sponsor may not make any expenditure under this Grant Agreement until project work addressed under this Grant Agreement is removed from an approved PFC application by amendment.
23. **Exhibit "A" Property Map.** The Exhibit "A" Property Map dated 12/10/2018, is incorporated herein by reference or is submitted with the project application and made part of this Grant Agreement.
24. **Employee Protection from Reprisal.**
- a. Prohibition of Reprisals —

1. In accordance with 41 U.S.C. § 4712, an employee of a Sponsor, grantee, subgrantee, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph a.2. below, information that the employee reasonably believes is evidence of:
 - i. Gross mismanagement of a Federal grant;
 - ii. Gross waste of Federal funds;
 - iii. An abuse of authority relating to implementation or use of Federal funds;
 - iv. A substantial and specific danger to public health or safety; or
 - v. A violation of law, rule, or regulation related to a Federal grant.
2. Persons and bodies covered. The persons and bodies to which a disclosure by an employee is covered are as follows:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency;
 - v. A court or grand jury;
 - vi. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
 - vii. An authorized official of the Department of Justice or other law enforcement agency.
3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph a of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this condition more than three years after the date on which the alleged reprisal took place.
5. Required Actions of the Inspector General — Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
6. Assumption of Rights to Civil Remedy — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).

SPECIAL CONDITIONS

25. **Plans and Specifications Prior to Bidding.** The Sponsor agrees that it will submit plans and specifications for FAA review prior to advertising for bids.
26. **Buy American Executive Orders.** The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the Grant Assurances, terms, and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.¹

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**


Lacey D Spriggs (Jul 9, 2020 11:44 CDT)

(Signature)

Lacey D Spriggs

(Typed Name)

Manager LA/NM Airports District Office

(Title of FAA Official)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the Grant Assurances, terms, and conditions in this Offer and in the Project Application.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.²

Dated July 12, 2021

City of Santa Fe

(Name of Sponsor)

Jarel LaPan Hill

Jarel LaPan Hill (Jul 12, 2021 08:11 MDT)

(Signature of Sponsor's Authorized Official)

By: Jarel LaPan Hill

(Typed Name of Sponsor's Authorized Official)

Title: City Manager

(Title of Sponsor's Authorized Official)

² Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of New Mexico. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State, the FAA Reauthorization Act of 2018 (Public Law Number 115-254); Title 49 U.S.C., Chapters 471 and 475; 49 U.S.C. §§ 40101, et seq., and 48103; and the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L), as further amended by the American Rescue Plan Act of 2021 (Public Law 117-2). In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.³

Dated at _____

By: _____
(Signature of Sponsor's Attorney)

ASSURANCES

AIRPORT SPONSORS

A. General.

- a. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
- b. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
- c. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. Airport Planning Undertaken by a Sponsor.

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

FEDERAL LEGISLATION

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act — 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1 2}
- f. National Historic Preservation Act of 1966 – Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 – Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 – Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.¹
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity¹
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 – Environmental Justice

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Non-procurement Suspension and Debarment.
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures
- e. 14 CFR Part 16 – Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- f. 14 CFR Part 150 – Airport noise compatibility planning.
- g. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.
- h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- i. 29 CFR Part 1 – Procedures for predetermination of wage rates.¹
- j. 29 CFR Part 3 – Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- k. 29 CFR Part 5 – Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- m. 49 CFR Part 18 – Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- n. 49 CFR Part 20 – New restrictions on lobbying.
- o. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- p. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.

- q. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.^{1 2}
- r. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- s. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- t. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- u. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- v. 49 CFR Part 32 – Government-wide Requirements for Drug-Free Workplace (Financial Assistance).
- w. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- x. 49 CFR Part 41 – Seismic safety of Federal and federally assisted or regulated new building construction.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

FOOTNOTES TO ASSURANCE C.1.

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.
- ⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.**a. Public Agency Sponsor:**

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or

document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United

States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-
 - 1. Operating the airport's aeronautical facilities whenever required;
 - 2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3. Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and

purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
 - 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
 - b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
 - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
 1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
 3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
 4. all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
 1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.
- c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
2. So long as the sponsor retains ownership or possession of the property.

- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The (**City of Santa Fe**), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

- e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2)

transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

Engineering and Design Services. If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U. S. C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out any project funded under an Airport Improvement Program Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars for AIP projects as of June 30, 2021.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or

operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 1. Describes the requests;
 2. Provides an explanation as to why the requests could not be accommodated; and
 3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

View the most current versions of FAA's Advisory Circulars (A/Cs) here:

https://www.faa.gov/regulations_policies/advisory_circulars/

Airports A/Cs are found in the 150 series. In addition Airspace A/Cs, found in the 70 series, also may apply for certain projects.

Log # <i>{Finance use only}</i> :	
Journal # <i>{Finance use only}</i> :	

City of Santa Fe, New Mexico BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME Public Works / Airport					DATE 7/13/2021	
ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE	
EXPENDITURES				<i>{enter as positive #}</i>	<i>{enter as negative #}</i>	
WIP Design	5450407	572960	AIR-225450A	97,030		
WIP Construction	5450407	572970	AIR-225450A	510,266		
REVENUES				<i>{enter as negative #}</i>	<i>{enter as positive #}</i>	
USDOT /FAA	5450407	490550	AIR-225450A	(607,296)		
JUSTIFICATION: <i>{use additional page if needed}</i> --Attach supporting documentation/memo				\$	-	\$

USDOT funding acceptance of Grant #3-35-0037-054-2021 for Improve Safety Area RW2 (grading)

<i>{Complete section below if BAR results in a net change to ANY Fund}</i>	
Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	0

Bobbi Huseman Prepared By <i>{print name}</i>	7/14/2021 Date	<i>{Use this form for Finance Committee/ City Council agenda items ONLY}</i>	Andy Hopkins Budget Officer	_____ Date
Mark Baca Division Director Signature <i>{optional}</i>	7/14/2021 Date	CITY COUNCIL APPROVAL City Council Approval Date: <input style="width: 100px; height: 20px;" type="text"/>	_____ Finance Director <i>{≤ \$5,000}</i>	_____ Date
 Department Director Signature	7/14/2021 Date	Agenda Item #: <input style="width: 100px; height: 20px;" type="text"/>	_____ City Manager <i>{≤ \$60,000}</i>	_____ Date

Signature: *Andy Hopkins*

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



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3202843

Contractor: USDOT/FAA

Description: Runway Safety Area (RSA) for Runway 2 grading

Contract Agreement Lease / Rent Amendment

Term Start Date: 07/12/2021 Term End Date: 07/11/2025

Approved by Council Date: _____

Contract / Lease: Grant agreement for RSA 2 grading

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

Amendment is for:

2. **HISTORY** of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)

3. Procurement History: _____

Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: _____

4. Funding Source: Federal Grant Org / Object: 5450407.572960/572970

Budget Officer Approval: _____ Date: _____

Comment & Exceptions: project string AIR22545OA

Staff Contact who completed this form: Mark Baca Phone # ext 2901

Email: mdbaca@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____









GB PWD AIRPORT FAA

Final Audit Report

2021-07-16

Created:	2021-07-16
By:	Lailah Herrera (lherrera@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAq5uX-5ejc0WKJzD31Z_CsW6R8MJlqEe3

"GB PWD AIRPORT FAA" History

-  Document created by Lailah Herrera (lherrera@ci.santa-fe.nm.us)
2021-07-16 - 4:01:28 PM GMT- IP address: 63.232.20.2
-  Document emailed to Andy Hopkins (ajhopkins@santafenm.gov) for signature
2021-07-16 - 4:03:36 PM GMT
-  Email viewed by Andy Hopkins (ajhopkins@santafenm.gov)
2021-07-16 - 4:20:54 PM GMT- IP address: 104.47.64.254
-  Document e-signed by Andy Hopkins (ajhopkins@santafenm.gov)
Signature Date: 2021-07-16 - 4:21:29 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to Fran Dunaway (fadunaway@santafenm.gov) for signature
2021-07-16 - 4:21:32 PM GMT
-  Email viewed by Fran Dunaway (fadunaway@santafenm.gov)
2021-07-16 - 4:24:10 PM GMT- IP address: 104.47.65.254
-  Document e-signed by Fran Dunaway (fadunaway@santafenm.gov)
Signature Date: 2021-07-16 - 4:25:29 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.
2021-07-16 - 4:25:29 PM GMT

ACTION SHEET
/ITEM FROM FINANCE COMMITTEE MEETING OF 07/19/21
FOR CITY COUNCIL MEETING OF 07/28/21

k) Request for Approval of Acceptance of FAA Grant SAF 3-35-0037-054-2021 in the Amount of \$607,296 for the Runway 2 Safety Area Grading Improvement Project. (Mark Baca, Airport Manager, mdbaca@santafenm.gov, 955-2901)

1. Request for Approval of BAR to Budget Grant Funding of \$607,296.

Committee	Review:
Finance Committee:	07/19/21
Public Works and Utilities Committee:	07/26/21
Governing Body: 07/28/21	

FINANCE COMMITTEE ACTION:

Approved on Consent

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

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

01/13/21



City of Santa Fe, New Mexico

Memorandum



DATE: July 6, 2021

TO: Finance Committee, Public Works and Utilities Committee, and Governing Body

VIA: Regina Wheeler, Public Works Department Director RW
Sam Burnett, Interim Facilities Division Director SB

FROM: Caryn Grosse, Facilities Project Administrator

ITEM AND ACTION:

Request for Approval of Amendment #2 Increasing Service Contract 20-0233 by \$1,000,000.00 to a Total Amount of \$1,418,742.81, for Fire Monitoring, Inspections, Repair and Maintenance Services Throughout City Facilities and Midtown Campus; American Fire Protection Group, Inc. (AFPG); (Caryn Grosse, Facilities Project Administrator, clgrosse@santafenm.gov, 505-955-5938)

BACKGROUND AND SUMMARY:

The Fire Monitoring, Inspections, Repair and Maintenance Services contract with American Fire Protection Group (AFPG) serves two purposes. First, it provides ongoing fire alarm monitoring and annual fire safety inspections, and updates in multiple City facilities. Second, it addresses deficiencies discovered during inspections, including repairs and upgrades, and provides flexibility to add and subtract City facilities to the monitoring and inspection plan as needed.

Amendment #2 provides additional funds for Fiscal Year 2022 for the continued monitoring, inspections, as well as repairs and upgrades needed to bring fire protection systems across the City into compliance with fire safety code.

Contract History:

Original:

1. Original contract 20-0233 for \$271,093.75 was approved on 05/28/2020. In FY20, the Fire System inspection & repair was funded through Facilities Maintenance Operating Budget. Due to operational funding cuts in FY21, the funding was re-allocated to GRT18 reallocation fund in the amount of \$300,000 for FY21.
2. Amendment #1 for increase of \$63,274.06 including applicable NMGR to existing American Fire Protection Group, Inc. contract. This increased original contract amount of \$271,093.75 to \$334,367.81. Amendment #1 is anticipated to be approved on 6/30/2021.
3. Proposed amendment #2 is to increase the contract amount by \$1,000,000.00 including NMGR to total contract amount of \$1,418,742.81.

The term of the contract remains unchanged, and it will expire on 3/30/2024 and can be terminated at any time should the City determine that the services of AFPG do not adequately meet the needs of the City.

PROCUREMENT METHOD:

The procurement method is via NM Statewide Price Agreement (NMSPA) #00-00000-20-00094, which expires on January 7, 2025.

SCHEDULE:

Finance Committee: 07/19/2021

Public Works and Utilities Committee: 07/26/2021

City Council: 07/28/2021

CONTRACT NUMBER:

The existing Munis contract number is 3201821.

FUNDING SOURCES:

This on-call contract will be used for buildings throughout the City, including Midtown Campus.

Funding sources will vary, depending on the facility but will include:

Munis Org Name/Number: FMD Maint/1000435

Munis Object Name/Number: Rep and Maint Build/Struct /520100

ATTACHMENTS:

American Fire Protection Group, Inc. Contract Amendment #2

American Fire Protection Group, Inc. Contract Amendment #1

American Fire Protection Group, Inc Original Contract #20-0233

American Fire Protection Group, Inc Proposal

State Price Agreement #: 90-000-18-00020

Contractor's Certificate of Professional Liability Insurance

City of Santa Fe Business License

Summary of Contract

Procurement Checklist

Signature: J Samuel Burnett
J Samuel Burnett (Jul 8, 2021 13:42 MDT)

Email: jsburnett@santafenm.gov

Signature: Regina Wheeler
Regina Wheeler (Jul 11, 2021 14:16 MDT)

Email: rawheeler@santafenm.gov

**CITY OF SANTA FE
AMENDMENT No. 2 TO
PROFESSIONAL SERVICES AGREEMENT
ITEM# 20-0233**

AMENDMENT No. 2 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated May 13, 2020, (the "Agreement"), between the City of Santa Fe (the "City") and American Fire Protection Group, 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 professional fire safety services for the City of Santa Fe.

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. COMPENSATION

Article 3, paragraph A, of the Agreement is amended to increase the amount of compensation by five hundred fifty thousand dollars and zero cents (\$550,000.00), plus applicable gross receipts taxes of forty-six thousand four hundred six dollars and twenty-five cents (\$46,406.25), for a total of five hundred ninety thousand four hundred six dollars and twenty-five cents (\$596,406.25), and as described in Exhibit "A" attached hereto so that Article 3, paragraph A reads in its entirety as follows:

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 Inspections, Certifications, Monitoring, Repair and Safety		\$930,774.06

The total compensation under this Agreement shall not exceed **\$930,774.06 including applicable NMGRT (8.4375%)**.

2. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 to the City of Santa Fe Professional Services Agreement as of the dates set forth below.

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

Date: _____

CONTRACTOR:



KYLE CONNELLY
DIVISION LEADER, AFPG, INC.

Date: 6-27-2021

CRS #: 03-242279-00-2

Business License: 224159

ATTEST:

KRISTINE BUSTOS-MIHELICIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez

Marcos Martinez (Jun 16, 2021 14:17 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED AS TO BUDGET:

MARY MCCOY, FINANCE DIRECTOR

Org/Object:

\$325,312.50 (\$300,000.00 plus NMGRT of \$25,312.50) from 3359980.520100,
\$271,093.75 (\$250,000.00 plus NMGRT of \$21,093.75) from 5256175.520100

AJH
AJH



City of Santa Fe, New Mexico

Memorandum



DATE: March 25, 2021

TO: Governing Body

VIA: Regina Wheeler, Public Works Department Director *RW*

FROM: Michael Rodriguez, Facilities Division Director *MR*
Curt E. Temple, Facilities Division Project Administrator *CT*

ITEM AND ACTION:

Request Approval of Amendment #1 to Service Contract 20-0233 with American Fire Protection Group, Inc; increasing the existing contract in the Amount of \$63,274.06 including NMGRT from \$271,093.75 to \$334,367.81 for fire monitoring, inspections, repair and maintenance services throughout City Facilities (Curt E. Temple, Facilities Division Project Administrator, cetemple@santafenm.gov, 505-955-5937 Office / 505-795-2439 Mobile)

SUMMARY:

This Fire Monitoring, Inspections, Repair and Maintenance Services contract with American Fire Protection Group (AFPG) serves two purposes. The first purpose is to provide ongoing fire alarm monitoring and annual fire safety inspections at City facilities. The second purpose is to address deficiencies discovered during inspections. The original purchase order amount has been used for inspections and repairs and upgrades. Additional funds are needed to continue inspections and upgrades to City facilities.

Buildings included in the upgrade, monitoring and inspection portion of this contract include: Bicentennial Pool; City Hall; Siler Road Offices; Fire Stations 1, 3, 4, 5, 7, 8, 9 and 10; Fort Marcy; La Farge Library; Main Library; Siringo Complex; Waste Water; Transit Complex; Canyon Road Treatment Plant; Water Building; MRC Administration and Café buildings; Municipal Court; Police Administration building; Salvador Perez; and the Southside Library as well as a number of Midtown buildings including Fogelson Library, Southwest Annex, St Michael Hall shelter, King Hall recovery center and Garson Studios.

Amendment #1 will add funds to allow for the continued inspection and repairs of fire protection systems for City buildings to ensure that buildings comply with fire safety code.

Contract History:

Original:

1. Original contract 20-0233 for \$271,093.75 approved 05/28/2020. In FY20, the Fire System inspection & repair was funded through Facilities Maintenance Operating PO# 22004848 - \$192,095.00 of which \$34,367.81 was expended. The remaining balance of \$157,727.19 could not be utilized due to operational funding cuts in FY21. A new PO was established using 2018 GRT reallocation fund, PO #22101236 for \$157,727.19 was established to support this effort (See attached spreadsheet to memo).

2. Proposed amendment #1 for \$63,274.06 including applicable gross receipts taxes using 2018 GRT bond reallocation. This will increase original \$271,093.75 contract, for total project funding of \$334,367.81.

PROCUREMENT METHOD:

The procurement method is NM Statewide Price Agreement (NMSPA) #90-000-18-00020. This contract will expire in approximately three years on 3/30/2024.

CONTRACT NUMBER:

The existing FY21 Munis contract number is 3201821

BUDGET:

FY21 - increase existing PO #22101236 allocated from GRT reallocation for fire system inspection & repair citywide.

Project String: GRT18FMD

Munis Org Name/Number: 3359980

Munis Object Name/Number: 520100

SCHEDULE:

Public Works committee: 04/26/2021

Finance Committee: 05/03/2021

City Council: 05/12/2021

ATTACHMENTS:

Amendment #1 to Contract

American Fire Protection Group, Inc Existing Contract #20-0233

American Fire Protection Group, Inc Proposal

State Price Agreement #: 00-00000-20-00094

Contractor's Certificate of Professional Liability Insurance

City of Santa Fe Business License

Summary of Contract

Procurement Checklist



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: May 3, 2021

To: **American Fire Protection Group, Inc.**

Attn: **Jason Vaillancourt**

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

RE: GSA Contract **00-00000-20-00094 Facilities Maintenance & Management**

The City of Santa Fe by mutual agreement between the City and **American Fire Protection Group, 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.

Kyle Connolly, Division Leader
Print Name, Title

jason.vaillancourt@AFP6USA.US
Email Address

[Signature]
Signature

AFP6
Company Name

5-3-2021
Date

8904 Adams St NE Albuquerque NM 87113
Address

Cc: Fran Dunaway, CPO
Procurement File

**CITY OF SANTA FE
AMENDMENT No. 1 TO
CONTRACT
ITEM# 20-0233**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE CONTRACT, dated May 13, 2020 the "Agreement"), between the City of Santa Fe (the "City") and American Fire Protection Group, 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 professional fire safety services for the City of Santa Fe.

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. COMPENSATION

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation by a total of Sixty three thousand two hundred seventy four dollars and six cents (\$63,274.06), including applicable gross receipts taxes and as described in Exhibit "A-1" attached hereto so that Article 3, paragraph A reads in its entirety as follows:

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 Inspections, Certifications, Monitoring, Repair and Safety		\$334,367.81

The total compensation under this Agreement shall not exceed **\$334,367.81 including applicable NMGRT (8.4375%)**.

2. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of Santa Fe Contract 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:

Marcos Martinez

Marcos Martinez (Jan 4, 2021 08:01 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED AS TO BUDGET:

MARY MCCOY, FINANCE DIRECTOR

Business Unit/Line Item: 3359980.520100

CONTRACTOR:



~~ROBERT THOMPSON~~ SERVICE LEADER, AFPG, INC.

*Kyle Connelly
Division Leader*

Date: 1-8-2021

CRS #: 03-242279-00-2

Business License: 20-224159

City of Santa Fe Contract

Annual Fire Inspections, Certifications, Monitoring, Safety and Repair for City Facilities

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and **American Fire Protection Group, Inc** herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "You" and "your" refers **American Fire Protection Group, Inc** "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. **Scope of Work**

A. The Contractor shall perform miscellaneous inspections, certifications, monitoring, safety and repairs for Fire Alarm Systems, Fire Extinguishers, Kitchen Hood Systems, Fire Sprinkler Wet/Dry, Clean Agent Systems, Low Voltage Fire Protection Systems services for City Facilities via State Price Agreement #00-00000-20-00094 and more particularly described in "Exhibit A" attached hereto and made a part thereof from **American Fire Protection Group, Inc.**

3. **Compensation**

The City shall pay to the Contractor on a time and materials basis for work pre-approved by an authorized City of Santa Fe Facilities Division representative in an amount that shall not exceed \$250,000.00 plus applicable New Mexico Gross Receipts Tax annually.

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
01 Annual Fire Inspections, Certifications, Monitoring, Safety and Repair		\$250,000.00

The total compensation under this Agreement shall not exceed **\$271,093.75 including applicable NMGRT (8.4375%) annually.**

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 15 % 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 3/30/2024. This Agreement shall not exceed a total of four years in accordance with NMSA 1978, §§ 13-1-150 through 152.

6. **Default and Force Maieure**

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

7. **Termination**

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

B. Notice: City Opportunity to Cure.

1. Except as otherwise provided in Paragraphs 7.A and 17, the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

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

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT*

8. Amendment

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

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. Status of Contractor

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

10. **Assignment**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

11. **Subcontracting**

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

12. **Non-Collusion**

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

13. **Inspection of Plant**

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

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

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. **Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the legislature,

this Agreement, and any orders placed under it, shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

18. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

19. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the City.

20. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

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

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

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

21. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

22. **Scope of Agreement; Merger**

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

23. **Notice**

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

24. **Equal Opportunity Compliance**

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

25. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

26. **New Mexico Tort Claims Act**

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

27. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (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**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

30. **Workers' Compensation**

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

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

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

B. The Contractor shall provide and maintain an inspection system acceptable to the

City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
(2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

(1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
(2) terminate the contract for default.

33. **Insurance**

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

A. Commercial General Liability insurance shall be written on an occurrence basis and be 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.

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:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. 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:

- i. 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;
- ii. replace or modify the product or service so that it becomes non-infringing; or
- iii. 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.

J. Sam Burnett, Property Maintenance Manager
City of Santa Fe Public Works Dept.
2651 Siringo Road, Building E
Santa Fe, New Mexico 87504
jsburnett@santafenm.gov
505-955-5933

To Contractor:
American Fire Protection Group, Inc
8904 Adams Street, NE
Albuquerque, New Mexico 87113
(505) 298-8024 - Phone
(505) 298-8012 - Fax

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 Contractor:
American Fire Protection Group, Inc
8904 Adams Street, NE
Albuquerque, New Mexico 87113
(505) 298-8024 - Phone
(505) 298-8012 - Fax

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:

CONTRACTOR:

American Fire Protection Group, Inc



ALAN WEBBER,
MAYOR



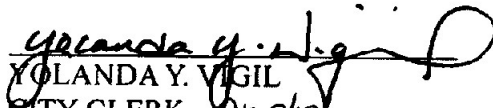
ROBERT THOMPSON
SERVICE LEADER

DATE: 5/28/2020

DATE: 3/11/2020

CRS#03-242279-00-2
Registration #224159

ATTEST:



YOLANDA Y. VIGIL
CITY CLERK 5/13/20

CITY ATTORNEY'S OFFICE:

 5/4/20

SENIOR ASSISTANT CITY ATTORNEY

APPROVED:



MARY MCCOY
FINANCE DIRECTOR

Business Unit Line Item: VARIOUS

EXHIBIT A



AMERICAN
FIRE PROTECTION
GROUP, INC.

8904 Adams Street NE, Albuquerque, NM 87113
Phone 505-298-80241 Fax 505-298-8012 laffgusa.com
License NM 84802

Thursday, February 20, 2020

J. Sam Burnett- Property Maintenance Manager
City of Santa Fe Public Works Dept.
Phone: 505.955.6853
Mobile: 505.795.2491
Email: jsburnett@santafenm.gov

State Contract # 00-00000-20-00094
GSA Contract #GS-21 F-0060W

**Reference: Annual Service Agreement City of Santa Fe/ American Fire
Protection Group**

Service Agreement Terms & Conditions

We are pleased to offer the following pricing for service related calls for the Fire Alarm Systems, Fire Extinguishers, Kitchen Hood Systems, Fire Sprinkler Wet/Dry, Clean Agent Systems, Low Voltage Fire Protection Systems for the properties listed below. All work to comply with NFPA 72, latest edition, and all Local, State AHJ's. All work to be done under a "Blanket Purchase Order" of **Two Hundred and Fifty Thousand Dollars and Zero Cents.**

Included in This Proposal:

All City of Santa Fe Public Buildings

Not To Exceed Amount: \$250,000.00 including applicable taxes

Scheduled Service Rate: \$88.88/ per tech per hr (M-F 8am-4pm)

Emergency Service Rate: \$177.76 per tech per /hr (Outside Normal Business Hours)

Parts/Materials Fire Alarm:

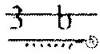
All parts/materials are at list -20%

Travel:

Travel charges for all trips are based on Google Map times for each facility. ***AFPG will attempt to schedule and send technicians with the shortest travel times to help the customer with travel costs.

Excluded in This Proposal:

- W A Deficiency proposal will be provided for any repairs needed.
- W Fire Watch
- W Approved Repair parts. (Any parts over **\$250.00** must be approved by City of Santa Fe Maintenance Dept, before purchasing)
Applicable sales taxes



AMERICAN
FIRE PROTECTION
GROUP, INC.

8904 Adams Street NE, Albuquerque, NM 87113
Phone 505-298-80241 Fax 505-298-80121 afpgusa.com
License NM 84802

Thank you for the opportunity to quote your project. Should you have any further questions or concerns, please do not hesitate to call.

Sincerely,

R. Jason Vaillancourt
SHAD Sales
505.263.0720-C
A.F.P.G.
NM LIC 84802

ACCEPTANCE CLAUSE:

The above prices, specifications and conditions are satisfactory and are hereby accepted.

BY: _____ DATED: _____

TITLE: _____

COMPANY: _____ PO# _____

Please provide a Purchase Order or Purchase Order # with this Acceptance Clause



AMERICAN
FIRE PROTECTION
GROUP, INC.

8904 Adams Street NE, Albuquerque, NM 87113
Phone 505-298-80241 Fax 505-298-8012 | afpgusa.com
License NM 84802

Thursday, February 20, 2020

J. Sam Burnett- Property Maintenance Manager
City of Santa Fe Public Works Dept.
Phone: 505.955.6853
Mobile: 505.795.2491
Email: jsburnett@santafenm.gov

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GSA Contract #GS-21 F-0060W

Reference: Annual Service Agreement City of Santa Fe/ American Fire Protection Group

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- W Fire Watch
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Thank you for the opportunity to quote your project. Should you have any further questions or concerns, please do not hesitate to call.

Sincerely,

R. Jason Vaillancourt
SHAD Sales
505.263.0720-C
A.F.P.G.
NM LIC 84802

ACCEPTANCE CLAUSE:

The above prices, specifications and conditions are satisfactory and are hereby accepted.

BY: _____ DATED: _____

TITLE: _____

COMPANY: _____ PO# _____

Please provide a Purchase Order or Purchase Order # with this Acceptance Clause



State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
0000127391
American Fire Protection Group
8904 Adams St. NE
Albuquerque, NM 87109

Telephone No. 505-298-8012
Email: Robert.Thompson@afpgusa.us

Price Agreement Number: 00-00000-20-00094

Price Agreement Amendment No.: One

Term: March 4, 2020 thru January 7, 2025

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

Procurement Specialist: Sandra Lujan

Telephone No.: (505) 827-0242

Email: sandrar.lujan@state.nm.us

SL

Invoice:
As Requested at time of order

Title: Facilities Maintenance & Management

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

This amendment is issued to reflect the following effective immediately:

Add GSA Memorandum (1-page attachment) to the awarded Price Agreement which was inadvertently omitted in error.

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

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 3/12/2020

Purchasing Division: 1100 St. Francis Drive, Room 2016, Santa Fe, 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472

RR



MICHELLE LUJAN GRISHAM
GOVERNOR

KEN ORTIZ
CABINET SECRETARY

MARK HAYDEN
DIRECTOR
STATE PURCHASING DIVISION

State of New Mexico
General Services Department

ADMINISTRATIVE SERVICES DIVISION
(505) 476-1837

FACILITIES MANAGEMENT DIVISION
(505) 827-2141

PURCHASING DIVISION
(505) 827-0472

RISK MANAGEMENT DIVISION
(505) 827-2036

STATE PRINTING & GRAPHIC SERVICES BUREAU
(505) 476-1950

TRANSPORTATION SERVICES DIVISION
(505) 827-1958

March 9, 2020

MEMORANDUM

To: American Fire Protection Group

From: Mr. Mark Hayden, State Purchasing Agent

RE: Price Agreement for 00-00000-20-00094 Facilities Maintenance & Management

Please be advised the State Purchasing Agent is willing to establish a Price Agreement based upon your willingness to extend your GSA pricing, terms and conditions based on Federal Supply Schedule GS-21F-0060W to the State of New Mexico subject to the following requirements:

1. Purchases based on 13-1-129 (A)(1) NMSA 1978 do not reflect actual purchases from a General Services Administration (GSA) contract, the vendor must agree to remit the 0.75% Industrial Funding Fee to the State of New Mexico, State Purchasing Division, on a quarterly basis to offset contract administration costs.
2. Along with submitting the required fee, the vendor must also agree to, and actually supply the State of New Mexico, State Purchasing Division a quarterly usage report broken out, at a minimum, to the state agency and local public body level in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
September 30	October 31
December 31	January 31
March 31	April 30
June 30	July 31

If you agree to the above conditions please sign at the space provided below and email back to sandrar.lujan@state.nm.us. If you have any further concerns please contact Sandra Lujan at 505-827-0242.

By signing this document you are certifying that you have the authorization to bind your company.

Your immediate attention to this matter is greatly appreciated.

AMERICAN FIRE PROTECTION GROUP
Company Name

ROBERT THOMPSON
Print Name

SERVICE LEADER
Title

[Signature]
Signature

3/11/2020
Date



**State of New Mexico
General Services Department**

Statewide Price Agreement

Awarded Vendor
0000127391
American Fire Protection Group
8904 Adams St. NE
Albuquerque, NM 87109

Telephone No. 505-298-8012
Email: Robert.thompson@afpgusa.us


Price Agreement Number: **00-00000-20-00094**

Payment Terms: **See Contract**

F.O.B.: **See Contract**

Delivery: **See Contract**

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

Procurement Specialist: **Sandra Lujan** 

Telephone No.: **505-827-0242**

Email: sandrar.lujan@state.nm.us

Invoice:

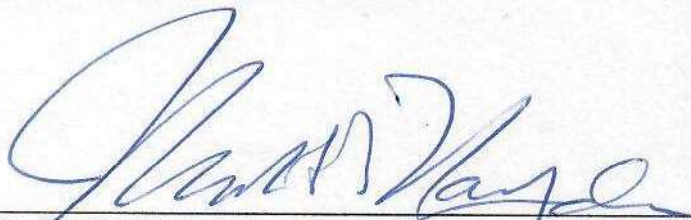
As requested by User

Title: **Facilities Maintenance & Management**

Term: **March 4, 2020 thru January 7, 2025**

This Price Agreement is made subject to the "terms and conditions" shown on the reverse side of this page, and as indicated in this Price Agreement.

Accepted for the State of New Mexico



New Mexico State Purchasing Agent

Date: 03/03/2020

Purchasing Division, 1100 St. Francis Drive, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

sl RR

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 00-00000-20-00094

Establish a Price Agreement based on GSA Contract # GS-21F-0060W for description.

This Price Agreement may be extended if the GSA Contract is extended, upon approval of all parties.

Contract orders shall be issued only to vendor(s) shown under this Price Agreement. Prices shall be equal to or less than the price stipulated under the above listed GSA Contract.

Agencies must verify that items being purchased, rented, etc., are listed on the above referenced GSA. Only those items listed may be placed on contract orders under this Price Agreement. A complete copy of the GSA catalog must be retained by the using agency for auditing purposes. Trade-ins are not allowed under this Price Agreement.

Vendors under this Price Agreement are required to furnish a complete copy of the GSA catalog to the using agency upon request. Vendors must certify upon request that only those products, supplies or services accepted by the federal government are included in GSA price list.

State and local government catalogs are not acceptable.

Note: all terms and conditions established in the referenced GSA and by the New Mexico State Purchasing Agent shall prevail.

The Contractor agrees to provide a utilization report to the agreement administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
September 30	October 31
December 31	January 31
March 31	April 30
June 30	July 31

The periodic report shall include the gross total sales for the period subtotaled by procuring agency name. The report shall be accompanied with a check payable to the State Purchasing Division for an amount equal to three quarters of one percent (0.75%) of the total sales for the period.

This agreement is not intended to be used to procure "Open Market" items.

Item	Approx Qty	Unit	Article and Description	Unit Price
------	------------	------	-------------------------	------------

001 1 Ea. (Facilities Maintenance & Management per)

(GS-21F-0060W)

*** 1 Item Total ***



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/09/2021

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 Willis Towers Watson Midwest, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	CONTACT NAME: Willis Towers Watson Certificate Center PHONE (A/C No. Ext): 1-877-945-7378 FAX (A/C No): 1-888-467-2378 E-MAIL ADDRESS: certificates@willis.com	
	INSURER(S) AFFORDING COVERAGE	
INSURED American Fire Protection Group, Inc. 8904 Adams St. NE. Albuquerque, NM 87113	INSURER A: Zurich American Insurance Company NAIC # 16535	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	


COVERAGES **CERTIFICATE NUMBER:** W20060575 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			GLO 8902940-01	12/31/2020	12/31/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BAP 8488453-01	12/31/2020	12/31/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N No	N/A	WC 8902941-01	12/31/2020	12/31/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 5,000,000 E.L. DISEASE - EA EMPLOYEE \$ 5,000,000 E.L. DISEASE - POLICY LIMIT \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
This Voids and Replaces Previously Issued Certificate Dated 12/15/2020 WITH ID: W19289818.

Stop Gap Employers Liability for the Monopolistic States of North Dakota, Ohio, Washington and Wyoming is provided under Workers' Compensation policy, however, Statutory coverage for the Monopolistic states is not.

CERTIFICATE HOLDER City of Santa Fe Transit Division 2931 Rufina Santa Fe, NM 87505	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



Blanket Notification to Others of Cancellation or Non-Renewal

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO 8902940-01	12/31/2020					

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

- A.** If we cancel or non-renew this Coverage Part by written notice to the first Named Insured, we will mail or deliver notification that such Coverage Part has been cancelled or non-renewed to each person or organization shown in a list provided to us by the first Named Insured if you are required by written contact or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to the first Named Insured. Such list:
 - 1. Must be provided to us prior to cancellation or non-renewal;
 - 2. Must contain the names and addresses of only the persons or organizations requiring notification that such Coverage Part has been cancelled or non-renewed; and
 - 3. Must be in an electronic format that is acceptable to us.
- B.** Our notification as described in Paragraph **A.** of this endorsement will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to the first Named Insured. We will mail or deliver such notification to each person or organization shown in the list:
 - 1. Within ten days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
 - 2. At least 30 days prior to the effective date of:
 - a. Cancellation, if cancelled for any reason other than nonpayment of premium; or
 - b. Non-renewal, but not including conditional notice of renewal.
- C.** Our mailing or delivery of notification described in Paragraphs **A.** and **B.** of this endorsement is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
 - 1. Extend the Coverage Part cancellation or non-renewal date;
 - 2. Negate the cancellation or non-renewal; or
 - 3. Provide any additional insurance that would not have been provided in the absence of this endorsement.
- D.** We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs **A.** and **B.** of this endorsement.

All other terms and conditions of this policy remain unchanged.

Commercial Auto Insurance

Endorsement



Insurance for this coverage is provided by: **Zurich American Insurance Company**

Policy Number: **BAP 8488453-01**

Blanket Notification to Others of Cancellation or Non-Renewal

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial Automobile Coverage Part

- A.** If we cancel or non-renew this Coverage Part by written notice to the first Named Insured, we will mail or deliver notification that such Coverage Part has been cancelled or non-renewed to each person or organization shown in a list provided to us by the first Named Insured if you are required by written contract or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to the first Named Insured. Such list:
 - 1. Must be provided to us prior to cancellation or non-renewal;
 - 2. Must contain the names and addresses of only the persons or organizations requiring notification that such Coverage Part has been cancelled or non-renewed; and
 - 3. Must be in an electronic format that is acceptable to us.
- B.** Our notification as described in Paragraph **A.** of this endorsement will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to the first Named Insured. We will mail or deliver such notification to each person or organization shown in the list:
 - 1. Within ten days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
 - 2. At least 30 days prior to the effective date of:
 - a. Cancellation, if cancelled for any reason other than nonpayment of premium; or
 - b. Non-renewal, but not including conditional notice of renewal.
- C.** Our mailing or delivery of notification described in Paragraphs **A.** and **B.** of this endorsement is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
 - 1. Extend the Coverage Part cancellation or non-renewal date;
 - 2. Negate the cancellation or non-renewal; or
 - 3. Provide any additional insurance that would not have been provided in the absence of this endorsement.
- D.** We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs **A.** and **B.** of this endorsement.

All other terms and conditions of this policy remain unchanged.

Endorsement



Policy No.	Eff. Date of Pol	Exp. Date of Pol.	Eff. Date of End	Producer	Add'l Prem	Return Prem
WC 8902941- 01	12/31/2020					

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

BLANKET NOTIFICATION TO OTHERS OF CANCELLATION OR NONRENEWAL ENDORSEMENT

This endorsement is used to add the following to Part Six of the policy.

PART SIX CONDITIONS

Blanket Notification to Others of Cancellation or Nonrenewal

1. If we cancel or non-renew this policy by written notice to you, we will mail or deliver notification that such policy has been cancelled or non-renewed to each person or organization shown in a list provided to us by you if you are required by written contract or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to you. Such list:
 - a. Must be provided to us prior to cancellation or non-renewal;
 - b. Must contain the names and addresses of only the persons or organizations requiring notification that such policy has been cancelled or non-renewed; and
 - c. Must be in an electronic format that is acceptable to us.
2. Our notification as described in Paragraph 1. above will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to you. We will mail or deliver such notification to each person or organization shown in the list:
 - a. Within ten days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
 - b. At least 30 days prior to the effective date of:
 - (1) Cancellation, if cancelled for any reason other than nonpayment of premium; or
 - (2) Non-renewal, but not including conditional notice of renewal.
3. Our mailing or delivery of notification described in Paragraphs 1. and 2. above is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
 - a. Extend the policy cancellation or non-renewal date;
 - b. Negate the cancellation or non-renewal; or
 - c. Provide any additional insurance that would not have been provided in the absence of this endorsement.
4. We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs 1. and 2. above.

All other terms and conditions of this policy remain unchanged.

Endorsement



ZURICH

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.



City of Santa Fe
Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: AMERICAN FIRE PROTECTION GROUP
DBA: AMERICAN FIRE PROTECTION GROUP

Business Location: 3766 HAWKINS ST NE
ALBUQUERQUE, NM 87109

Owner: JEFF CROUCH

License Number: 224159

Issued Date: January 20, 2021

Expiration Date: January 20, 2022

CRS Number: 03-242279-00-2

License Type: Business License - Renewable

Classification: Out of Jurisdiction Contractor - Specialty

Fees Paid: \$10.00

AMERICAN FIRE PROTECTION GROUP
P.O. BOX 74008409 NE
CHICAGO, IL 60674-8409

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE



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 American Fire Protection Group, Inc

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$271,093.75

Termination Date: June 30, 2024

Approved by Council Date: May 28, 2020

or by City Manager Date: _____

Contract is for: Annual Fire Monitoring, Inspections, Repair and Maintenance Services

Amendment # 1 to the Original Contract# #20-0233 Munis 320182'

Increase/(Decrease) Amount \$ \$63,274.06

Extend Termination Date to: _____

Approved by Council Pending

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 \$ 271,093.75 of original Contract# 3201821 Termination Date: 6/30/2024
Reason: Annual Fire Monitoring, Inspections, Repair and Maintenance Services

Amount \$ 63,274.06 amendment # 1 Termination Date: 6/30/2024
Reason: To increase City building Inspections, Repairs and Installations

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

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

Total of Original Contract plus all amendments: \$ \$334,367.81



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

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

RFP# _____ Date: _____
RFQ [] _____ Date: _____
Sole Source [] _____ Date: _____
Other SPA# 00-00000-20-00094

6 Procurement History: Second year (4) year contract
example: (First year of 4 year contract)

[Signature]
Fran Dunaway (May 6, 2021 8:31 MDT)

Purchasing Officer Review

Comments or Exceptions: Amendment #1 to increase for FY21- to existing City Contract exp: 3/30/24

7 Funding Source: GRT Reallocation BU/Line Item: 3359980.520100

[Signature]
Andy Hopkins (May 4, 2021 13:41 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: Curt Temple

Phone # 505-795-2439

10 Certificate of Insurance attached. (if original Contract) [checked]

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 PROCUREMENT CHECKLIST

Contractor Name: American Fire Protection Group, Inc.

Procurement Title: Amendment #1 to Service Contract #20-0233 in the amount of \$63,274.06

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting Facilities _____ Staff Name Curt Temple

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 checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	RFP
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Evaluation Committee Report
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ITB
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bib Tab
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Quotes (3 valid current quotes)
<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"/>	Executed 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"/>	All documentation presented to Committees
<input type="checkbox"/>	<input type="checkbox"/>	Other: _____

Curt Temple Project Administrator 2/22/2021

Department Rep Printed Name (attesting that all information included) Title Date

Fran Dunaway Chief Procurement Officer May 6, 2021
Fran Dunaway (May 6, 2021 10:31 MDT)

Purchasing Officer (attesting that all information is reviewed) Title Date

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

*

City of Santa Fe Contract

Annual Fire Inspections, Certifications, Monitoring, Safety and Repair for City Facilities

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and **American Fire Protection Group, Inc** herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "You" and "your" refers **American Fire Protection Group, Inc** "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. **Scope of Work**

A. The Contractor shall perform miscellaneous inspections, certifications, monitoring, safety and repairs for Fire Alarm Systems, Fire Extinguishers, Kitchen Hood Systems, Fire Sprinkler Wet/Dry, Clean Agent Systems, Low Voltage Fire Protection Systems services for City Facilities via State Price Agreement #00-00000-20-00094 and more particularly described in "Exhibit A" attached hereto and made a part thereof from **American Fire Protection Group, Inc.**

3. **Compensation**

The City shall pay to the Contractor on a time and materials basis for work pre-approved by an authorized City of Santa Fe Facilities Division representative in an amount that shall not exceed \$250,000.00 plus applicable New Mexico Gross Receipts Tax annually.

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
01 Annual Fire Inspections, Certifications, Monitoring, Safety and Repair		\$250,000.00

The total compensation under this Agreement shall not exceed **\$271,093.75 including applicable NMGR (8.4375%) annually.**

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 15 % 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 3/30/2024. This Agreement shall not exceed a total of four years in accordance with NMSA 1978, §§ 13-1-150 through 152.

6. **Default and Force Maieure**

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

7. **Termination**

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

B. Notice: City Opportunity to Cure.

1. Except as otherwise provided in Paragraphs 7.A and 17, the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

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

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT*

8. Amendment

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

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. Status of Contractor

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

10. **Assignment**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

11. **Subcontracting**

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

12. **Non-Collusion**

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

13. **Inspection of Plant**

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

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

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. **Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the legislature,

this Agreement, and any orders placed under it, shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

18. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

19. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the City.

20. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

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

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

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

21. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

22. **Scope of Agreement; Merger**

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

23. **Notice**

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

24. **Equal Opportunity Compliance**

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

25. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

26. **New Mexico Tort Claims Act**

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

27. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (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**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

30. **Workers' Compensation**

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

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

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

B. The Contractor shall provide and maintain an inspection system acceptable to the

City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
(2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

(1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
(2) terminate the contract for default.

33. **Insurance**

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

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

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

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

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:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense or settlement of the claim; and
- iii. 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:

- i. 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;
- ii. replace or modify the product or service so that it becomes non-infringing; or
- iii. 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.

J. Sam Burnett, Property Maintenance Manager
City of Santa Fe Public Works Dept.
2651 Siringo Road, Building E
Santa Fe, New Mexico 87504
jsburnett@santafenm.gov
505-955-5933

To Contractor:
American Fire Protection Group, Inc
8904 Adams Street, NE
Albuquerque, New Mexico 87113
(505) 298-8024 - Phone
(505) 298-8012 - Fax

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 Contractor:
American Fire Protection Group, Inc
8904 Adams Street, NE
Albuquerque, New Mexico 87113
(505) 298-8024 - Phone
(505) 298-8012 - Fax

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:

CONTRACTOR:

American Fire Protection Group, Inc



ALAN WEBBER,
MAYOR



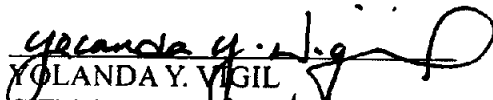
ROBERT THOMPSON
SERVICE LEADER

DATE: 5/28/2020

DATE: 3/11/2020

CRS#03-242279-00-2
Registration #224159

ATTEST:



YOLANDA Y. VIGIL
CITY CLERK 5/13/20

CITY ATTORNEY'S OFFICE:

 5/4/20

SENIOR ASSISTANT CITY ATTORNEY

APPROVED:



MARY MCCOY
FINANCE DIRECTOR

Business Unit Line Item: VARIOUS

EXHIBIT A



AMERICAN
FIRE PROTECTION
GROUP, INC.

8904 Adams Street NE, Albuquerque, NM 87113
Phone 505-298-80241 Fax 505-298-8012 afpgusa.com
License NM 84802

Thursday, February 20, 2020

J. Sam Burnett- Property Maintenance Manager
City of Santa Fe Public Works Dept.
Phone: 505.955.6853
Mobile: 505.795.2491
Email: jsburnett@santafenm.gov

State Contract # 00-00000-20-00094
GSA Contract #GS-21 F-0060W

**Reference: Annual Service Agreement City of Santa Fe/ American Fire
Protection Group**

Service Agreement Terms & Conditions

We are pleased to offer the following pricing for service related calls for the Fire Alarm Systems, Fire Extinguishers, Kitchen Hood Systems, Fire Sprinkler Wet/Dry, Clean Agent Systems, Low Voltage Fire Protection Systems for the properties listed below. All work to comply with NFPA 72, latest edition, and all Local, State AHJ's. All work to be done under a "Blanket Purchase Order" of **Two Hundred and Fifty Thousand Dollars and Zero Cents.**

Included in This Proposal:

All City of Santa Fe Public Buildings

Not To Exceed Amount: \$250,000.00 including applicable taxes

Scheduled Service Rate: \$88.88/ per tech per hr (M-F 8am-4pm)

Emergency Service Rate: \$177.76 per tech per /hr (Outside Normal Business Hours)

Parts/Materials Fire Alarm:

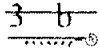
All parts/materials are at list -20%

Travel:

Travel charges for all trips are based on Google Map times for each facility. ***AFPG will attempt to schedule and send technicians with the shortest travel times to help the customer with travel costs.

Excluded in This Proposal:

- W A Deficiency proposal will be provided for any repairs needed.
 - W Fire Watch
 - W Approved Repair parts. (Any parts over **\$250.00** must be approved by City of Santa Fe Maintenance Dept, before purchasing)
- Applicable sales taxes**



AMERICAN
FIRE PROTECTION
GROUP, INC.

8904 Adams Street NE, Albuquerque, NM 87113
Phone 505-298-80241 Fax 505-298-80121 afpgusa.com
License NM 84802

Thank you for the opportunity to quote your project. Should you have any further questions or concerns, please do not hesitate to call.

Sincerely,

R. Jason Vaillancourt
SHAD Sales
505.263.0720-C
A.F.P.G.
NM LIC 84802

ACCEPTANCE CLAUSE:

The above prices, specifications and conditions are satisfactory and are hereby accepted.

BY: _____ DATED: _____

TITLE: _____

COMPANY: _____ PO# _____

Please provide a Purchase Order or Purchase Order # with this Acceptance Clause



State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
0000127391
American Fire Protection Group
8904 Adams St. NE
Albuquerque, NM 87109

Telephone No. 505-298-8012
Email: Robert.Thompson@afpgusa.us

Price Agreement Number: 00-00000-20-00094

Price Agreement Amendment No.: One

Term: March 4, 2020 thru January 7, 2025

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

Procurement Specialist: Sandra Lujan

Telephone No.: (505) 827-0242

Email: sandrar.lujan@state.nm.us

SL

Invoice:
As Requested at time of order

Title: Facilities Maintenance & Management

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

This amendment is issued to reflect the following effective immediately:

Add GSA Memorandum (1-page attachment) to the awarded Price Agreement which was inadvertently omitted in error.

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

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 3/12/2020

Purchasing Division: 1100 St. Francis Drive, Room 2016, Santa Fe, 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472

RR



MICHELLE LUJAN GRISHAM
GOVERNOR

KEN ORTIZ
CABINET SECRETARY

MARK HAYDEN
DIRECTOR
STATE PURCHASING DIVISION

State of New Mexico
General Services Department

ADMINISTRATIVE SERVICES DIVISION
(505) 476-1857

FACILITIES MANAGEMENT DIVISION
(505) 827-2141

PURCHASING DIVISION
(505) 827-0472

RISK MANAGEMENT DIVISION
(505) 827-2036

STATE PRINTING & GRAPHIC SERVICES BUREAU
(505) 476-1950

TRANSPORTATION SERVICES DIVISION
(505) 827-1958

March 9, 2020

MEMORANDUM

To: American Fire Protection Group

From: Mr. Mark Hayden, State Purchasing Agent

RE: Price Agreement for 00-00000-20-00094 Facilities Maintenance & Management

Please be advised the State Purchasing Agent is willing to establish a Price Agreement based upon your willingness to extend your GSA pricing, terms and conditions based on Federal Supply Schedule GS-21F-0060W to the State of New Mexico subject to the following requirements:

1. Purchases based on 13-1-129 (A)(1) NMSA 1978 do not reflect actual purchases from a General Services Administration (GSA) contract, the vendor must agree to remit the 0.75% Industrial Funding Fee to the State of New Mexico, State Purchasing Division, on a quarterly basis to offset contract administration costs.
2. Along with submitting the required fee, the vendor must also agree to, and actually supply the State of New Mexico, State Purchasing Division a quarterly usage report broken out, at a minimum, to the state agency and local public body level in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
September 30	October 31
December 31	January 31
March 31	April 30
June 30	July 31

If you agree to the above conditions please sign at the space provided below and email back to sandrar.lujan@state.nm.us. If you have any further concerns please contact Sandra Lujan at 505-827-0242.

By signing this document you are certifying that you have the authorization to bind your company.

Your immediate attention to this matter is greatly appreciated.

AMERICAN FIRE PROTECTION GROUP
Company Name

ROBERT THOMPSON
Print Name

SERVICE LEADER
Title

[Signature]
Signature

3/11/2020
Date



State of New Mexico General Services Department

Statewide Price Agreement

Awarded Vendor
0000127391
American Fire Protection Group
8904 Adams St. NE
Albuquerque, NM 87109

Telephone No. 505-298-8012
Email: Robert.thompson@afpgusa.us

Price Agreement Number: **00-00000-20-00094**

Payment Terms: **See Contract**

F.O.B.: **See Contract**

Delivery: **See Contract**

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

Procurement Specialist: **Sandra Lujan** 

Telephone No.: **505-827-0242**

Email: sandrar.lujan@state.nm.us

Invoice:

As requested by User

Title: **Facilities Maintenance & Management**

Term: **March 4, 2020 thru January 7, 2025**

This Price Agreement is made subject to the "terms and conditions" shown on the reverse side of this page, and as indicated in this Price Agreement.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 03/03/2020

Purchasing Division, 1100 St. Francis Drive, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

sl RR

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 00-00000-20-00094

Establish a Price Agreement based on GSA Contract # GS-21F-0060W for description.

This Price Agreement may be extended if the GSA Contract is extended, upon approval of all parties.

Contract orders shall be issued only to vendor(s) shown under this Price Agreement. Prices shall be equal to or less than the price stipulated under the above listed GSA Contract.

Agencies must verify that items being purchased, rented, etc., are listed on the above referenced GSA. Only those items listed may be placed on contract orders under this Price Agreement. A complete copy of the GSA catalog must be retained by the using agency for auditing purposes. Trade-ins are not allowed under this Price Agreement.

Vendors under this Price Agreement are required to furnish a complete copy of the GSA catalog to the using agency upon request. Vendors must certify upon request that only those products, supplies or services accepted by the federal government are included in GSA price list.

State and local government catalogs are not acceptable.

Note: all terms and conditions established in the referenced GSA and by the New Mexico State Purchasing Agent shall prevail.

The Contractor agrees to provide a utilization report to the agreement administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
September 30	October 31
December 31	January 31
March 31	April 30
June 30	July 31

The periodic report shall include the gross total sales for the period subtotaled by procuring agency name. The report shall be accompanied with a check payable to the State Purchasing Division for an amount equal to three quarters of one percent (0.75%) of the total sales for the period.

This agreement is not intended to be used to procure "Open Market" items.

Item	Approx Qty	Unit	Article and Description	Unit Price
------	------------	------	-------------------------	------------

001 1 Ea. (Facilities Maintenance & Management per)

(GS-21F-0060W)

*** 1 Item Total ***



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/09/2021

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 Willis Towers Watson Midwest, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	CONTACT NAME: Willis Towers Watson Certificate Center PHONE (A/C. No. Ext): 1-877-945-7378 FAX (A/C. No.): 1-888-467-2378 E-MAIL ADDRESS: certificates@willis.com	
	INSURER(S) AFFORDING COVERAGE	
INSURED American Fire Protection Group, Inc. 8904 Adams St. NE. Albuquerque, NM 87113	INSURER A: Zurich American Insurance Company NAIC # 16535	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER: W20060575

REVISION NUMBER:

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

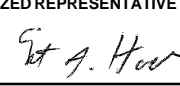
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			GLO 8902940-01	12/31/2020	12/31/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BAP 8488453-01	12/31/2020	12/31/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N No	N/A	WC 8902941-01	12/31/2020	12/31/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 5,000,000 E.L. DISEASE - EA EMPLOYEE \$ 5,000,000 E.L. DISEASE - POLICY LIMIT \$ 5,000,000

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

This Voids and Replaces Previously Issued Certificate Dated 12/15/2020 WITH ID: W19289818.

Stop Gap Employers Liability for the Monopolistic States of North Dakota, Ohio, Washington and Wyoming is provided under Workers' Compensation policy, however, Statutory coverage for the Monopolistic states is not.

CERTIFICATE HOLDER**CANCELLATION**

City of Santa Fe Transit Division 2931 Rufina Santa Fe, NM 87505	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	---

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ZURICH®

Blanket Notification to Others of Cancellation or Non-Renewal

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO 8902940-01	12/31/2020					

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

- A. If we cancel or non-renew this Coverage Part by written notice to the first Named Insured, we will mail or deliver notification that such Coverage Part has been cancelled or non-renewed to each person or organization shown in a list provided to us by the first Named Insured if you are required by written contact or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to the first Named Insured. Such list:
 - 1. Must be provided to us prior to cancellation or non-renewal;
 - 2. Must contain the names and addresses of only the persons or organizations requiring notification that such Coverage Part has been cancelled or non-renewed; and
 - 3. Must be in an electronic format that is acceptable to us.
- B. Our notification as described in Paragraph A. of this endorsement will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to the first Named Insured. We will mail or deliver such notification to each person or organization shown in the list:
 - 1. Within ten days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
 - 2. At least 30 days prior to the effective date of:
 - a. Cancellation, if cancelled for any reason other than nonpayment of premium; or
 - b. Non-renewal, but not including conditional notice of renewal.
- C. Our mailing or delivery of notification described in Paragraphs A. and B. of this endorsement is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
 - 1. Extend the Coverage Part cancellation or non-renewal date;
 - 2. Negate the cancellation or non-renewal; or
 - 3. Provide any additional insurance that would not have been provided in the absence of this endorsement.
- D. We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs A. and B. of this endorsement.

All other terms and conditions of this policy remain unchanged.

Commercial Auto Insurance

Endorsement



Insurance for this coverage is provided by: **Zurich American Insurance Company**

Policy Number: **BAP 8488453-01**

Blanket Notification to Others of Cancellation or Non-Renewal

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial Automobile Coverage Part

- A.** If we cancel or non-renew this Coverage Part by written notice to the first Named Insured, we will mail or deliver notification that such Coverage Part has been cancelled or non-renewed to each person or organization shown in a list provided to us by the first Named Insured if you are required by written contract or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to the first Named Insured. Such list:
 - 1. Must be provided to us prior to cancellation or non-renewal;
 - 2. Must contain the names and addresses of only the persons or organizations requiring notification that such Coverage Part has been cancelled or non-renewed; and
 - 3. Must be in an electronic format that is acceptable to us.
- B.** Our notification as described in Paragraph **A.** of this endorsement will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to the first Named Insured. We will mail or deliver such notification to each person or organization shown in the list:
 - 1. Within ten days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
 - 2. At least 30 days prior to the effective date of:
 - a. Cancellation, if cancelled for any reason other than nonpayment of premium; or
 - b. Non-renewal, but not including conditional notice of renewal.
- C.** Our mailing or delivery of notification described in Paragraphs **A.** and **B.** of this endorsement is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
 - 1. Extend the Coverage Part cancellation or non-renewal date;
 - 2. Negate the cancellation or non-renewal; or
 - 3. Provide any additional insurance that would not have been provided in the absence of this endorsement.
- D.** We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs **A.** and **B.** of this endorsement.

All other terms and conditions of this policy remain unchanged.

Endorsement



Policy No.	Eff. Date of Pol	Exp. Date of Pol.	Eff. Date of End	Producer	Add'l Prem	Return Prem
WC 8902941- 01	12/31/2020					

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

BLANKET NOTIFICATION TO OTHERS OF CANCELLATION OR NONRENEWAL ENDORSEMENT

This endorsement is used to add the following to Part Six of the policy.

PART SIX CONDITIONS

Blanket Notification to Others of Cancellation or Nonrenewal

1. If we cancel or non-renew this policy by written notice to you, we will mail or deliver notification that such policy has been cancelled or non-renewed to each person or organization shown in a list provided to us by you if you are required by written contract or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to you. Such list:
 - a. Must be provided to us prior to cancellation or non-renewal;
 - b. Must contain the names and addresses of only the persons or organizations requiring notification that such policy has been cancelled or non-renewed; and
 - c. Must be in an electronic format that is acceptable to us.
2. Our notification as described in Paragraph 1. above will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to you. We will mail or deliver such notification to each person or organization shown in the list:
 - a. Within ten days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
 - b. At least 30 days prior to the effective date of:
 - (1) Cancellation, if cancelled for any reason other than nonpayment of premium; or
 - (2) Non-renewal, but not including conditional notice of renewal.
3. Our mailing or delivery of notification described in Paragraphs 1. and 2. above is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
 - a. Extend the policy cancellation or non-renewal date;
 - b. Negate the cancellation or non-renewal; or
 - c. Provide any additional insurance that would not have been provided in the absence of this endorsement.
4. We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs 1. and 2. above.

All other terms and conditions of this policy remain unchanged.

Endorsement



ZURICH

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.



City of Santa Fe
Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: AMERICAN FIRE PROTECTION
GROUP
DBA: AMERICAN FIRE PROTECTION
GROUP

Business Location: 3766 HAWKINS ST NE
ALBUQUERQUE, NM 87109

CRS Number: 03-242279-00-2

Owner: JEFF CROUCH

License Number: 224159

License Type: Business License - Renewable

Issued Date: January 20, 2021

Classification: Out of Jurisdiction Contractor -
Specialty

Expiration Date: January 20, 2022

Fees Paid: \$10.00

AMERICAN FIRE PROTECTION GROUP
P.O. BOX 74008409 NE
CHICAGO, IL 60674-8409

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3201821

Contractor: American Fire Protection Group, Inc.

Description: Service Contract for Fire Monitoring, Inspections, Repair and Maintenance Services Throughout City Facilities

Contract Agreement Lease / Rent Amendment

Term Start Date: May 28, 2020 Term End Date: March 30, 2024

Approved by Council Date: May 13, 2020

Contract / Lease: Amendment to Original Contract

Amendment # 2 to the Original Contract / Lease # 20-0233

Increase/(Decrease) Amount \$ 1,000,000.00

Extend Termination Date to: no change

Approved by Council Date: _____

Amendment is for: Increasing Amount of Contract

2. **HISTORY** of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)

Original Contract # 20-0233/Munis Contract # 3201821 for \$271,093.75, termination date 3/30/2024

Contract Amendment #1, no change in term, increase by \$63,274.06, approved by Governing Body on 6/30/2021

Contract Amendment #2, no change in term, increase by \$1,000,000.00 excluding NMGRT

3. Procurement History: SWPA# 00-00000-20-00094

Fran D'Amico
Fran D'Amico (Jul 15, 2021 09:03 MDT)

Jul 15, 2021

Purchasing Officer Review:

Date:

Comment & Exceptions: Original Contract issued utilizing a SWPA - Amendment # 2 to increase compensation.

4. Funding Source: Various, including FMD Maintenance

Org / Object: 1000435.520100

Andy Hopkins
Andy Hopkins (Jul 14, 2021 09:38 MDT)

Jul 14, 2021

Budget Officer Approval:

Date:

Comment & Exceptions: _____

Staff Contact who completed this form: Caryn Grosse Phone # 955-5938

Email: clgrosse@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: American Fire Protection Group, Inc.

Procurement Title: Amendment #2 to Service Contract #20-0233

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting Public Works/Facilities Division Staff Name Caryn Grosse

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 checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	RFP
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Evaluation Committee Report
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ITB
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bid Tab
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Quotes (3 valid current quotes)
<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"/>	Executed 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"/>	All documentation presented to Committees
<input type="checkbox"/>	<input type="checkbox"/>	Other: _____

Caryn Grosse Facilities Project Administrator July 13, 2021

Department Rep Printed Name (attesting that all information included) Title Date

Fran Dunaway Chief Procurement Officer Jul 15, 2021
Fran Dunaway (Jul 15, 2021 09:03 MDT)

Purchasing Officer (attesting that all information is reviewed) Title Date

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

*



City of Santa Fe, New Mexico

Memorandum



DATE: May 24, 2021

VIA: Regina Wheeler, Public Works Department Director

FROM: Sam Burnett, Interim Facilities Division Director

ITEM & ISSUE:

Request for the approval of Amendment #1 to Service Contract #19-0943 with Davenport Construction Management, Inc increasing compensation for fiscal year 2022 by \$1,000,000.00 to a new total of \$1,250,000.00 exclusive of NMGRS for On-Call General Contractor Services throughout the City; Davenport Construction Management, Inc; Sam Burnett, Interim Facilities Division Director, jsburnett@santafenm.gov, 505-795-2491

BACKGROUND & SUMMARY:

This On-Call Contract with Davenport Construction Management, Inc is critical to the ability of the Facilities Division to respond to emergency situations in a timely manner to prevent major damage to the City's Facilities' and to mitigate damage once it has occurred.

This contract will be available to provide coverage throughout the City with the prior permission of the Public Works Property Maintenance Manager or the Facilities Division Director.

Davenport Construction Management, Inc has provided a number of General Contractor services throughout the City. They have proven to be cost effective, reliable and consistently capable of providing high quality results. Between their merits and their familiarity with our City Facilities Davenport is an ideal choice for this on-call contact.

SCHEDULE:

This contract is scheduled to expire on 6/30/2023.

PROCUREMENT METHOD:

This contract is being procured using New Mexico State Price Agreement 00-00000-20-00110

CONTRACT NUMBER:

The unis contract number is 3201676

FUNDING SOURCE:

Munis Org Name/Number: Misc

Munis Object Name/Number: Misc

ACTION REQUESTED:

Please approve this contract amendment with Davenport Construction Management, Inc. increasing the amount of their compensation by \$1,000,000.00 to a new total of **\$1,250,000.00** excluding NMGRS.

**CITY OF SANTA FE
AMENDMENT No. 1 TO
SERVICES AGREEMENT
ITEM# 19-0943**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE SERVICES AGREEMENT, dated December 11, 2019 the "Agreement"), between the City of Santa Fe (the "City") and Davenport Construction Management, Inc (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, Contractor has agreed to provide on-call general contracting services for the City of Santa Fe.

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. COMPENSATION.

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation by a total of one million dollars (\$1,000,000.00), plus applicable gross receipts taxes so that Article 3, paragraph A reads in its entirety as follows:

A. City shall pay to the Contractor on a time and materials basis for work pre-approved by an authorized City of Santa Fe Facilities Division representative in an amount that shall not exceed \$1,250,000.00 plus applicable New Mexico Gross Receipts Tax.

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
01 On-Call General Contracting Services		\$1,250,000.00

The total compensation under this Agreement shall not exceed \$1,250,000.00 plus applicable NMGRT (8.4375%).

2. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of Miscellaneous General Contractor Services Agreement as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:

ALAN WEBBER
MAYOR



MITCH DAVENPORT
PRESIDENT DCM

DATE: _____

DATE: 7/6/2021

CRS#03-053313-00-9
Registration #225440
State Price Agreement #00-00000-20-00110

ATTEST:

KRISTINE BUSTOS_MIHELICIC, CITY CLERK

CITY ATTORNEY'S OFFICE:


Marcos Martinez (Jul 2, 2021 10:29 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

FOR MARY MCCOY,
FINANCE DIRECTOR

Business Unit Line Item: MISC

City of Santa Fe Contract
Miscellaneous General Contractor Services for City Facilities

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and **Davenport Construction Management** herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "Products and Services schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

D. "You" and "your" refers **Davenport Construction Management** "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. **Scope of Work**

A. The Contractor shall perform the following work: miscellaneous general contractor services for Midtown Campus via State Price Agreement #90-000-19-00057. See the attached proposal marked "Exhibit A" attached hereto and made a part thereof from **Davenport Construction Management** to include the following, but is not necessarily inclusive to the following: miscellaneous general contractor services for City Facilities.

3. **Compensation**

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

Deliverable item:	U/I (unit of issue)	Price
01 Miscellaneous General Contractor Services		\$250,000.00

The total compensation under this Agreement shall not exceed **\$271,093.75 including NMGRT.**

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 6/30/2023. 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**

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

12. **Non-Collusion**

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

13. **Inspection of Plant**

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

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

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. **Appropriations**

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

18. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

19. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the City.

20. **Conflict of Interest**

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

Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

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

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

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

21. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

22. **Scope of Agreement; Merger**

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

23. **Notice**

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

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances,

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

25. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

26. **New Mexico Tort Claims Act**

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

27. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (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**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request

for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

30. **Workers' Compensation**

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

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

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

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- (2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

- (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
- (2) terminate the contract for default.

33. **Insurance**

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

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

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

34. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

35. **Invalid Term or Condition**

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

36. **Enforcement of Agreement**

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

37. **Patent, Copyright and Trade Secret Indemnification**

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. 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:

- i. 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;
- ii. replace or modify the product or service so that it becomes non-infringing; or,
- iii. 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.

J. Sam Burnett, Property Maintenance Manager
City of Santa Fe Public Works Dept.
2651 Siringo Road, Building E
Santa Fe, New Mexico 87504
jsburnett@santafenm.gov
505-955-5933

To Contractor:
Mitch Davenport
Davenport Construction Management
141 Camino de las Crucitas
Santa Fe, NM 87501
mitch@dcmnm.com
(505) 660-7105

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 Contractor:
Mitch Davenport
Davenport Construction Management
141 Camino de las Crucitas
Santa Fe, NM 87501
mitch@dcmnm.com
(505) 660-7105

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: 12/31/19


CONTRACTOR:


MITCH DAVENPORT
PRESIDENT DCM

DATE: 11/14/19

CRS#03-053313-00-9
Registration #19-00009749
State Price Agreement #90-000-19-00057

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK
Comtg 12/11/19

APPROVED AS TO FORM:

 9/18/19
ERIN K. MCSHERRY
CITY ATTORNEY

APPROVED:


MARY MCCOY
FINANCE DIRECTOR

Business Unit Line Item: 5256175.520100



City of Santa Fe

Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: DAVENPORT CONST MGMNT LLC
DBA: DAVENPORT CONST MGMNT
LLC

Business Location: 3600 CERRILLOS RD 719D
SANTA FE, NM 87505

CRS Number: 03-053313-00-9

Owner: MITCH DAVENPORT

License Number: 225440

License Type: Business License - Renewable

Issued Date: January 08, 2021

Classification: Contractor - General

Expiration Date: January 08, 2022

Fees Paid: \$35.00

DAVENPORT CONST MGMNT LLC
141 CAMINO DE LAS CRUCITAS
SANTA FE, NM 87501

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

03/01/2021

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 Daniels Insurance, Inc.-Santa Fe 805 St. Michaels Drive Santa Fe NM 87505	CONTACT NAME: Michael Latting PHONE (A/C. No. Ext): (505) 982-4302 E-MAIL ADDRESS: mlatting@danielsinsuranceinc.com	FAX (A/C. No.): (505) 989-9186	
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED (505) 660-7105 Davenport Construction Management, LLC 141 Camino De Las Crucitas Santa Fe NM 87501	INSURER A: Builders Trust		
	INSURER B: Cincinnati Insurance Companies		10677
	INSURER C: Cincinnati Specialty Underwrit		13037
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES

CERTIFICATE NUMBER: Cert ID 30322

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
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:			CSU0027329	04/18/2020	04/18/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			ENP/EBA0074852	04/18/2020	04/18/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			CSU0027329	04/18/2020	04/18/2021	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	5928	01/01/2021	01/01/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000
							\$

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

All operations of the insured per policy conditions, Liability: Continental U.S.; Workers Compensation: New Mexico.


CERTIFICATE HOLDER

City of Santa Fe, Public Works
 Facilities Division Administrator
 Attn: Curt E Temple
 120 S Federal Pl #305
 Santa Fe NM 87501

CANCELLATION

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

AUTHORIZED REPRESENTATIVE



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City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3201676

Contractor: Davenport Constrcution Management

Description: On-call general contractor services for City faciilites.

Contract Agreement Lease / Rent Amendment

Term Start Date: 06/15/2019 Term End Date: 06/30/2019

Approved by Council Date: 12/31/2019

Contract / Lease:

Amendment # 1 to the Original Contract / Lease # 19-0943

Increase/(Decrease) Amount \$ 1,000,000 + NMGRT

Extend Termination Date to: NA

Approved by Council Date: Pending

Amendment is for: Increasing Compensation

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)
This amendment is to add compensation to the on-call contract with Davenport to allow them to continue to provide on-call services throughout all City facilities.

3. Procurement History: _____

Fran Dunaway 7/16/21
Purchasing Officer Review: _____ Date: _____
Comment & Exceptions: _____

4. Funding Source: VARIOUS Org / Object: VARIOUS

Andy Hopkins 7/16/21
Budget Officer Approval: _____ Date: _____
Comment & Exceptions: _____

Staff Contact who completed this form: Sam Burnett Phone # 505-795-2491

Email: jsburnett@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Davenport Construction Management

Procurement Title: On-Call General Contracting Services

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting: Public Works

Staff Name: Sam Burnett

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 checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	RFP
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Evaluation Committee Report
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ITB
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bib Tab
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Quotes (3 valid current quotes)
<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"/>	Executed 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 type="checkbox"/>	<input type="checkbox"/>	All documentation presented to Committees
<input type="checkbox"/>	<input type="checkbox"/>	Other: _____

Sam Burnett Interim Facilities Division Director 7/6/2021

Department Rep Printed Name (attesting that all information included) Title Date

Fran Dunaway Chief Procurement Officer 7/16/21

Purchasing Officer (attesting that all information is reviewed) Title Date

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

Signature: 
Fran Dunaway (Jul 16, 2021 09:30 MDT)

Email: fadunaway@santafenm.gov

Signature: 
Andy Hopkins (Jul 16, 2021 10:20 MDT)

Email: aclotero@santafenm.gov



City of Santa Fe, New Mexico

Memorandum



DATE: June 30, 2021

VIA: Regina Wheeler, Public Works Department Director

FROM: Sam Burnett, Public Works Property Maintenance Manager

ITEM & ISSUE:

Request for the approval of a Service Contract with National Roofing, Inc for fiscal year 2022 in the total amount of \$1,000,000.00 exclusive of NMGRT with a Term that will expire on 6/30/2023 for On-Call Roofing Services throughout the City; National Roofing, Inc; Sam Burnett, Interim Facilities Division Director, jsburnett@santafenm.gov, 505-795-2491

BACKGROUND & SUMMARY:

This On-Call Contract with National Roofing, Inc is critical to the ability of the Facilities Division to respond to emergency situations in a timely manner, to prevent major damage to the City's Facilities, and to mitigate damage once it has occurred.

This contract will be used to provide coverage throughout the City with the prior permission of the Public Works Property Maintenance Manager or the Facilities Division Director.

National Roofing, Inc has provided comprehensive roofing replacement, repairs, maintenance, and inspection services at Midtown Santa Fe for two years. They have proven to be cost effective, reliable and consistently capable of providing high quality results. Between their merits and their familiarity with our City Facilities National is an ideal choice for this on-call contact.

SCHEDULE:

This contract is scheduled to expire on 6/30/2023.

PROCUREMENT METHOD:

This contract is being procured using the CES procurement vehicle via CES Contract #2020-10B-G1107-12348

CONTRACT NUMBER:

The Munis contract number is 3201647

FUNDING SOURCE:

Munis Org Name/Number: Misc

Munis Object Name/Number: Misc

ACTION REQUESTED:

Please approve this contract amendment with National Roofing, Inc. increasing the amount of their compensation by \$1,000,000.00 to a new total of **\$1,000,000.00** inclusive of NMGRT.

**City of Santa Fe Contract
On-Call Roofing Services for 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 **National Roofing, Inc** herein after referred to as the “Contractor.”

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. “You” and “your” refers to **National Roofing, Inc.** “We,” “us” or “our” refers to the City and whose accounts are created under this Agreement.

2. **Scope of Work**

A. The Contractor shall perform the following work:

National Roofing, Inc will provide on-call service work not to exceed \$1,000,000.00 before New Mexico Gross Receipts Tax, including labor and materials, per the direction of the City of Santa Fe via CES Price Agreement #2020-10B-G1107-12348, 2020-10B-R1209-1234, 2020-10B-C1308-12348. All work will be performed on a time and materials basis. See attached proposal from National Roofing, Inc dated July 2, 2021 and marked exhibit “A” attached hereto and made a part thereof.

3. **Compensation**

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

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
01 On-Call / Not to Exceed Miscellaneous Roof Services		\$1,000,000.00

The total compensation under this Agreement shall not exceed **\$1,000,000.00 – Plus applicable New Mexico gross receipts tax (8.4375%) on services and labor only.**

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 6/30/2022. 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 Vendor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the City due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of 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 Vendor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. **Termination**

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

B. **Notice; City Opportunity to Cure.**

1. Except as otherwise provided in Paragraphs 7.A and 17, the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

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

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

8. **Amendment**

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

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. **Status of Contractor**

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any

other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. **Assignment**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

11. **Subcontracting**

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

12. **Non-Collusion**

In signing this Agreement, the Vendor/Contractor certifies the Vendor/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 Vendor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. Vendor 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**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

30. **Workers' Compensation**

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

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

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

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- (2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

- (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
- (2) terminate the contract for default.

33. **Insurance**

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

A. Commercial General Liability insurance shall be written on an occurrence basis and be 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.

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

34. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

35. **Invalid Term or Condition**

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

36. **Enforcement of Agreement**

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

37. **Patent, Copyright and Trade Secret Indemnification**

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. 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:

- i. 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;
- ii. replace or modify the product or service so that it becomes non-infringing; or,
- iii. 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:

J. Sam Burnett, Interim Facilities Division Director
City of Santa Fe, Public Works Dept, Facilities Division
jsburnett@santafenm.gov
(505) 955-5933
2651 Siringo Road, Building E
Santa Fe, New Mexico 87504

To the Contractor:

National Roofing
6281 Academy Parkway W. NE
Albuquerque, New Mexico 87109
info@nationalroofing.com
(505) 883-3000

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:

National Roofing
6281 Academy Parkway W. NE
Albuquerque, New Mexico 87109
info@nationalroofing.com
(505) 883-3000

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.

43. **Construction Contract Performance and Payment Bond.**

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

(1) a performance bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract; and

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

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

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:

CONTRACTOR:

National Roofing

ALAN WEBBER
MAYOR



JACKSON JOHNS
PRESIDENT NATIONAL ROOFING

DATE: _____

DATE: 7/12/2021 _____

CRS#01-851145-007
Registration #224368



6821 ACADEMY PARKWAY W. NE ALBUQUERQUE, NM 87109
P 505 883 3000 F 505 883 1719 INFO@NATIONALROOFING.COM
NATIONALROOFING.COM

July 2, 2021

TO: City of Santa Fe
Facilities Division
Santa Fe, NM 87501

ATTN: J Sam Burnett

EXHIBIT A

FROM: National Roofing
6281 Academy Parkway W. NE
Albuquerque, NM 87109

RE: 600 Lincoln Ave

At your request, National Roofing Company (NRC) prepared the following proposal for PO.

Miscellaneous Roof Inspection, Repairs and Replacement for the City of Santa Fe Facilities. Via CES Agreements #2020-10B-G1107-12348, 2020-10B-R1209-1234, 2020-10B-C1308-12348. NMGRT not included.

Total: One Million Dollars (\$1,000,000.00) PLUS APPLICABLE NMGRT.

Notes

- All repairs will be made with compatible material.
- Price includes the loading and removal of all roofing material.
- We will not be responsible for the detection or removal of asbestos, lead based paint, mold, animal feces or other hazardous substances. We are neither qualified nor licensed to identify or handle these materials.
- This proposal is good for thirty (30) days from the date on the proposal.
- Payment due upon completion of the repairs.

We can be contacted at (505) 883-3000 or by email with any questions or comments, or if you would like to schedule this work. Thank you for relying on National Roofing for your roofing needs.

Thank you,
Rosio Trujillo
rosio@nationalroofing.com

Company Name: _____

Signed By: _____

Title: _____

Date: _____



Contract Award Letter

December 13, 2019

NATIONAL ROOFING COMPANY, INC.
3408 Columbia NE
Albuquerque, NM 87107

Re: ACCEPTANCE OF OFFER and CONTRACT AWARD For:

2020-10B-G1107-12348 JOC Roofing - Gordian
2020-10B-R1209-1234 JOC Roofing - RS Means
2020-10B-C1308-12348 Roofing - Line Item Pricing

Dear Procurement Partner,

Cooperative Educational Services (CES) thanks you for responding to our 2020-10 solicitation. The responses have been reviewed and it is our pleasure to inform you that your company has been selected to provide the products and services indicated in your response.

The enclosed Acceptance of Offer and Contract Award, in conjunction with the RFP documents that you submitted with your proposal, constitute the Agreement between the parties. Please retain all documents for your records. The term of this Indefinite Quantity Contract Award as defined in NMSA 13-1-63; is for three (3) years beginning December 13, 2019 and expiring December 12, 2022, pursuant to 13-1-150 NMSA.

It is the vendor's responsibility to keep pricing up-to-date, throughout the life of the contract.

Sincerely Yours,

Cooperative Educational Services

David Chavez
Executive Director
Ofc: 505.344.5470
Fax: 505.344.9343



City of Santa Fe

Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: NATIONAL ROOFING CO INC

Business Location: SF COUNTY

Owner: THOMAS JOHNS

License Number: 224368

Issued Date: January 23, 2020

Expiration Date: December 31, 2020

License Type: Business License - Renewable

Classification: Out of Jurisdiction Contractor - Specialty

Fees Paid: \$10.00

NATIONAL ROOFING CO INC
6821 ACADAMEY PKWY WEST NE
ALBUQUERQUE, NM 87109

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERRABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/01/2021

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 Downey & Company 6565 AMERICAS PARKWAY NE SUITE 750 ALBUQUERQUE NM 87110		CONTACT NAME: Susan Vance PHONE (A/C, No, Ext): (505) 881-0300 E-MAIL ADDRESS: svance@downeyandco.com FAX (A/C, No): (505) 881-0908	
INSURED National Roofing Co., Inc. 6821 Academy Parkway W. NE Albuquerque NM 87109		INSURER(S) AFFORDING COVERAGE INSURER A: National Fire Insurance Company of Hartford INSURER B: The Continental Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 2021-2022

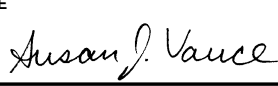
REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			7011952454	05/01/2021	05/01/2022	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000
							MED EXP (Any one person)	\$ 15,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			7011969142	05/01/2021	05/01/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			7012132938	05/01/2021	05/01/2022	EACH OCCURRENCE	\$ 5,000,000
							AGGREGATE	\$ 5,000,000
								\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	7011969173	05/01/2021	05/01/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

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

CERTIFICATE HOLDER**CANCELLATION**

CITY OF SANTA FE FACILITIES DIVISION PO BOX 909 SANTA FE NM 87504	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
---	--

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CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: National Roofing

Procurement Title: On-Call General Contracting Services

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting: Public Works

Staff Name: Sam Burnett

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 checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	RFP
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Evaluation Committee Report
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ITB
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bib Tab
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Quotes (3 valid current quotes)
<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"/>	Executed 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 type="checkbox"/>	<input type="checkbox"/>	All documentation presented to Committees
<input type="checkbox"/>	<input type="checkbox"/>	Other: _____

Sam Burnett _____ Interim Facilities Division Director

7/12/2021

Department Rep Printed Name (attesting that all information included) Title Date

Printed Name (Jul 15, 2021 8:32 MDT)

Purchasing Officer (attesting that all information is reviewed) Title Date

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



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3202829

Contractor: CES / National Roofing

Description: On-call roofing services for City facilities.

Contract Agreement Lease / Rent Amendment

Term Start Date: 7/30/2021 Term End Date: 06/30/2022

Approved by Council Date: TBD

Contract / Lease: 1,000,000 + NMGRT

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)

This amendment is for on-call contract with National Roofing to allow them to provide on-call services throughout all City facilities.

3. **Procurement History: New Contract**

Fran Dunaway, CPO 7/15/21
Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: _____

4. **Funding Source: VARIOUS** Org / Object: **VARIOUS**

Andy Hopkins 7/19/21
Budget Officer Approval: _____ Date: _____

Comment & Exceptions: _____

Staff Contact who completed this form: Sam Burnett Phone # 505-795-2491

Email: jsburnett@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

Signature: Andy Hopkins
Andy Hopkins (Jul 19, 2021 14:31 MDT)

Email: aclotero@santafenm.gov

Log # {Finance use <u>only</u> }:	
Journal # {Finance use <u>only</u> }:	

City of Santa Fe, New Mexico BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME Public Works / Streets & Drainage					DATE 7/20/2021	
ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE	
EXPENDITURES				{enter as <u>positive</u> #}	{enter as <u>negative</u> #}	
WIP Construction - Streets/Roads Projects	3309980	572970	GRT22SDM – Construct	2,990,000		
Capital Transfer to Streets/Roads CIP	1000471	760330		2,990,000		
REVENUES				{enter as <u>negative</u> #}	{enter as <u>positive</u> #}	
Capital Transfer from General Fund	3309980	660100		(2,990,000)		
JUSTIFICATION: (use additional page if needed) --Attach supporting documentation/memo				\$ 2,990,000	\$ -	

Use of excess General Fund GRT revenues earned in the prior year (FY21) over and above budgeted estimates to fund citywide critical arterial and residential road rehabilitation projects	{Complete section below if BAR results in a net change to ANY Fund}	
	Fund(s) Affected	Fund Balance Increase/(Decrease)
	100	(2,990,000)
	TOTAL:	(2,990,000)

Andy Hopkins Prepared By {print name}	7/20/2021 Date	{Use this form for Finance Committee/ City Council agenda items ONLY}	<u>Alexis Lotero, Assistant Finance Director</u> <small>Alexis Lotero, Assistant Finance Director (Jul 20, 2021 14:58 MDT)</small>
		CITY COUNCIL APPROVAL	Budget Officer Date
		City Council Approval Date	N/A Date
		Agenda Item #:	N/A Date
			Finance Director {≤ \$5,000} Date
			City Manager {≤ \$60,000} Date

Division Director Signature {optional}
Regina Wheeler
Regina Wheeler (Jul 20, 2021 13:51 MDT)

Department Director Signature

Summer 2021 Pavement Rehabilitation Plan

District 1 Road Rehab	Gonzales Road from Vallecita to Hyde Park	\$275,000
District 1 Road Rehab	Camino Alire from Alameda to Agua Fria	\$250,000
District 2 Road Rehab	Don Diego from Cerillos to Cordova	\$300,000
District 2 Road Rehab	Camino de los Marquez from Don Diego to Cordova	\$165,000
District 3 Road Rehab	Jaguar from Paseo del Sol to Sombra	\$205,000
District 3 Road Rehab	Jaguar from Paseo del Sol to South Meadows	\$355,000
District 4 Road Rehab	Camino Carlos Rey, Siringo to Zia	\$270,000
District 4 Road Rehab	Camino Carlos Rey, Siringo to Cerrillos	\$270,000
Residential streets rehab	Luisa St, Acequia Borrada, Rio Vista Pl, Valentine Way, Jaguar Loop, Saw Mill (a section East of St. Francis), Ridge View Circle	\$900,000

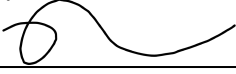
\$2,990,000

PUBLIC WORKS/STREETS, DRAINAGE AND MAINTENANCE SECTION
2017 GAS TAX PROJECTS FINAL REPORT

Project Title	City Council District	Lane Miles	Contractor	Cost	% Complete
Rodeo/ Zia mill and Inlay	4	10.94	GM Emulsion	\$1,880,414	100%
Paseo De Peralta/Mill and Inlay	2	5.52	EMCO	\$587,400	100%
Upper Canyon Road	2	2.58	EMCO	\$232,202	100%
Old Pecos Trail Mill and Inlay	2	1.44	EMCO	\$346,975	100%
Agua Fria Mill and Inlay	1	3.98	EMCO	\$835,861	100%
Avenida de Las Campanas Mill and Inlay	4	1.68	GM Emulsion	\$431,539	100%
Calle Lorca Mill and Inlay	2	0.36	GM Emulsion	\$115,481	100%
Galisteo Street Mill and Inlay	2	1.75	GM Emulsion	\$311,488	100%
Johnson Street Mill and Inlay	1	0.34	GM Emulsion	\$60,396	100%
Siler Road Mill and Inlay	1	1.86	EMCO	\$278,936	100%
Camino Entrada Mill and Inlay	3	4.28	EMCO	\$886,399	100%
Rufina Street Mill and Inlay	4	3.58	GM Emulsion	\$764,475	100%
Zia Road West Mill and Inlay	2	1.3	Allied	\$236,314	100%
Agua Fria Mill and Inlay	4	0.44	Allied	\$52,051	100%
Sierra de Norte (additional funds from PNM)	1	3.08	GM Emulsion	\$200,000	100%
Old Airport Road	3	0.28	GM Emulsion	\$155,000	100%
Osage (Agua Fria to St. Mikes)	1	1.36	EMCO	\$435,000	100%
Palace (Alameda to Delgado)	1	1.18	EMCO	\$210,000	100%
Placita de Oro (Rio Vista to West Alameda)	1	0.14	GM Emulsion	\$55,000	100%
Hopewell (Llano to 2nd St.)	2	1.04	EMCO	\$290,000	100%
Armenta (Old Pecos Trail to Corrales)	2	0.48	EMCO	\$90,000	100%
Espinacitas (Hopewell to St Mikes)	2	0.42	EMCO	\$90,000	100%
East DeVargas St (Old SF Trail to PdP)	2	0.44	EMCO	\$105,000	100%
W. San Mateo (St Francis to Calle Lorca)	2	1.14	EMCO	\$245,000	100%
Paseo de Sol (Airport Road to Capital High)	3	2.48	GM Emulsion	\$685,000	100%
Agua Fria (San Felipe to Vista Verde)	3	0.6	GM Emulsion	\$160,000	100%
Siringo (Richards to Camino Consuelo)	4	0.46	EMCO	\$120,000	100%
Zafarano (Cerrillos to Rodeo)	4	1.04	GM Emulsion	\$295,000	100%
Camino de los Arroyos (Zafarano to Vegas Verde)	4	0.42	GM Emulsion	\$85,000	100%
Rufina Circle (Rufina to Rufina)	4	0.8	EMCO	\$235,000	100%
Crack Seal City Wide	All		GM Emulsion	\$290,070	100%
Richards Ln (end to end)	4	0.34	EMCO	\$90,000	100%
Alta Vista (Cerrillos to St. Francis)	2	0.35	GM Emulsion	\$55,000	100%
Paseo del Sol West (Airport to Valentine)	3	0.81	GM Emulsion	\$90,000	85%
TOTALS		56.9		\$11,000,000	

City of Santa Fe, New Mexico

MEMO

Date: July 22, 2021
To: Governing Body
Via: 
Regina Wheeler, Public Works Department Director
From: Mark Brooks, Streets Project Administrator

Item & Action

Request approval of Budget Adjustment Request (BAR) in the amount of \$2,990,000 to address critical road rehabilitation needs throughout the City of Santa Fe. (Mark Brooks, Streets Project Administrator, mebrooks@santafenm.gov, 955-6622)

Background & Summary

The City recently completed \$11M of road rehabilitation projects, completely utilizing the 2017 Gas Tax Bond funds secured for this purpose. The list of roads rehabilitated using this funding is attached

Additional funding is required to continue to address the \$350M backlog of road rehabilitation needs across the city. The attached list of critical needs have been identified for immediate funding using FY21 GRT revenue that exceeded FY21 budget and expenditures. Please see the attached list. While main and arterial streets are a priority for pavement and rehabilitation due to the number of people served by these streets, there are a number of residential roads that are seriously degraded and will be rehabilitated with this funding. Any savings from the arterial rehabilitation will be used to fund these and additional residential street paving. This work is scheduled to begin as soon as funding is available and expected to complete by the end of the 2021 paving season.

This is the first of a number capital funding allocations that the Governing Body will review and direct in the coming months. Bicentennial Pool repairs and other critical facilities, parks and equipment needs will be presented for funding with available 2021 GRT revenue over the next 60 days. A GRT Bond package is being developed for funding in early 2022. The legislative capital request will be approved by Governing Body in early September 2021 with priorities established by December 2021. A GO Bond package may be developed for consideration by the voters in November 2022. Public Works is working with departments and divisions to establish long, medium and short term capital needs that will feed into proposals for these capital funding opportunities.

Committee Review:

Public Works and Utilities Committee: 07/26/2021
Governing Body: 07/28/2021

Attachments:

2017 Gas Tax Bond rehabilitation projects completed
Budget Adjustment Request (BAR)
Summer 2021 road rehabilitation project list

City of Santa Fe, New Mexico

memo

Date: July 15, 2021

To: Governing Body

From: *Thoma A Martinez for R.W.*
Thoma A Martinez for R.W. (Jul 19, 2021 07:55 MDT)

Regina Wheeler, Public Works Department Director

ITEM AND ACTION:

Amendment #1 to the Global Management Performance Contract (Munis Contract No. 3202498) **with Dalkia Energy Solutions, LLC for the City of Santa Fe Streetlight Conversion and Maintenance** to incorporate the specifications of the community guided lighting design. (Regina Wheeler, Public Works Department Director, rawheeler@santafenm.gov, 955-6622)

BACKGROUND AND SUMMARY:

On February 24, 2021, the City of Santa Fe entered contracts with PNM and Dalkia Energy Solutions to convert the city's streetlights to highly reliable, energy efficient and dark sky compliant light emitting diode (LED) fixtures. On May 26, 2021, the Governing Body approved the specifications for the luminaire fixtures to be installed according to the community guided lighting design. This amendment incorporates those luminaire specifications and defines the public engagement and lighting design verification that will occur during the installation and adds one month to the installation timeframe. There is no cost change associated with this amendment. The amendment extends the time to complete the conversion in consideration of the time that was taken to conduct the community guided design process.

The attached presentation summarizes the details included in the revised implementation plan that is part of this amendment.

Attachments:

- 1- Dalkia Energy Solutions GPMC Amendment 1
- 2- Dalkia Energy Solutions Global Performance Management Contract (GPMC)
- 3- Revised Implementation Plan
- 4- Presentation on streetlight conversion and ongoing public engagement plan

Item# _____
Munis Contract# 3202498

**CITY OF SANTA FE
AMENDMENT No. 1 TO
Global Management Performance Contract
ITEM# _____**

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE Global Management Performance Contract, dated March 22, 2021 (the "Agreement"), between the City of Santa Fe (the "City") and Dalkia Energy Solutions, LLC (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, Contractor has agreed to provide the upgrade of and ensure the technical operation and maintenance of the Infrastructure.

B. Pursuant to Article 15.19 Amendment, part a, 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:

ARTICLE 3: WORKS PHASE, 3.5 Time for Completion of the Works is amended to include the time for the community guided design and public engagement during the streetlight conversion and will substitute the existing language to read as follows:

The expected date of completion of all of the Works shall be 12 months from the Commencement Date (hereinafter the "Expected Completion Date").

Schedule 1: DEFINITIONS is modified to reflect the current Rate No. 20 by substituting the

definition for “Constant Energy Rate” as follows:

"Constant Energy Rate" means an energy rate as described in Section B of Public Service Company of New Mexico Electric Service, 16th Revised Rate No. 20, Canceling 15th Revised Rate No. 20, incorporated in the Revised Implementation Plan. The Constant Energy Rate is required to be reviewed and revised every five years in accordance with any changes in the Public Service Company of New Mexico Electric Service rate.

Schedule 2: SCOPE OF WORKS, Article 2: GENERAL SCOPE OF WORKS

Section 2.9 of the Agreement (“Measurement and Verification Plan: Energy Savings”) is amended to extend the time for the required Measurement and Verification Plan (M&V Plan), from 60 days to 180 days, to allow for community driven design process and public engagement during the streetlight conversion. The section shall read as follows:

Within one hundred eighty (180) days of the Commencement Date, CONTRACTOR shall provide CLIENT with a written Measurement and Verification Plan (M&V Plan), which shall be based on the International Performance Measurement and Verification Protocol (IPMVP). The M&V Plan shall provide the CLIENT with an accurate assessment of Energy Savings for an Annual Period and identify any Savings Excess or Savings Shortfall for the corresponding Annual Period in accordance Performance Assurance Reconciliation of Appendix 3A of Schedule 3 below.

The following new section is inserted in Schedule 2:

2.10 Community-Guided Design and Ongoing Community Engagement

During the Works phase, CONTRACTOR shall perform concurrent continuous engagement as outlined in the Revised Implementation Plan.

APPENDIX 3A to SCHEDULE 3 - Services Performance Objectives and Penalties is amended to make installed parameters consistent with the community guided design.

2. System Operations and Maintenance KPIs, 2.8 Average Installed Wattage (Kw) shall decrease the average installed wattage (Kw) from 96 to 84 Watts as follows:

The average installed wattage (Kw) reflects the total wattage of the System upon completion of the Works. Maintenance of the averaged installed wattage at a consistent rate throughout Agreement plays an important role in maintaining Energy Savings and lighting performance. The average installed wattage metric reflects CONTRACTOR's commitment to repairing and/or replacing street lights with infrastructure that is consistent with the System's wattage output after Acceptance. CONTRACTOR's commitment for average installed wattage (Kw) is 84 Watts, which shall be measured in accordance with the below KPI formula Kw. The KPI Kw shall be calculated on an annual basis and included in the Annual Performance Report.

3. KPI Table is amended so that the last row, "Kw – Average Installed Wattage" reads as follows:

Sub-Category	Designation	Commitment	Unit	Periodicity
Operations	Kw - Average Installed Wattage	84 W	W	Each Annual Period

Schedule 4 PAYMENT MECHANISM, 4. Services Payment and Works Payment Schedule is amended to read as follows:

Price: As consideration of CONTRACTOR's performance of the Works and the Services as described in Schedule 2 (Technical Scope and Works) and Schedule 3 (Scope of Services), CLIENT shall pay to CONTRACTOR the amounts identified in Section 6 of the Implementation Plan which shall be invoiced on a monthly basis beginning on the Acceptance Date for the corresponding Segment of the Works for the Works Payments, and on Commencement Date for the Services Payments.

If the Acceptance of any Segment of the Works is delayed, the payment schedule for the Works Payments and Services Payments will be adjusted accordingly.

The Implementation Plan is modified to include the community guided design specifications and construction plan. The Implementation Plan is replaced in its entirety with Attachment A: Revised Implementation Plan.

____. 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:

CONTRACTOR:

ALAN WEBBER, MAYOR

DocuSigned by:
Lee Vardakas

LEE VARDAKAS

DATE: _____

CEO

CEO

DATE: July 15, 2021

CRS# _____

Registration # _____

ATTEST:

KRISTINE BUSTOS MIHELICIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Erin K. McSherry

ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED FOR FINANCES:

MARY MCCOY, FINANCE DIRECTOR

Org. Name/Org.# _____ *AJH*
AJH

**Global Management Performance Contract
 Between the City of Santa Fe and Dalkia Energy Solutions
 Amendment No. 1 Attachment A: Revised Implementation Plan**

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Global Management Performance Contract
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1. Works Schedule

1.1. Work Segment Summary

The Works schedule is based on a System Baseline provided by the CLIENT and displayed in the below table. Based on community input, which expressed a preference for warmer color temperature light, and balancing enhanced streetlighting levels with community desires for darker skies and lower local lighting levels consistent with historical and present cultural values, the adopted design specifications, pursuant to Section 11 of the Revised Implementation Plan, will limit residential area street lighting to 2700 Kelvin and streetlighting on other City-owned streets to 3000 Kelvin, with conversion of streetlights on NMDOT-owned facilities to follow further discussions regarding NMDOT LED lighting standards.

Roadway Type	Number of Fixtures	Percentage of Total
Residential	1,316	39%
Local/Collector	1,404	42%
Major	635	19%

Works Segments and schedule, summarized below, are consistent with CLIENT'S permitting and operational processes and geographical priorities. CONTRACTOR will complete all Works Segments within twelve months of the Commencement Date of the Agreement.

Phase	Location	Description	Estimated Completion
Segment 1	South/Southeast	North of I-25, South of 284, West of 14	Month 7
Segment 2	Downtown	Downtown and North of Downtown	Month 8
Segment 3	East	South of 14 and 475, North of I-25	Month 9
Segment 4	South/Southwest	North of 284, South of 599, West of 285	Month 10

The map on the following page displays the Segments.

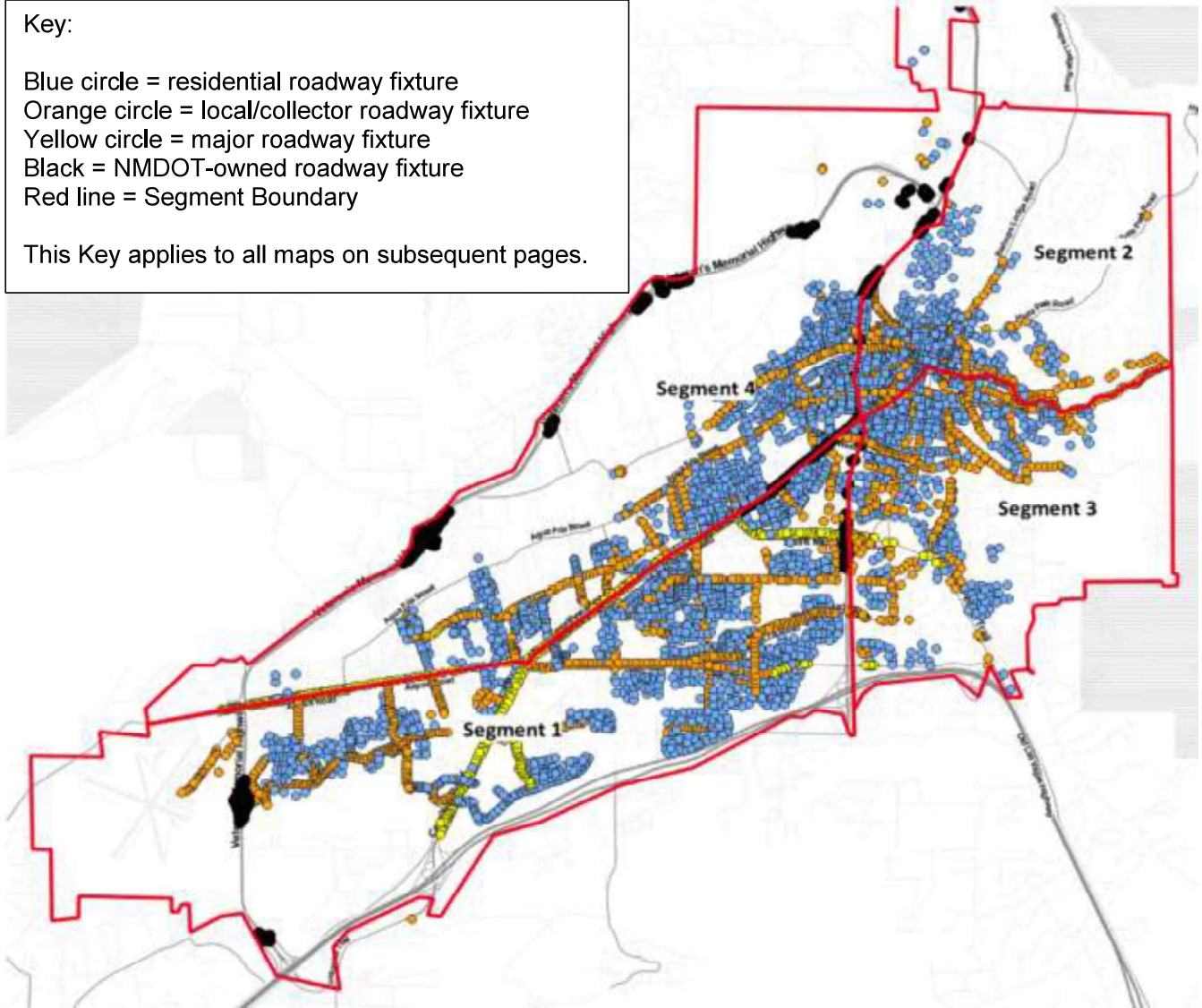
Global Management Performance Contract
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Map of City of Santa Fe, displaying Works Segments:

Key:

- Blue circle = residential roadway fixture
- Orange circle = local/collector roadway fixture
- Yellow circle = major roadway fixture
- Black = NMDOT-owned roadway fixture
- Red line = Segment Boundary

This Key applies to all maps on subsequent pages.

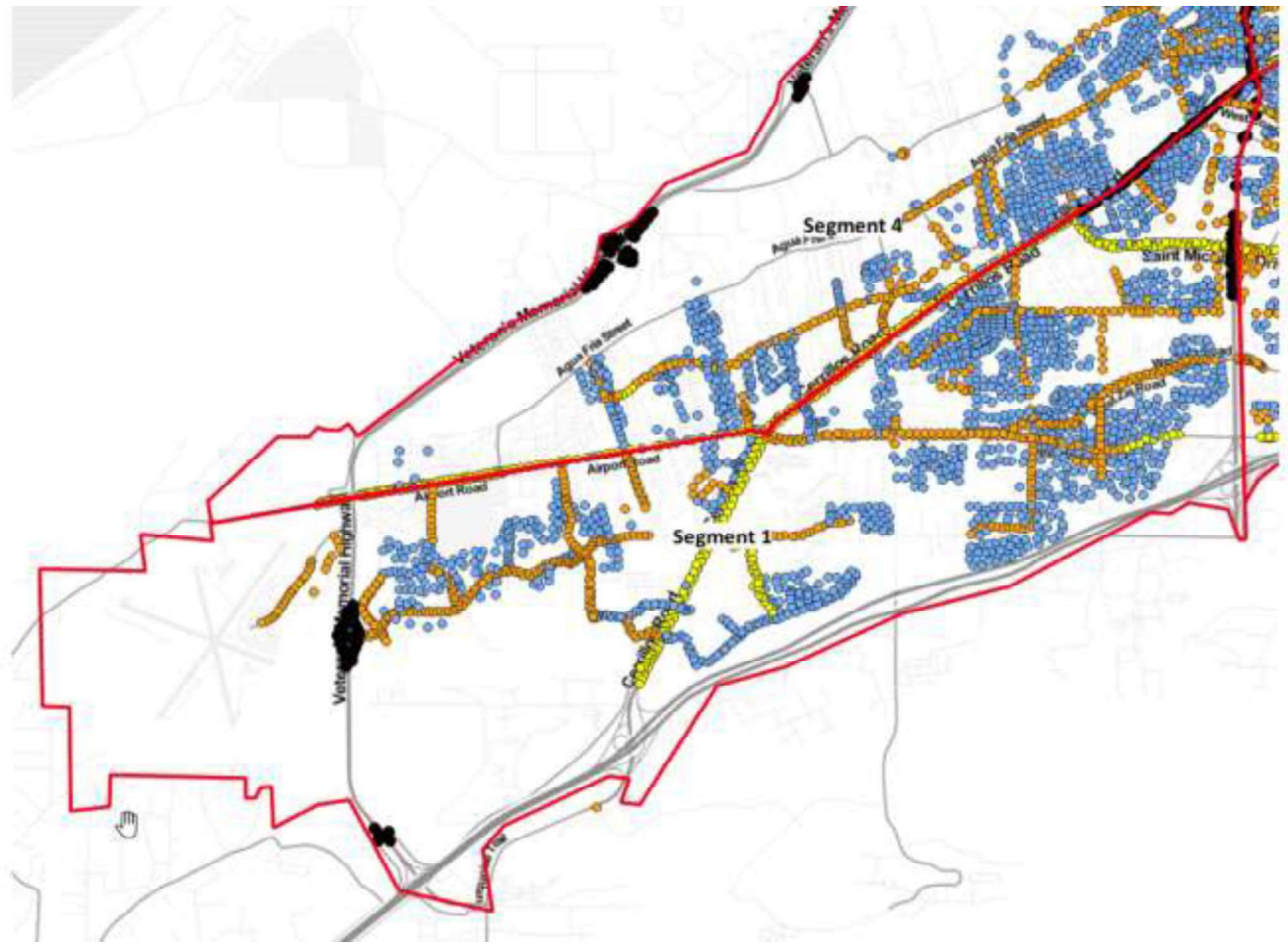


Global Management Performance Contract
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1.2 Detailed Works Segments

1.2.1 Segment 1, South/Southwest

Description : North of I-25, South of 284, West of 14
Estimated Pole Distribution: Residential - 900; Local - 500; Major - 250
Estimated Duration: 1.5 months



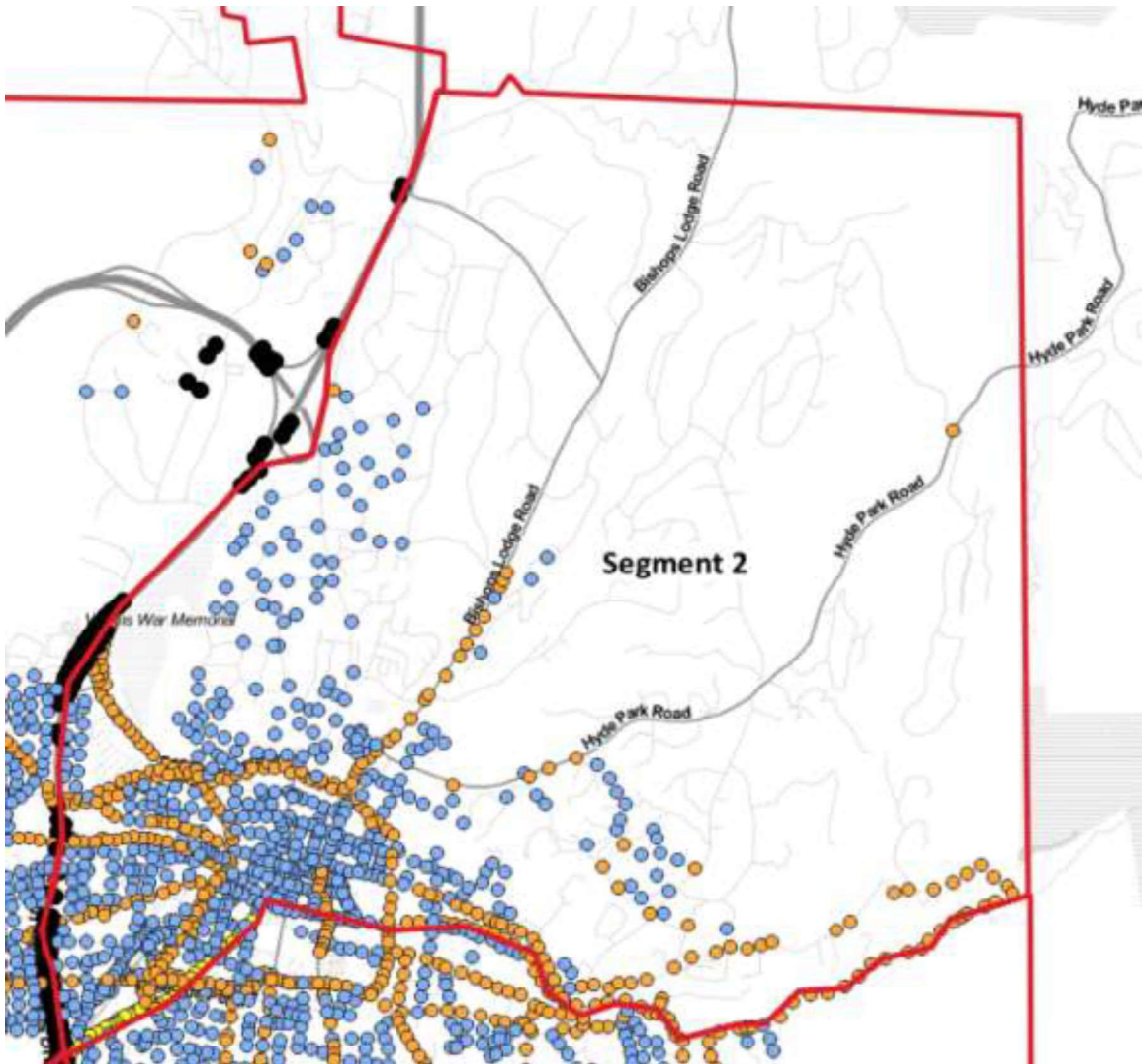
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1.2.2 Segment 2, Downtown

Description: Downtown and North of Downtown

Estimated Pole Distribution: Residential – 330; Local – 190; Major – 50

Estimated Duration: 1 month



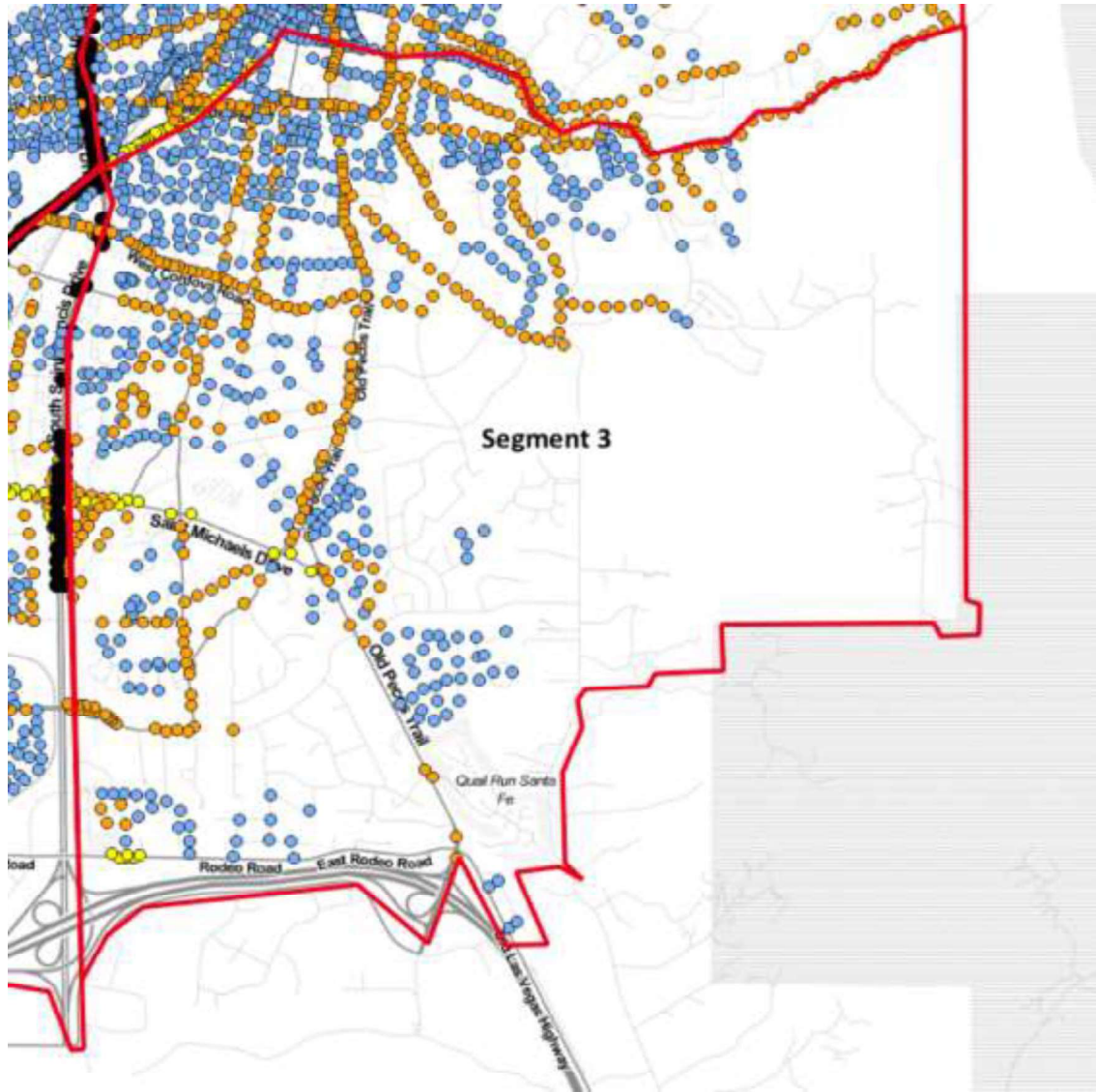
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1.2.3 Segment 3, East

Description: South of 14 and 475, North of I-25

Estimated Pole Distribution: Residential – 170; Local – 150; Major – 30

Estimated Duration: 0.5 month



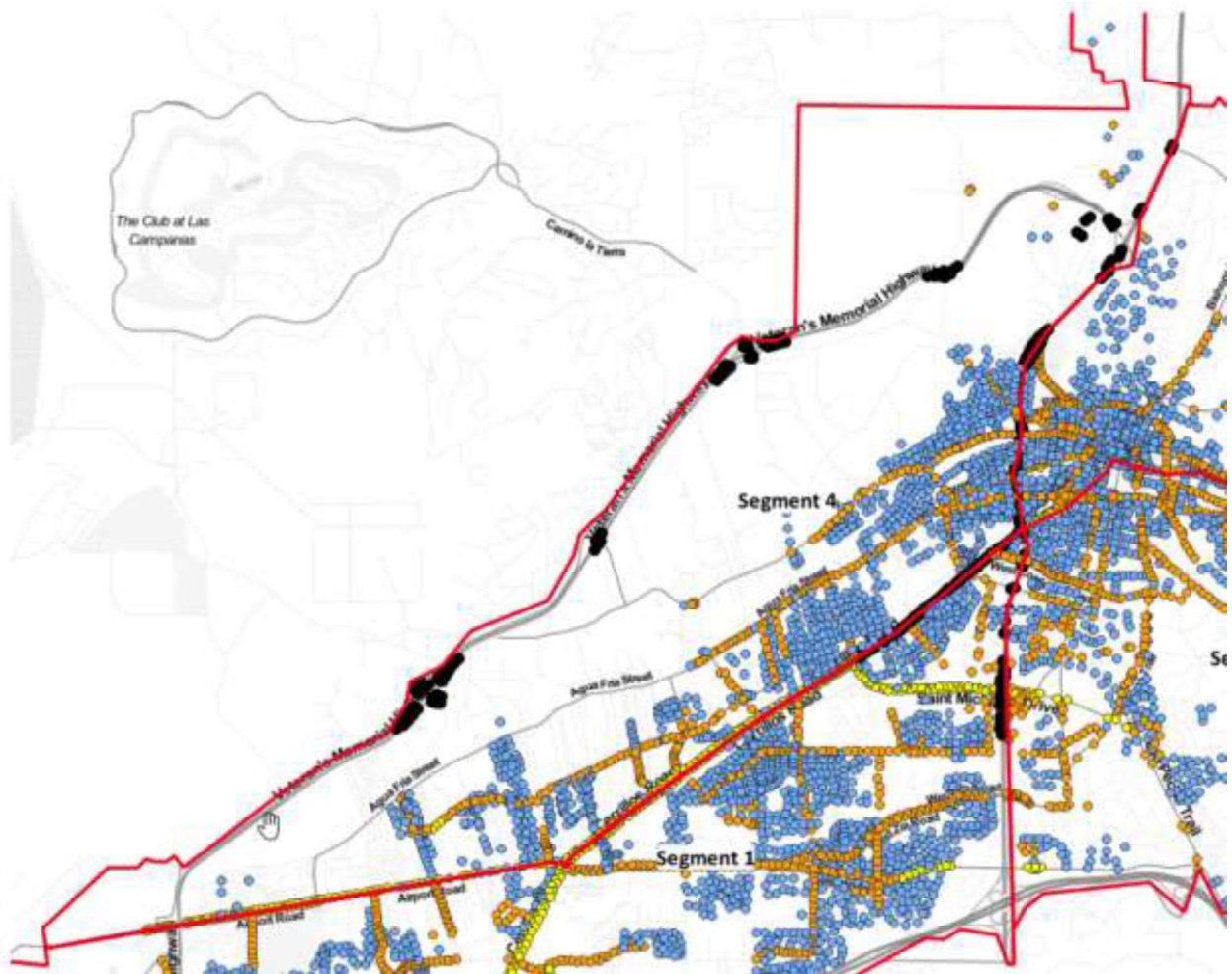
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1.2.4 Segment 4, North/West

Description: North of 284, South of 599, West of 285

Estimated Pole Distribution: Residential – 470; Local – 200; Major – 260

Estimated Duration: 1 month



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1.3 Calendar of Execution

Period	Events
February 24, 2021	Commencement Date
Months 1-3	Community Engagement Phase Community-Guided Design Finalization
Month 3	Council Approval of Community-Guided Smart Street Lighting Design Specifications
Month 4	Contract Amendments
Month 5	Council Approval of Amendment Material Ordering
Month 6	Weekly Construction Meetings Begin
Month 7	Material Delivery Start of Phase 1 Weekly Construction Meetings
Month 8	Closeout of Phase 1 Start of Phase 2 Weekly Construction Meetings
Month 9	Closeout of Phase 2 Start of Phase 3 Closeout of Phase 3 Start of Phase 4 Weekly Construction Meetings
Month 10	Weekly Construction Meetings
Month 11	Closeout of Phase 4
Month 12	Acceptance of Final Segment of Works Commencement of Services Phase

Pursuant to Section 3.4 of the Agreement, Events in each Period are estimated, following commercially reasonable efforts.

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2. Continuous Community Engagement

2.1. Project Website

CONTRACTOR will maintain the project website SantaFeLED.com. Before the conversion starts, the website will be updated with the Calendar of Execution contained herein and the Work Segments and maps contained herein. Once the conversion commences, the website will be updated to display the completed Infrastructure progress and upcoming Work schedule, including GIS functionality.

2.2. Constituent feedback collection

CONTRACTOR will create a new form on the project website to collect constituent feedback as the conversion is underway. The form will inquire about the need for additional house-side shielding; future policies for addition or removal of street lighting; future dimming strategies; and overall experience.

2.3. Secondary reporting mechanism

CONTRACTOR will maintain a phone line during the Works and Services phases. The phone line service representative will be equipped to collect the same feedback and information as the website form.

2.4. Door hangers

CLIENT will provide CONTRACTOR with randomly selected, minimum 4% sample of resident addresses for the CONTRACTOR to place door hangers. Door hangers will be provided to the CONTRACTOR by the CLIENT at the expense of the CLIENT. The door hangers will include a QR-code that links to the feedback form, the link to the project website, and the phone line number.

2.5. Dual language

CONTRACTOR will make the website, along with the feedback form, available in English and Spanish.

2.6. Drone footage

CONTRACTOR will collect aerial drone footage of lighting conditions before commencement of the Works, and after completion of the Works. During Segment 1, CONTRACTOR will provide drone footage which displays a minimum of 0.5 miles of roadway for each of the residential, local/collector, and major roadway classifications (hereinafter, "sample footage locations") herein for review and design validation. Additional drone footage will be collected in subsequent Segments at the direction of the CLIENT, not to exceed twelve sample footage locations unless agreed upon by both parties.

2.7. Design Validation

CONTRACTOR, during the Works phase, will perform photometric analyses and correlated color temperature readings on the same roadways selected for sample footage locations.

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3. Necessary Activities

CONTRACTOR will mobilize field crews. Each crew is to be composed of at least two workers: a Journeyman Electrician (EL-01J or EE-98J) and a ground man. CONTRACTOR will run all operations out of a centrally located warehouse, where equipment, vehicles, and the inventory upgrade materials will be stored.

CONTRACTOR will implement Maintenance of Traffic (hereinafter, MoT) procedures. All MoT guidelines will follow Occupational Safety and Health Administration and Federal Highway Administration standard protocols. The MoT procedures will be based on roadway type. Residential and Local/Collector roadways require a Work Vehicle and Arrow Board. Major roadways require personnel with a Traffic Control Supervisor (TCS) Certification and a Mobile Utility Traffic Vehicle following the bucket truck.

CONTRACTOR will work under a Mobile Operation Permit issued by the City of Santa Fe Traffic Department. Permit will be active for the Segment number the CONTRACTOR is actively working in during the Works Phase.

4. Hazardous Materials and Recycling

4.1 Hazardous Materials Within Scope

The term “Hazardous Materials Within Scope” shall mean the discerned presence of any of the following (collectively and hereinafter, “Hazardous Waste”): mercury, polychlorinated biphenyls (PCBs); oil or other petroleum products; fungus, mold, mildew, spores, or other biological or microbial agents which may adversely affect human health; any substances which are “hazardous materials” “hazardous substances” “hazardous wastes” or “toxic substances” under the Hazardous Material Laws. Hazardous Materials Laws shall mean all federal, state, and local laws, ordinances, and regulations relating to Hazardous Materials, including, without limitation: the Toxic Substances Control Act, as amended, 15 U.S.C Section 2601 et seq.; the Pollution Prevention Act, as amended, 42 U.S.C Section 13101 et seq.; the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C Section 1251 et seq.; The Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, including the Superfund Amendments and Reauthorization Act of 1986, “CERCLA”), 42 U.S.C. Section 9601 et seq.; the Occupational Safety and Health Act , as amended, 29 U.S.C. Section 651; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; any substance subject to the National Emissions Standard Hazardous Air Pollutants as found in 40 C.F.R. 61; and all comparable state and local laws.

4.2 Recycling and Disposal

CONTRACTOR will collect, temporarily store, and contract for the transportation and disposal of all hazardous and non-hazardous waste generated during the Works outlined in the Agreement and Revised Implementation Plan. CONTRACTOR shall provide CLIENT with

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evidence from the disposal companies of proper handling, transport, recycling, and disposal of all hazardous materials.

5. Commissioning and Quality Assurance Plan

CONTRACTOR commits to implementing an extensive and comprehensive quality assurance program that incorporates elements of the commissioning process throughout performance of the Works. These steps assure the CLIENT of a satisfactory delivery of the Infrastructure.

This plan includes the following elements:

- Asset Inspection and Design Validation Records
- Safety and Quality Inspection Reports
- Formal Joint Review of Completed Construction Work
- Systematic Conveyance of Critical System Information
- Opportunity for Inspection of Physical Assets and Documentation
- Formal Review and Acceptance of CMMS Records Documenting Conversion of Assets
- Formal Notification and Confirmation of Utility Rate Reduction Process

5.1 Pre-Construction Commissioning

CONTRACTOR will inspect the fixtures as they are received at the warehouse to ensure materials arrive as ordered, including but not limited to a thorough review of fixture part numbers, driver and LED condition, and bench testing of a portion of the materials.

CONTRACTOR staff will complete the inventory verification checklist (attached hereto) for all received orders (hereinafter "Inventory Verification Checklist").

5.2 CONTRACTOR Internal Commissioning

The first portion of the after-upgrade commissioning program is CONTRACTOR'S internal commissioning of the installed Infrastructure. Commissioning shall take place on a work order basis, including all tasks required to close the upgrade work order, included but not limited to the proper installation of the new luminaire, replacement of equipment, and upgrades to deficient infrastructure.

STEPS

1. Construction Completed Field Inspection Begins

Once all work is completed for the assets within a given work order, CONTRACTOR's internal commissioning process kicks-off. This may be completed on an asset-by-asset basis.

2. Journeyman Validates Checklists

The certified Journeyman electrician on the work team completing the Works will

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complete a field checklist for acceptance that reviews the installation process (hereinafter "Field Checklist for Acceptance"). The checklist attached hereto.

3. Work Order and Field Reports Reviewed and Validated

After reviewed in the field, a CONTRACTOR superintendent will provide an additional review to examine if the Field Checklist for Acceptance is complete and if data inputted by field crews is correct to ensure that design criteria has been followed. The superintendent shall decide if the upgrade work order is accepted for CLIENT commissioning and per section 11.3 below.

4. If no, CONTRACTOR Generates New Work Order.

If not accepted, the superintendent shall create a work order in CMMS to fix open issues.

5. If yes, CMMS Data Prepped for Update.

Relevant asset installation records are stored in the CMMS system, recording the conversion of assets and appropriate model and serial numbers identifying the individual components for warranty, maintenance and asset tracking.

6. O&M Documentation Package Prepared.

Manufacturer's warranty, instructional materials, maintenance recommendations and procedures, diagrams and systems operational information are prepared for formal transfer to the CLIENT.

7. Completed Work Order Submitted for Closeout.

The superintendent shall close the upgrade work order in CMMS.

8. Transmittal Letter Issued to CLIENT and the Public Service Company of New Mexico (hereinafter "PNM").

CONTRACTOR will provide the official notification to the CLIENT and PNM that the construction steps including asset replacement or conversion has been completed and is now ready for inspection and commissioning.

9. Post Construction Review Meeting.

This weekly meeting is to be scheduled weekly throughout the duration of the Works Phase of the project. Attendees included in this meeting are all CONTRACTOR management personnel and any key stakeholders designated by the CLIENT that will benefit from information discussed in the following sub-topics:

A. Review of Letters of Transmittal and Completed Work Schedule

CONTRACTOR, CLIENT and PNM will review transmittal letters for assets converted, including identification numbers and physical location. This will also include a review of the Inventory Verification Checklist and Field Checklist for Acceptance to ensure luminaires are compliant with adopted design specifications.

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B. Review Field Variances

Review of non-standard repairs or changes that were required in the field to effectively complete the Works.

C. Review Inspections Schedule

Gather feedback from designated CLIENT and PNM inspectors concerning completed inspections and review upcoming work areas for planning purposes.

D. Review Constituent Requests and Feedback

House-side shielding and any other actionable constituent requests received will be reviewed to generate an action plan to fulfill requests.

5.3 CLIENT Commissioning, PNM Validation

After the letter of transmittal has been issued with a copy of the CONTRACTOR Field Checklist for Acceptance, the commissioning process will enter the second subsection: CLIENT commissioning and PNM validation. CONTRACTOR anticipates that the CLIENT's commissioning inspection process shall begin concurrent with the post construction review meeting for each associated work order. Within thirty (30) days of receipt of transmittal letter, the CLIENT shall inspect and commission the respective Infrastructure and PNM shall validate the new luminaires and their installed wattage in accordance with the following steps.

STEPS CONT'D

10. CLIENT Inspection Period Begins.

11. CLIENT Inspects.

This process step is the period allocated to the CLIENT to provide any feedback required to sign off on the Field Checklist for Acceptance, or to present punch-list items requiring correction before acceptance.

12. If not accepted, Post-Inspection Corrections Addressed.

If outstanding items need to be corrected for acceptance of the work, CONTRACTOR will work diligently to perform those works and re-issue a request for the CLIENT to re-inspect the asset(s).

13. If accepted, CLIENT Signs Field Checklist for Acceptance.

The CLIENT has completed all inspections and has received confirmation of correction to any deficiencies in the system reported during the inspection period. The CLIENT will complete the Field Checklist for Acceptance. Upon completion and execution of the Field Checklist for Acceptance, the work therein shall be deemed commissioned and accepted for the purpose of the Certificate of Substantial Completion for the respective Segment

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and the CLIENT is precluded from asserting additional punch-list items or corrective work for the commissioned work order(s) thereafter.

14. PNM Validation Period Begins.

15. PNM Validates Change.

This process step is the period allocated to PNM to review the installed luminaires and associated wattage(s) for the purpose of updated billing. This will be assisted by the previously prepared CMMS database update (see Step 5). If not validated, the process returns to the post-inspection corrections addressed (see Step 13).

16. If validated, PNM Signs Field Checklist to Validate New Fixture Installed Wattage. PNM will complete the field checklist for validation of the installed fixture(s) and associated wattage(s) (hereinafter "Field Checklist for Validation"). Completion of the checklist will act as PNM's approval to initiate the update of the streetlighting system database with updated inventory information. Date of signature of validation may act as the start date for updated billing based on the LED tariff for the validated assets(s) (to be confirmed with PNM).

5.4 PNM Inventory Update

After the CLIENT has signed the Field Checklist for Acceptance for the commissioned Infrastructure and PNM has signed the Field Checklist for Validation of installed wattage, CONTRACTOR will begin the process of formally updating the system inventory with PNM to update the billing accordingly.

STEPS CONT'D

17. CMMS Data Update

Data from CMMS will be prepared for and transmitted to PNM. CONTRACTOR may transfer the information on a frequency based on rate of acceptance.

18. Data Transfer to PNM of Updates/Accepted Fixtures

PNM will review all data transferred from CONTRACTOR and upload it into their electronic software platforms for accuracy, system integrity and continuity of program requirements. The primary purpose of this step is to ensure synchronization between CONTRACTOR's CMMS Database on behalf of the CLIENT, and PNM's operational software platforms for tracking and billing purposes.

19. Billing Rate Adjusted with Notification

PNM will validate the appropriate asset conversion to correspond with the billing system that produces the energy bills for the CLIENT. PNM will also notify all parties of the update.

5.5 Completion of the Segment(s)

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The process laid out relates to the ongoing acceptance of work for individual work orders. CONTRACTOR implements this process to expedite the process of and ease the burden on the CLIENT to accept work. At the end of the corresponding Segment of Works, CONTRACTOR will submit a Certificate of Substantial Completion for all the previously accepted work orders within the Segment. If all punch-list items have been addressed by CONTRACTOR, the CLIENT will execute a Certificate of Acceptance for the given Segment of Works in accordance with Schedule 5 of the Agreement.

Inventory Verification Checklist (Pre-Field Work)				
Shipment Receive Date:	Shipment Number:	Manufacturer/Supplier:		
Luminaire and Components Verification:	As the luminaires arrive on site, a 10% random sampling of each type should be opened to confirm that they comply with the specifications and/or approved submittals.			
	Model 1:	Model 2:	Model 3:	Model 4:
Is all packaging sealed and intact?				
Manufacturer?				
Luminaire Type?				
Is manufacturer and type as specified?				
Is equipment undamaged and are all components present?				
Total Luminaires Checked:				
Total Luminaires this Shipment:				
Percentage of Luminaires Checked:				
Driver Verifications				
Is all packaging sealed and intact?				
Driver manufacturer?				
Driver type (model)?				
Is manufacturer and type as specified?				
Dimmable?				
Note any other special characteristics				
Lamp (LED) Verification+A42:A52				
Total Drivers this Shipment:				
Percentage of Drivers Checked				
Lamp (LED) Verification				
Is all packaging sealed and intact?				
Lamp (LED) Type				
CRI				
CCT				
Is manufacturer and type as specified?				
Total LEDs Checked:				
Total LEDs this Shipment:				
Percentage of LEDs Checked				
Controls Verification				
Percentage of lighting controls checked				
Control Manufacturer				
Control Type				
Is manufacturer and type as specified?				
Total Controls Checked:				
Total Controls this Shipment:				
Percentage of Controls Checked				

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Field Checklist for Acceptance - Complete for Each Work Order			
Luminaire and Infrastructure Checklist	Date:	Associated Work Order:	
	Acceptance		
	<i>Field (Contractor)</i>	<i>City</i>	<i>PNM</i>
	Pass/Fail/Initial	Pass/Fail/Initial	Pass/Fail/Initial
Do the luminaires have the correct type of lamp as required in the specifications?			
Do the luminaires have labelling, and components with labelling, that satisfy the specifications, indicating specified lamp type and wattage? For drivers, spot check one driver in each type of luminaire per zone.			
Are the correct luminaires mounted in the proper location? Refer to replacement fixture			
Are the luminaires mounted at the proper height?			
Are the luminaires properly aligned, with all joints aligned?			
Are the luminaires supported by the structure?			
Are the luminaires clean and new, with no fingerprints, scratches, dents or other			
Are the luminaires installed without exposed wires?			
Functionality			
Are the luminaires functional with no lap flicker, burnouts or end blackening, and no ballast hum or noise after 12-24 hours of continuous uncontrolled operation?			
Have the Smart Control Nodes been properly attached and/or configured?			
Design Illumination			
Is initial illuminance enabling the average maintained design illuminance to be achieved based on calculations involving assumed light loss factors and finish reflectance assumptions? (One per road type per segment)			
Pole, Arm and Infrastructure			
Has the pole been tested for contact voltage?			
Is the luminaire free from obstructions?			
Is the source of energy documented in the work order?			
Did the pre-installation inspection reveal any defects or conditions that require additional			
Is the luminaire cleared to restore power?			

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6. Works Payment and Services Payment Schedule

6.1. Works Payment

As consideration of CONTRACTOR'S performance of the Works as described in the Revised Implementation Plan, CLIENT shall pay the CONTRACTOR the amounts identified in the table below which shall be invoiced on the Acceptance Date for the corresponding Segment of the Works. Amounts based on total contract amount not including NMGR as described in Schedule 4 Section 1.a.1 of the Agreement.

Milestone	Description	Payment minus NMGR
Design	Design of Smart LED Conversion Plan for the City of Santa Fe	\$254,319.50
Insurance	Insurance requirements gathered and provided to the City of Santa Fe	\$254,319.50
Material on Site	Reception of material at Contractor's facility. Phase completion upon delivery of copy of Bill of Lading to City of Santa Fe.	\$508,639.00
Segment 1	Completion of Segment 1, as described in the Implementation Plan	\$381,479.24
Segment 2	Completion of Segment 2, as described in the Implementation Plan	\$286,109.44
Segment 3	Completion of Segment 3, as described in the Implementation Plan	\$286,109.44
Segment 4	Completion of Segment 4, as described in the Implementation Plan	\$286,109.44
Punchlist and close out	Dalkia to finalize punch list and outstanding open items per the direction of the City of Santa Fe. Payment upon written sign off on the Works Phase.	\$286,109.44

6.2. Services Payment

As consideration of CONTRACTOR performance of the Services as described, CLIENT shall pay CONTRACTOR the amount identified in Schedule 4 Section 1.a.2 of the Agreement, which shall be invoiced on a monthly basis.

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7. Unit Prices

Unit prices defined below are for additional repairs outside of the Works and Services scope.

Santa Fe Contract Unit Prices as of January 27, 2021 Unit prices will be updated annually to reflect cost increases or decreases, technological advancements and the addition or deletion of items based on the work performed.							
Line	Item	Description	Unit	Road Type	Total	Road Type	Total
1	Fixture Installation: Cobra head	Installation of (1) LED cobra head. Price includes luminaire, photocell, rewiring, and labor.	EA	Residential	\$342.26	Local	\$462.89
2	Fixture Installation: Cobra head	Installation of (1) LED cobra head. Price includes luminaire, photocell, rewiring, and labor.	EA	Major/Highway			\$607.65
3	Arm Installation: 6 ft or less	Installation of (1) arm made of aluminum, steel or comparable material. Price includes labor and wiring.	EA	Pipe	\$610.77	Davit	\$1,016.00
4	Arm Installation: Greater than 6 ft	Installation of (1) arm made of aluminum, steel or comparable material. Price includes labor and wiring.	EA	Davit	\$1,100.97	Twin Davit	\$2,177.60
5	Pole Installation: Less than 25 ft	Installation of pole made of aluminum, steel, or comparable material. Price includes labor and wiring.	EA	Local			\$2,484.36
6	Pole Installation: 25 to 35 ft	Installation of pole made of aluminum, steel, or comparable material. Price includes labor and wiring.	EA	Local			\$3,101.85
7	Pole Installation: Greater than 35 ft	Installation of pole made of aluminum, steel, or comparable material. Price includes labor and wiring.	EA	Up to 45 ft	\$3,911.12	Greater than 45 ft	\$5,957.64
8	Pole Base: 18"	Installation of an 18" pole base. Price includes base and labor	EA	All			\$778.91
9	Pole Base: 24"	Installation of a 24" pole base. Price includes base and labor	EA	All			\$942.31
10	Wiring Material: Copper Wire	Underground Copper 10/2 UF Wire. Price per foot, material only.	FT	All			\$1.12
11	Wiring Material: Aluminum Wire	Underground Aluminum Triplex Wire. Price per foot, material only.	FT	All			\$1.48
12	Overhead Wiring Material: Copper Wire	Overhead #8 Copper THHN Wire. Overhead requires 2 wires per pole. Price per foot, material only.	FT	All			\$0.45
13	Overhead Wiring Material: Aluminum Wire	Overhead #4 ACSR Wire. Overhead requires 2 wires per pole. Price per foot, material only.	FT	All			\$0.77
14	Pole Installation: Reusable	Installation of a reusable pole. Price includes labor and wiring.	EA	All			\$1,188.45
15	Arm Installation: Reusable	Installation of a reusable arm. Price includes labor and wiring.	EA	All			\$564.64
16	Fixture Installation: Reusable	Installation of a reusable fixture. Price includes labor and wiring.	EA	All			\$191.49
18	Materials for Repair	Extra materials needed to complete works will be itemized and priced on an individual basis.	EA	All			TBD
17	General Labor	Hourly rate for an electrician team composed of 1 Journeyman, 1 Groundman, 1 bucket truck plus equipment. MoT not included.	HR	All			\$174.48
19	Excavation	Hourly rate for an electrician team composed of 1 Journeyman, 1 Groundman, 1 bucket truck plus mini excavator	HR	All			220.96
20	Locating	Hourly rate for 1 technician, 1 vehicle, plus line locating machine	HR	All			204.48
21	Boring	Boring w/2-2" dia conduit & 2-#2 triplex, does not include set up fee	FT	All			\$27.69
22	Troubleshooting	Hourly rate for a troubleshooting team composed of 1 Journeyman, 1 Groundman, 1 bucket truck. MoT not included.	HR	All			165.85
23	Maintenance of Traffic	Traffic control comprised of 1 Groundman, 1 truck, 1 arrow board, and additional equipment for 1 hour.	HR	City	\$89.17	DOT	\$178.33
24	Labor for Smart Ready Controls	Hourly rate for a Smart Ready Control team composed of 1 Journeyman, 1 Groundman, 1 bucket truck plus	HR	All			\$230.80
25	IT Support	Hourly rate for technical support of Smart Ready Controls	HR	Basic	\$126.00	Expert	\$205.00

8. Additional Repairs identified during the Works phase

CONTRACTOR, throughout the Works phase, will record detailed notes around future repairs outside of the Works scope, including a plan to address these repairs, categorized as "Deferred Maintenance". CONTRACTOR will report the additional repair tasks in the weekly meetings. CLIENT will instruct CONTRACTOR to perform additional work based on priorities and budget.

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9. Measurement and Verification Plan

At the conclusion of the Works Phase, CONTRACTOR will employ the International Performance Measurement and Verification Protocol (IPMVP), Option A, Partially Measured Retrofit Isolation, utilizing installed wattage as the key parameter, as the standard methodology for measurement and verification of the system until the control system (Smart Nodes) is fully operational and accepted by the CONTRACTOR, CLIENT, and PNM. Once the control system is considered accepted by the CONTRACTOR, CLIENT, and PNM, CONTRACTOR will employ IPMVP Option B, Retrofit Isolation, with post-retrofit energy use data sourced from the lighting control system.

9.1. System Baseline

System Baseline is estimated in Section 1.1 of Appendix 3A to Schedule 3 of the Agreement to be confirmed through the conversion process and subsequently updated for use in Annual Realized Savings calculations and publication in the Annual Performance Report provided by the CONTRACTOR in accordance with Article 3 of the Agreement.

9.2. Performance Baseline

Performance Baseline is estimated in Section 1.1 of Appendix 3A to Schedule 3 of the Agreement. After the completion of Commissioning and Quality Assurance protocols, $K_{pb \text{ unmetered}}$ will be updated to accurately reflect the installed Infrastructure as agreed upon by all parties.

9.3. Control System

Prior to acceptance of the control system as a billing mechanism by all parties, IPMVP Option A shall be employed so that actual energy consumption of the System, based on the accepted wattage of each asset of the Infrastructure, installed as verified by all parties through the Commissioning and Quality Assurance Plan, is to be calculated as articulated Section 1.1 of Appendix 3A to Schedule 3 of the Agreement. Should the control system be recognized as a billing mechanism by all parties, IMPVP Option B shall be employed so that energy consumption of the System is measured in real time utilizing the control system. Energy consumption (wattage) and hours of use for each asset will be collected to derive actual kilowatt hours consumed by each asset of the Infrastructure, which will be included in $K_{pb \text{ metered}}$ for inclusion into the Annual Performance Baseline of the System as articulated Section 1.1 of Appendix 3A to Schedule 3 of the Agreement.

9.4. Changes to Infrastructure

After completion of the Works, during the Services phase, any addition or removal of city-owned Infrastructure assets by the CONTRACTOR at the direction of the CLIENT will be incorporated into the energy consumption of the System appropriately as described above for reconciliation of the Annual Realized Savings to be presented in the Annual Performance Report.

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9.5. Sample calculations

Inventory	
Roadway Type	Units
Residential	1,316
Local/Collector	1,548
Major	635
Subtotal	3,499

Roadway Type	Existing			
	Unit Wattage	Unit kWh/Month	Total kWh/Year	Unit Non-Fuel Rate/Month
Residential	100	45	710,640	\$3.42
Local/Collector	250	107	1,987,632	\$8.12
Major	400	165	1,257,300	\$12.53
Average	193	83	3,955,572	\$7.15

Roadway Type	Upgrade LED							
	Total Non-Fuel Charge/Year	Unit Wattage	Rate 20 Unit Equivalent kWh/Month*	Total kWh/Year	Rate 20 Unit Non-Fuel Rate/Month*	Total Non-Fuel Charge/Year	Total kWh/Year Savings	Total Non-Fuel Savings/Year
Residential	\$54,008.64	40	14	224,562	\$0.80	\$12,633.60	486,078	\$41,375.04
Local/Collector	\$150,837.12	92	36	660,377	\$2.00	\$37,152.00	1,327,255	\$113,685.12
Major	\$95,478.60	190	71	541,782	\$3.99	\$30,403.80	715,518	\$65,074.80
Average	\$300,324.36	76	29	1,426,721	\$1.62	\$80,189.40	2,528,851	\$ 220,134.96

*CONTRACTOR shall utilize Public Service Company of New Mexico Electrical Services 16th Revised Rate No. 20, included as Section 11, in calculating CLIENT PNM bill savings.

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10. Products Specifications

CONTRACTOR shall implement the following Community-Guided Smart Street Lighting Design Specifications.

Roadway Type	Correlated Color Temperature (Kelvin)	Input Wattage Range (W)	Nominal Lumen Output (lumen) +/- 10%	Minimum Color Rendering Index	IES Distribution	Visual Comfort Refractor	IES TM-15 Backlight, Uplight, and Glare Rating		
							B	U	G
Residential	2700K	28-45	4,000	70	Type 2	Required	1	0	1
Local/Collector	3000K	90-100	8,900	70	Type 2 or Type 3	Required	2	0	2
Major	3000K	190-200	20,000	70	Type 2 or Type 3	Not required	3	0	3

Part A: STREET LIGHTING LIGHT EMITTING DIODE (LED) LUMINAIRE SPECIFICATIONS

1.0 REFERENCES

The publications listed below form a part of this specification to the extent referenced. Publications are referenced within the text by their basic designation only. Versions listed shall be superseded by updated versions as they become available.

1.1 American National Standards Institute (ANSI)

- A. C136.2 (Most current), American National Standard for Roadway and Area Lighting Equipment—Luminaire Voltage Classification
- B. C136.10-2010 (Most current), American National Standard for Roadway and Area Lighting Equipment Locking-Type Photocontrol Devices and Mating Receptacle Physical and Electrical Interchangeability and Testing
- C. C136.15-2011 (Most current), American National Standard for Roadway and Area Lighting Equipment Luminaire Field Identification
- D. C136.25-2009 (Most current), American National Standard for Roadway and Area Lighting Equipment Ingress Protection (Resistance to Dust, Solid Objects and Moisture) for Luminaire Enclosures
- E. C136.31-2010 (Most current), American National Standard for Roadway Lighting Equipment – Luminaire Vibration.
- F. C136.41

1.2 American Society for Testing and Materials International (ASTM)

- A. B117-09 (Most current), Standard Practice for Operating Salt Spray (Fog) Apparatus
- B. D1654-08 (Most current), Standard Test Method for Evaluation of Painted or Coated Specimens Subjected to Corrosive Environments
- C. D523-08 (Most current), Standard Test Method for Specular Gloss
- D. G154-06 (Most current), Standard Practice for Operating Fluorescent Light Apparatus for UV Exposure of Nonmetallic Materials

1.3 Council of the European Union (EC)

- A. RoHS Directive 2002/95/EC, on the restriction of the use of certain hazardous substances in electrical and electronic equipment

1.4 Illuminating Engineering Society of North America (IESNA or IES)

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- A. DG-4-03 (Most current), Design Guide for Roadway Lighting Maintenance
 - B. HB-10-11 (Most current), IES Lighting Handbook, 10th Edition
 - C. LM-50-99 (Most current), IESNA Guide for Photometric Measurement of Roadway Lighting Installations
 - D. LM-61-06 (Most current), IESNA Approved Guide for Identifying Operating Factors Influencing Measured Vs. Predicted Performance for Installed Outdoor High Intensity Discharge (HID) Luminaires
 - E. LM-79-08 (Most current), IESNA Approved Method for the Electrical and Photometric Measurements of Solid-State Lighting Products
 - F. LM-80-08 (Most current), IESNA Approved Method for Measuring Lumen Maintenance of LED Light Sources
 - G. RP-8-18 (Most current), ANSI / IESNA American National Standard Practice for Roadway Lighting
 - H. RP-16-10 (Most current), ANSI/IES Nomenclature and Definitions for Illuminating Engineering
 - I. TM-3-95 (Most current), A Discussion of Appendix E - "Classification of Luminaire Lighting Distribution," from ANSI/IESNA RP-8-83
 - J. TM-15-11 (Most current), Luminaire Classification System for Outdoor Luminaires
 - K. TM-21-11 (Most current), Projecting Long Term Lumen Maintenance of LED Light Sources
- 1.5 National Electrical Manufacturers Association (NEMA)
- A. ANSI/NEMA/ANSI C78.377-2008 (or latest), American National Standard for the Chromaticity of Solid State Lighting Products
- 1.6 National Fire Protection Association (NFPA)
- A. 70 – National Electrical Code (NEC)
- 1.7 Underwriters Laboratories (UL)
- A. 1449, Surge Protective Devices
 - B. 1598, Luminaires.
 - C. 8750, Light Emitting Diode (LED) Equipment for Use in Lighting Products LED Roadway Specification
- 1.8 CSA
- 1. 1598, Luminaires

2.0 GENERAL CONSTRUCTION

- 2.1 Shall be compliant with CSA C22.2 No. 250.0-08 – UL 1598 Harmonized Std.
- 2.2 Luminaire housing to be fabricated from die cast aluminum low copper content alloy.
- A. Luminaire housing to act as passive heat sink for LED Array.
 - B. Housing to be designed in such a manner that debris build-up with-in "heat-fin" structure will not significantly impact lamp lumen depreciation (LLD).
 - C. Luminaire finish and casting to be tested to ASTM B117 salt fog, and must maintain a scribe creepage rating of 8 per ASTM D1654 after 5000 hours.
 - D. Access to electrical compartment shall be tool-less by means of a thumb screw.
 - E. Tool-less access should accommodate user wearing electrical gloves.
- 2.3 LED light engine
- A. Shall be IP66 rated (provide 0% uplight and restrict backlight to within sidewalk depth).
 - B. Lens shall be created from borosilicate glass.
- 2.4 Luminaire Attachment
- A. Luminaire shall be able to attach to 1 ¼" and/or 2" IPS schedule 40 mast arms (1 5/8" to 2 3/8" OD).
 - B. Luminaire shall be designed to be able to tilt +/- 5 degrees from horizontal.
 - C. Luminaire shall be designed to withstand 3G vibration testing prescribed in ANSI C136.31.
 - D. Luminaire shall include internal integral leveling bubble to assist in the installation.
- 2.5 Luminaire Markings
- A. Shall have external wattage label affixed on underside of luminaire to be seen from ground per ANSI C136.15.

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- B. Luminaire shall have internal label indicating manufacturer's name, product name, input voltage and date of manufacture.
- 2.6 Wildlife shield shall be a cast in feature (not a separate component).

3.0 ELECTRICAL

- 3.1 All electrical components shall be terminated through the use of quick disconnect couplings.
- A. There shall not be any wire nuts supplied in the luminaire
 - B. All luminaires shall be equipped with a 3 station tunnel style terminal block for terminating supply wire.
 - 1. Terminal block shall accommodate up to 6 AWG conductors.
 - 2. For ease of installation, the terminal block shall be positioned in such a manner that supply wires do not need to bent or re-routed around components to make electrical termination.
 - C. Luminaire shall provide means to protect LED driver and LED lighting array from electrical transients caused by electrical storms or capacitor switching by means of surge protection device.
 - 1. Surge Protection Device (SPD) shall be UL1449 recognized.
 - 2. SPD shall be 3 wire and provide both common and differential mode protection.
 - 3. SPD must have an inductive filter circuit that reduces the amount of energy passed thru to electronics during a surge event.
 - 4. Surge protection device shall be rated to protect the luminaire up to 10kV/5kA combination wave surges in accordance with ANSI C136.2 (Most Current).
 - 5. Surge protection shall be thermally fused.
 - 6. Failure mode of surge protection is to leave luminaire off.
 - D. LED Driver shall meet the following minimum requirements
 - 1. LED Driver shall have a minimum power factor of 90% at full load.
 - 2. LED Driver THD shall be less than 20% at full load.
 - 3. LED Driver shall comply with the requirements of UL, CSA, FCC47 subpart 15
 - 4. LED Driver maximum case temperature shall not be exceeded when luminaire is operating in a 40C ambient.
 - 5. LED Driver shall be RoHS compliant
 - 6. LED Driver shall have in ingress protection rating IP66.
 - E. Photocontrol receptacle shall comply with ANSI C136.10 for standard 7 PIN configurations. When using smart controls receptacle shall comply with ANSI C136.41.

4.0 LIFE

- 4.1 Component rated life shall be a minimum of 20 years (or 100,000 hours) when operating in a continuous 25C ambient.
- 4.2 The design life of the LED array (based on LM80/TM21) shall be defined as L80 at 98,000 hours operation in an ambient of 25C.

5.0 WARRANTY

- 5.1 Luminaire shall be warranted to be free from manufacturing defects for a minimum period of 10 years.

6.0 LED LUMINAIRE PERFORMANCE

- 6.1 Residential Roadway LED Luminaires
- A. Correlated Color Temperature (CCT) shall be nominally rated at 2700 Kelvin CCT.
 - B. Luminaire input wattage shall be between 28 watts and 45 watts.
 - C. Luminaire nominal lumen output shall be between 4000 lumens and 5000 lumens.
 - D. Minimum Color Rendering Index (CRI) shall be 70.
 - E. Luminaire shall have a distribution pattern consistent with IES RP-8-18 Type II Distribution.

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- F. Luminaire shall have a maximum BUG rating per IES TM-15 of B1-U0-G1.
- G. Product shall have a visual comfort glare reduction refractor.

6.2 Local/Collector Roadway LED Luminaires

- A. Correlated Color Temperature (CCT) shall be nominally rated at 3000 Kelvin CCT.
- B. Luminaire input wattage shall be between 90 watts and 120 watts.
- C. Luminaire nominal lumen output shall be between 8000 lumens and 12000 lumens.
- D. Minimum Color Rendering Index (CRI) shall be 70.
- E. Luminaire shall have a distribution pattern consistent with IES RP-8-18 Type II or Type III Distribution.
- F. Luminaire shall have a maximum BUG rating per IES TM-15 of B2-U0-G2.
- G. Product shall have a visual comfort glare reduction refractor.

6.3 Major Roadway LED Luminaires

- A. Correlated Color Temperature (CCT) shall be nominally rated at 3000 Kelvin CCT.
- B. Luminaire input wattage shall be between 190 watts and 260 watts.
- C. Luminaire nominal lumen output shall be between 20000 lumens and 24000 lumens.
- D. Minimum Color Rendering Index (CRI) shall be 70.
- E. Luminaire shall have a distribution pattern consistent with IES RP-8-18 Type II or Type III Distribution.
- F. Luminaire shall have a BUG rating per IES TM-15 of B3-U0-G3.
- G. Product shall be Design Lights Consortium (DLC) qualified.

Part 2: SMART CONTROLS

One of the use-cases for smart controls technology on the city's street lighting infrastructure is dimming capability. Dimming control will allow luminaires to be adjusted as an additional mechanism to increase energy savings and dark-sky protection.

7.0 Smart Node Technology

- 7.1 Node shall have twist-lock controller compatibility with 3, 5 or 7 pin NEMA socket receptacle.
- 7.2 Node shall utilize AES 128/256-bit encryption in its communication security.
- 7.3 Node shall function with a 0-10V, DALI or DALI2 driver and will provide a dimming circuit with a range of 0% to 100%.
- 7.4 Node shall have a single SKU to handle both low voltage and high voltage.
- 7.5 Node shall have a minimum of 10KV/5KA power surge protection and a single power supply range for 90V to 506V line voltage.
- 7.6 Node shall have a minimum IP66 rating to withstand harsh weather conditions with a -30C to +70C (-22F to +158F) operating temperature range.
- 7.7 Node shall utilize LTE CAT-1 cellular communication per module and provide advanced lighting and IoT functions and services to include, but not limited to, Tilt, Scheduling, Dynamic Dimming, Asset Management, GPS, Outage Notification, Traffic Trends, Beaconing, and Utility Grade Power Metering accuracy of ANSI C12.20 Class + or - 0.5.
- 7.8 Node must have a 10-year warranty and include 10 years of Software as a Service and connectivity.

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11. Public Service Company of New Mexico Electrical Services 16th Revised Rate No. 20

CONTRACTOR shall utilize this rate in accordance with Section 9.

PUBLIC SERVICE COMPANY OF NEW MEXICO
ELECTRIC SERVICES

16TH REVISED RATE NO. 20
CANCELING 15TH REVISED RATE NO. 20

INTEGRATED SYSTEM STREETLIGHTING
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APPLICABILITY: Applicable to any municipal corporation or other political subdivision within the State of New Mexico (for purposes of this Rate Schedule, "Customer") that receives service for streetlighting and floodlighting systems within all areas served by the company in New Mexico. x
x
x

AVAILABILITY: Available within all areas served by the company in New Mexico.

A. Appendix A: Appendix A shall be a list of Company-owned LED streetlights that are operational substitutes for standard Mercury Vapor ("MV"), Low Pressure Sodium ("LPS") and High Pressure Sodium ("HPS") fixtures. Appendix A shall be publicly available on the Company's website and shall be updated periodically by the Company to reflect updates for operational substitutes currently available from suppliers. x
x
x
x
x

B. Operational Substitute No. 1: Operational Substitute No. 1 shall be a Company-owned LED light identified in Appendix A to this tariff that is an operational substitute for the existing 175W MV, 55W LPS, 70W HPS and 100W HPS streetlight fixtures. x
x

C. Operational Substitute No. 2: Operational Substitute No. 2 shall be a Company-owned LED light identified in Appendix A to this tariff that is an operational substitute for the existing 400W MV, 135W LPS, 200W HPS and 250W HPS streetlight fixtures. x
x
x

D. Operational Substitute No. 3: Operational Substitute No. 3 shall be a Company-owned LED light identified in Appendix A to this tariff that is an operational substitute for a 400W HPS streetlight fixture. x
x
x

MINIMUM CHARGE: Payment for lamps, standards, and lighting fixtures installed in accordance with the rates specified below.

TERMS OF PAYMENT: All bills are net and payable within twenty (20) days from the date of bill. If payment for any or all electric service rendered is not made within thirty (30) days from the date the bill is rendered, the Company shall apply an additional late payment charge as defined in Rate 16 Special Charges.

NET RATE PER MONTH OR PART THEREOF: The charge per month will be the sum of the applicable components of A, B, C, D, E, F and G. All monthly kWh listed for unmetered lighting assumes dusk-to-dawn operation at an average of 355.5 hours per month.

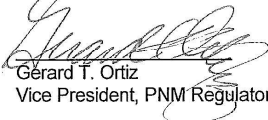
Advice Notice No. 545

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BY Commission Order Case #16-00276-UT


Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development

GCG#524210

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**PUBLIC SERVICE COMPANY OF NEW MEXICO
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**16TH REVISED RATE NO. 20
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**INTEGRATED SYSTEM STREETLIGHTING
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A. LIGHT CHARGE (for unmetered lights where maintenance is provided by the Company and included in the Monthly Charge):

Standard Light Type	Monthly kWh Usage	Monthly Charge (Company Owned)	Monthly Charge (Customer Owned)
<u>Mercury Vapor Lights (1)</u>			
175W MV	73	\$14.14	\$ 5.54
400W MV	162	\$21.47	\$12.30
<u>Low Pressure Sodium Lights (1)</u>			
55W LPS	28	\$12.70	\$ 2.13
135W LPS	63	\$17.13	\$ 4.78
<u>High Pressure Sodium Lights</u>			
70W HPS	31	\$10.95	\$ 2.35
100W HPS	45	\$12.02	\$ 3.42
200W HPS	89	\$14.99	\$6.76
250W HPS	107	\$17.29	\$8.12
400W HPS	165	\$21.70	\$12.53

(1) Service under this rate is restricted to those installations and customers receiving service as of August 21, 2011.

B. **METERED SERIES STREET LIGHTING:** For PNM owned and maintained metered lights, and customer owned metered lights where maintenance is provided by the Company and is included in the monthly charge.

Description	Monthly Rate (Company Owned (1))	Monthly Rate (Customer Owned)
Metered Lighting	\$0.1940070	\$0.0561839

(1) Service under this rate is restricted to those installations receiving service as of August 21, 2011.

C. **COMPANY OWNED AND MAINTAINED LED LIGHTING, AND CUSTOMER OWNED AND MAINTAINED LIGHTING** (for unmetered lights where maintenance is not provided by the Company and is not included in the Monthly Charge):

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Vice President, PNM Regulatory Affairs & Economic Development
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Fixture Wattage Range	Monthly kWh Usage (1), (2)	Company Owned And Maintained Option for LED Lighting-Monthly Charge Per Unit	Customer Owned and Maintained Lighting-Monthly Charge Per Unit
(Wattage includes all ballast or driver losses (if applicable))		Monthly kWh Usage * (\$0.0561839 per kWh + \$0.1441851 per kWh)	Monthly kWh Usage * \$0.0561839 per kWh
0.0 to 10.0 Watts	3.6	\$ 0.71	\$ 0.20
10.1 to 20.0 Watts	7.1	\$ 1.42	\$ 0.40
20.1 to 30.0 Watts	10.7	\$ 2.14	\$ 0.60
30.1 to 40.0 Watts	14.2	\$ 2.85	\$ 0.80
40.1 to 50.0 Watts	17.8	\$ 3.56	\$ 1.00
50.1 to 60.0 Watts	21.3	\$ 4.27	\$ 1.20
60.1 to 70.0 Watts	24.9	\$ 4.99	\$ 1.40
70.1 to 80.0 Watts	28.4	\$ 5.70	\$ 1.60
80.1 to 90.0 Watts	32.0	\$ 6.41	\$ 1.80
90.1 to 100.0 Watts	35.6	\$ 7.12	\$ 2.00
100.1 to 110.0 Watts	39.1	\$ 7.84	\$ 2.20
110.1 to 120.0 Watts	42.7	\$ 8.55	\$ 2.40
120.1 to 130.0 Watts	46.2	\$ 9.26	\$ 2.60
130.1 to 140.0 Watts	49.8	\$ 9.97	\$ 2.80
140.1 to 150.0 Watts	53.3	\$ 10.68	\$ 3.00
150.1 to 160.0 Watts	56.9	\$ 11.40	\$ 3.20
160.1 to 170.0 Watts	60.4	\$ 12.11	\$ 3.40
170.1 to 180.0 Watts	64.0	\$ 12.82	\$ 3.60
180.1 to 190.0 Watts	67.5	\$ 13.53	\$ 3.79
190.1 to 200.0 Watts	71.1	\$ 14.25	\$ 3.99
200.1 to 210.0 Watts	74.7	\$ 14.96	\$ 4.19
210.1 to 220.0 Watts	78.2	\$ 15.67	\$ 4.39
220.1 to 230.0 Watts	81.8	\$ 16.38	\$ 4.59
230.1 to 240.0 Watts	85.3	\$ 17.10	\$ 4.79
240.1 to 250.0 Watts	88.9	\$ 17.81	\$ 4.99

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250.1 to 260.0	Watts	92.4	\$ 18.52	(5)	\$ 5.19
260.1 to 270.0	Watts	96.0	\$ 19.23		\$ 5.39
270.1 to 280.0	Watts	99.5	\$ 19.94		\$ 5.59
280.1 to 290.0	Watts	103.1	\$ 20.66		\$ 5.79
290.1 to 300.0	Watts	106.7	\$ 21.37		\$ 5.99
300.1 to 310.0	Watts	110.2	\$ 22.08		\$ 6.19
310.1 to 320.0	Watts	113.8	\$ 22.79		\$ 6.39
320.1 to 330.0	Watts	117.3	\$ 23.51		\$ 6.59
330.1 to 340.0	Watts	120.9	\$ 24.22		\$ 6.79
340.1 to 350.0	Watts	124.4	\$ 24.93		\$ 6.99
350.1 to 360.0	Watts	128.0	\$ 25.64		\$ 7.19
360.1 to 370.0	Watts	131.5	\$ 26.36		\$ 7.39
370.1 to 380.0	Watts	135.1	\$ 27.07		\$ 7.59
380.1 to 390.0	Watts	138.6	\$ 27.78		\$ 7.79
390.1 to 400.0	Watts	142.2	\$ 28.49		\$ 7.99

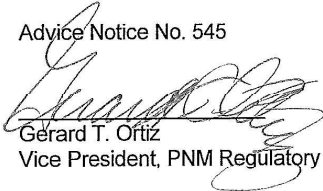
(1) Monthly kWh usage = Maximum Wattage in range x 355.5 hours per month / 1,000 Watts per kW.

For lights larger than 400W, the applicable usage and rate shall be the sum of the 390.1 - 400.0 Watts row in the table above plus a wattage range such that the resulting range encompasses the actual wattage of the light (Example: for a 600 Watt light, the applicable usage and charge is determined by adding the 390.1 - 400.0 Watts row and the 190.1 - 200.0 Watts row together, resulting in a 590.1 - 600.0 Watt Range with a monthly usage of 213.300 kWh.).

C.1 CUSTOMER OWNED AND MAINTAINED METERED LIGHTING: For Customer-owned metered lights (excluding B above) where maintenance is not provided by the Company and is not included in the monthly charge:

<u>Description</u>	<u>Monthly Rates</u>
	<u>(Customer Owned)</u>
Metered Lighting	\$ 0.0561839

Advice Notice No. 545



Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development
GCG#524210

EFFECTIVE

FEB - 1 2010

REPLACED BY NMPRC

BY Commission Order Case #16-00276-UT

Global Management Performance Contract
Between the City of Santa Fe and Dalkia Energy Solutions
Amendment No. 1 Attachment A: Revised Implementation Plan

PUBLIC SERVICE COMPANY OF NEW MEXICO
ELECTRIC SERVICES

16TH REVISED RATE NO. 20
CANCELING 15TH REVISED RATE NO. 20

INTEGRATED SYSTEM STREETLIGHTING
AND FLOODLIGHTING SERVICE

Page 5 of 9

D. POLE CHARGE: For company owned lighting attached to a dedicated street lighting pole.

<u>Description</u>	<u>Monthly Charge (Company Owned)</u>
Wood Pole	\$ 4.86
Non-Wood Pole	\$ 9.45

E. FUEL AND PURCHASED POWER COST ADJUSTMENT: All kWh usage under this tariff will be subject to the Fuel and Purchase Power Cost Adjustment Clause ("FPPCAC") factors calculated according to the provisions in PNM's Rider 23.

The appropriate FPPCAC factors will be applied to all kWh appearing on bills rendered under this tariff.

F. OTHER APPLICABLE RIDERS: Any other PNM riders that may apply to this tariff shall be billed in accordance with the terms of those riders.

G. SPECIAL TAX AND ASSESSMENT ADJUSTMENT: Billings under this Schedule may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and of all other taxes, fees, or charges (exclusive of ad valorem, state and federal income taxes) payable by the utility and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

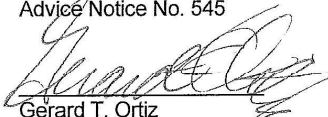
SPECIAL CONDITIONS:

I. Installation and Ownership of Lighting Facilities:

a) Company Owned Lighting Facilities-

Upon request from the Customer, the Company shall convert or install Company owned streetlighting fixtures at its own expense up to the limits provided by the Installation Allowance Table below, with any remaining expenses being the responsibility of the Customer. All lighting facilities shall be and remain the property of the Company.

Advice Notice No. 545


Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development

GCG#524210

EFFECTIVE

FEB - 1 2018

REPLACED BY NMPRC

BY Commission Order Case #16-00276-UT

**Global Management Performance Contract
Between the City of Santa Fe and Dalkia Energy Solutions
Amendment No. 1 Attachment A: Revised Implementation Plan**

**PUBLIC SERVICE COMPANY OF NEW MEXICO
ELECTRIC SERVICES**

**16TH REVISED RATE NO. 20
CANCELING 15TH REVISED RATE NO. 20**

**INTEGRATED SYSTEM STREETLIGHTING
AND FLOODLIGHTING SERVICE**

Page 6 of 9

Company Owned Light & Pole Installation Allowances

High Pressure Sodium Lighting Facilities

70W High Pressure Sodium Street Light	\$ 920.00
100W High Pressure Sodium Street Light	\$ 920.00
200W High Pressure Sodium Street Light	\$ 880.00
250W High Pressure Sodium Street Light	\$ 980.00
400W High Pressure Sodium Flood Light	\$ 980.00
400W High Pressure Sodium Street Light	\$ 980.00

Light Emitting Diode ("LED") Lighting Facilities

Operational Substitute No. 1	\$ 160.00
Operational Substitute No. 2	\$ 480.00
Operational Substitute No. 3	\$ 1,040.00

Dedicated Streetlight Poles

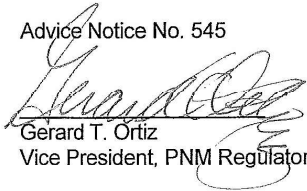
Wood Pole	\$ 520.00
Non-Wood Pole	\$ 1,010.00

- b) Customer Owned Lighting Facilities-
- i. The Customer shall be obligated to install its own streetlighting fixtures and poles at its own expense. The Company shall inspect and approve all Customer installed streetlighting prior to it being placed under this Rate.
 - ii. If requested by the Customer, poles or fixtures may be installed by the Company or an agent approved by the Company. Customer shall pay the Company for all installation costs of the facilities where such installation is done by the Company or the Company's agent.
 - iii. All facilities installed to provide electric service to customer owned streetlights under this tariff shall be and remain the property of the Company.
 - iv. The Customer is required to provide specific performance data on the total energy consumption of each non-standard fixture installed.

II. Highway Signs:

No service to or maintenance of highway signs connected to the lighting system is included under this schedule.

Advice Notice No. 545



Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development
GCG#524210

EFFECTIVE

FEB - 1 2010

REPLACED BY NMPRC

BY Commission Order Case #16-00276-UT

Global Management Performance Contract
Between the City of Santa Fe and Dalkia Energy Solutions
Amendment No. 1 Attachment A: Revised Implementation Plan

PUBLIC SERVICE COMPANY OF NEW MEXICO
ELECTRIC SERVICES

16TH REVISED RATE NO. 20
CANCELING 15TH REVISED RATE NO. 20

INTEGRATED SYSTEM STREETLIGHTING
AND FLOODLIGHTING SERVICE

Page 8 of 9

B. Customer-owned:

- 1. If requested by the Customer, Company agrees to make all repairs, alterations, fixture replacements or knock-downs replacements of Customer-owned Lights and Poles necessitated by accidents, vandalism, projectiles, thefts, acts of nature or existing or future laws or ordinances. The Customer shall pay all costs associated with such replacements. X
X
X
X
- 2. Customer agrees to coordinate recovery efforts with Company in instances where Company has potential legal liability from claims of the parties responsible for Customer-owned Light and Pole damage. X
X
X
X
The Company will, upon receipt of any information pertaining to the identity and circumstances of a knock-down or a copper theft associated with a Customer-owned Light or Pole, furnish to the customer a copy of that information. X
X

IV. Operation and Maintenance:

A. Total Company-Owned System:

The Company will perform normal operation and maintenance of the lighting system which includes routine maintenance, repairs and fixture servicing including all spot lamp replacement required by faulty lamps.

Mandatory replacement of or alterations to working luminaire to bring them into compliance with existing or future laws or ordinances that are not otherwise specifically addressed by other provisions of this tariff will be performed by the Company at the expense of the customer. X
X

It shall be the duty of the customer to report to the Company the failure of any lamp covered by the Rate to burn, or to burn adequately, and it shall thereafter be the obligation of the Company to at once restore such lamp to service subject, however, to the provisions of Special Conditions I, above and to subsequent provisions of this item as to replacements. Any lamp so reported as failing to burn, or to burn adequately, shall be replaced or repaired and returned to regular operation within seventy-two (72) hours from the time of notice of such failure to the Company. Pole hits and failures due to the loss of underground conductors or control equipment are excluded from the 72 hour requirement and shall be repaired as material availability and scheduling permits.

B. Total Customer-Owned System:

Page 1; Section A - "Light Charge (for unmetered lights where maintenance is provided by the Company and included in the Monthly Charge": Maintenance under this section includes faulty photoelectric cell replacement, faulty lamp replacement, faulty fixture fuse replacement, and

Advice Notice No. 545



Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development
GCG#524210

EFFECTIVE

FEB - 1 2010

REPLACED BY NMPRC

BY Commission Order Case #16-00276-UT

**Global Management Performance Contract
Between the City of Santa Fe and Dalkia Energy Solutions
Amendment No. 1 Attachment A: Revised Implementation Plan**

**PUBLIC SERVICE COMPANY OF NEW MEXICO
ELECTRIC SERVICES**

**16TH REVISED RATE NO. 20
CANCELING 15TH REVISED RATE NO. 20**

**INTEGRATED SYSTEM STREETLIGHTING
AND FLOODLIGHTING SERVICE**

Page 9 of 9

incidental lens cleaning.

Page 2; Sections B - "Metered Series Street Lighting", and C - "Customer Owned and Maintained Lighting". Maintenance under these sections is the responsibility of the customer.

All other operation and maintenance, including traffic control costs and troubleshooting customer owned systems may be done by the Company at the request and expense of the customer. The Company will not stock maintenance items that are considered nonstandard by the Company for use in maintaining customer-owned lighting systems. Stocking of these nonstandard items is the sole responsibility of the customer.

V. Termination:

Service to any lamp installed hereunder shall be terminated by the Company upon receipt of thirty (30) days notice and coincident with such notice, payment of the Company's depreciated investment for any lamp and/or pole associated with the removal of any Company owned lighting facilities.

VI. In the event of a conflict between the terms of this rate schedule and any provision contained in the streetlighting contract in effect, the relevant terms of the rate schedule shall control.

EFFECTIVE

FEB - 1 2010

REPLACED BY NMPRC

BY Commission Order Case #16-00276-UT

Advice Notice No. 545



Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development
GCG#524210

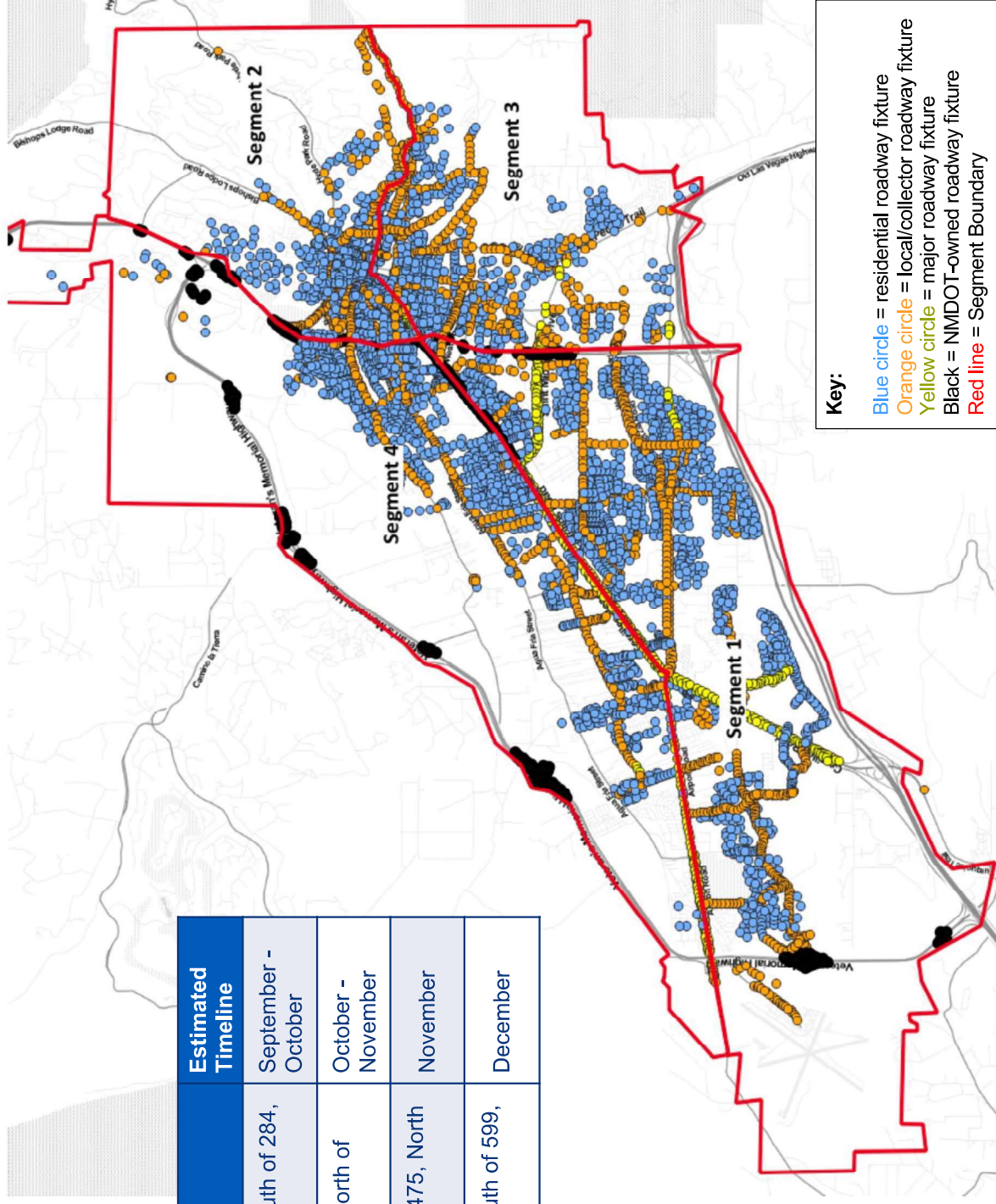


The Santa Fe LED Conversion Project IMPLEMENTATION PLAN

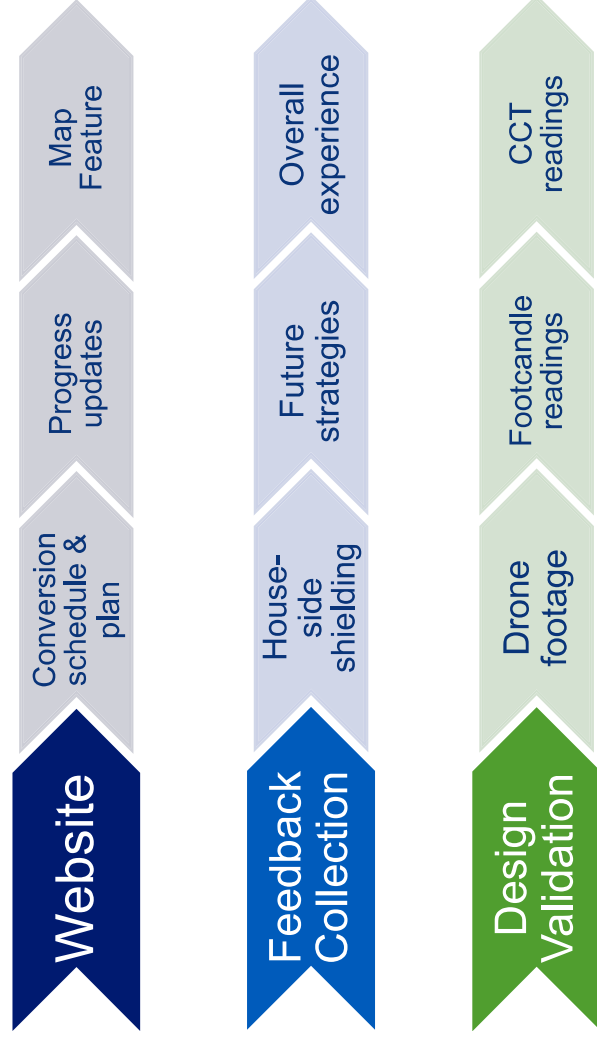
Schedule of Works

Phase	Location	Description	Estimated Timeline
Segment 1	South/Southeast	North of I-25, South of 284, West of 14	September - October
Segment 2	Downtown	Downtown and North of Downtown	October - November
Segment 3	East	South of 14 and 475, North of I-25	November
Segment 4	South/Southwest	North of 284, South of 599, West of 285	December

Roadway Type	Color Temperature (Kelvin)	Visual Comfort Refractor
Residential	2700K	Required
Local/Collector	3000K	Required
Major	3000K	Not required



Continuous Community Engagement Activities



- **Weekly Orange Barrel Report** updates at www.santafenm.gov/orangebarrel
- **Door hangers** will be distributed in **residential areas** at the time of conversion
- Website, door hangers, and other **communications** will be available in **English and Spanish**
- Dedicated **phone line** for feedback collection and constituent communication
- Bi-weekly updates at **Public Works and Utilities Committee** meeting

Implementation Activities



- All roadways will have **Maintenance of Traffic** during conversion



- **Certified recycling** of removed luminaires



- **Commissioning and Quality Assurance** involving city staff, PNM, and Dalkia
 - Weekly meetings
 - Inventory verification
 - Field inspection
 - PNM commissioning and rate adjustment
 - Design Validation



- Measurement and Verification Plan to **validate energy savings**



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3202498

Contractor: Dalkia Energy Solutions LLC

Description: **Amendment #1 - Incorporate the specifications of the community guided lighting design**

Contract Agreement Lease / Rent Amendment

Term Start Date: 08/01/2021 Term End Date: _____

Approved by Council Date: TBD

Contract / Lease:

Amendment # 1 to the Original Contract / Lease # 21-0105

Increase/(Decrease) Amount \$ 0.00

Extend Termination Date to: _____

Approved by Council Date: TBD

Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)
Amendment is being process to add specifications to lighting design. This will not have any increase to the compensation of original contract.

3. Procurement History: _____

Jim Deary
Jim Deary (Jul 20, 2021 1:19 MDT)

Purchasing Officer Review: _____ Date: Jul 20, 2021

Comment & Exceptions: _____

4. Funding Source: N/A Org / Object: N/A

Andy Hopkins
Andy Hopkins (Jul 19, 2021 10:49 MDT)

Budget Officer Approval: _____ Date: Jul 19, 2021

Comment & Exceptions: _____

Staff Contact who completed this form: Amanda Archuleta Phone # 955-6631

Email: ajarchuleta@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Dalkia Energy Solutions LLC

Procurement Title: Amendment #1

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting Public Works Staff Name Amanda Archuleta

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES N/A

- Approved Procurement Checklist (by Purchasing)
- Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
- State Price Agreement
- RFP
- Evaluation Committee Report
- ITB
- Bib Tab
- Quotes (3 valid current quotes)
- Cooperative Agreement
- Sole Source Request and Determination Form
- Contractors Exempt Letter
- Purchasing Officers approval for exempt procurement
- BAR
- FIR
- Executed Contract, Agreement or Amendment
- Current Business Registration and CRS numbers on contract or agreement
- Summary of Contracts and Agreements form
- Certificate of Insurance
- All documentation presented to Committees
- Other:

Amanda Archuleta - Contracts Administrator - 07/16/2021

Department Rep Printed Name (attesting that all information included)	Title	Date
 Fran D'Amico (Jul 20, 2021 11:19 MDT)	Chief Procurement Officer	Jul 20, 2021

Purchasing Officer (attesting that all information is reviewed)	Title	Date
---	-------	------

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



City of Santa Fe, New Mexico

Memorandum



DATE: January 24, 2021

TO: Governing Body

FROM: Regina Wheeler, Public Works Department Director *RW*

ITEM

Global Management Performance Contract with Dalkia Energy Solutions, LLC to convert City owned street lights to LEDs for \$2,757,777 plus NMGRT and maintain City owned street lights for \$179,074/year plus NMGRT. Regina Wheeler, rawheeler@santafenm.gov, 955-6622.

SUMMARY

Street lights play an important role in making roadways safe for pedestrians, bicyclists and drivers. The City's street lights have a short lifespan and a high failure rate. They are an old technology, high pressure sodium (HPS), that uses a lot of electricity. By converting street lights to LEDs, the reliability will be improved and the electricity use reduced by approximately 60%. The on-bill electric savings will pay for the conversion.

There are approximately 5550 street lights in the City of Santa Fe. The City owns approximately 3499 of these street lights including the lights on Cerrillos and St Michael's Drive that just transferred to the City from NMDOT. PNM owns approximately 2057 of the street lights in the City. NMDOT owns the lights at on and off ramps of 599 and other highways. The City is responsible for the cost of operations and maintenance for all of these lights at a cost of approximately \$1,000,000 per year.

The City pays PNM according to Rate 20, approximately \$620,000 per year for electricity and maintenance on all of the approximately 5550 street lights. The estimated on-bill electric savings of converting all of the City's lights to LED is projected to be \$550,000 per year. The City also pays PNM for non-routine maintenance associated with aging infrastructure and accidents costing an additional approximately \$300,000 per year. After the conversion, PNM will no longer maintain the City's street lights. The GMPC with Dalkia includes provisions for routine and non-routine maintenance of City street lights. The fee for regular maintenance will be \$179,074 plus NMGRT and non-routine maintenance will be performed at unit rates included in the GMPC. The Dalkia team that will convert and maintain the City of Santa Fe street lights just completed the City of Albuquerque's street light conversion project and performing ongoing maintenance from their office in Albuquerque.

The new street lights are smart ready, facilitating remote monitoring. Dalkia will manage the City's street light maintenance using a software for monitoring operations and reporting key performance indicators including energy savings as required by the contract. The City will have licenses to access the software as well. Constituents reporting street light issues will be able to call Dalkia's dedicated service phone number or send an email to the dedicated email address, call City of Santa Fe constituent services or log a work order into the City's online work order system. All items will be routed to Dalkia for resolution. Dalkia will meet monthly with City Public Works to review outstanding items.

The City is entering a separate contract with PNM for the conversion of street lights owned by PNM that will come to the Governing Body in a separate item. PNM, Dalkia and the City are working together with the goal of converting all of the lights in one 6 month project. From the notice to proceed, there is 6-8 weeks for materials delivery and then 4 months for installation. The map in the Implementation Plan shows the planned sequencing of the conversion, starting on the south side of town in approximately June, then moving to downtown in case large gatherings begin again and then crossing the rest of the City by September 2021.

The lamps being removed will be recycled and hazardous waste managed properly by the contractors.

The new LED lamp heads focus light down onto the street and generate less stray light than the current street lights. This improves safety while protecting dark skies. The smart ready street lights can also support a dimming strategy. When converting to LEDs there is also the specification of color. Rate 20 specifies the light conversion for PNM lights as 3,000 kelvin for residential and 4,000 kelvin for main streets and collectors. Dalkia will follow the same conversion strategy. It has been reported that 3,000 kelvin lights minimize interference with circadian rhythms and that 4,000 kelvin lights make main roads safer. Specifications of the luminaires to be used in the conversion of City owned street lights are included in the attached Implementation Plan.

PROCUREMENT METHOD:

The procurement method is use of existing contract. See attached City of Albuquerque GMPC with Dalkia (previously Citelum).

BUDGET:

Conversion

\$2,880,464.42 (\$2,757,777 plus \$232,687.43 @ 8.4375% NMGRT)

Project string FA1832001

Fund 600 Org Object: 1000471.520200a budget to be loaded after financing closes

Maintenance

\$194,183.37 (\$179,074/year plus \$15,109.37 @ 8.4375% NMGRT) for annual maintenanc.

Org/object 1000416.520150 (Traffic Engineering – Repair & Maintenance System Equipment)

MUNIS CONTRACT NUMBER:

3202498 Dalkia

SCHEDULE:

Public Works Committee: 02/08/2021

Finance Committee: 02/15/2021

City Council: 02/24/2021

The project is scheduled for completion within six months after the Notice To Proceed (NTP) is received by the contractor, currently scheduled for September 30, 2021.

ATTACHMENTS:

Exhibit A - GMPC agreement with Dalkia

Exhibit B – Dalkia Implementation Plan

Exhibit C – City of Albuquerque GMPC

Exhibit D – Letter extending terms and conditions to City of Santa Fe

Exhibit E – City of Santa Fe Business License(s)



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 Dalkia Energy Solutions, LLC

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$3,074,647.79

Termination Date: 15 years from acceptance LED's

Approved by Council Date: February 24, 2021

or by City Manager Date: _____

Contract is for: LED Conversion of City Owned Streetlights

Amendment # _____ to the Original Contract# Munis 3202498

Increase/(Decrease) Amount \$ _____

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 \$ 3,074,647.79 of original Contract# 3202498 Termination Date: 15 years from accep
Reason: LED Conversion of City Owned Streetlights

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

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

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

Total of Original Contract plus all amendments: \$ \$3,074,647.79

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

RFP# _____ Date: _____

RFQ _____ Date: _____



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Dalkia Energy Solutions, LLC

Procurement Title: City of Santa Fe Owned LED Streetlight Conversion Project

Procurement Method: State Price Agreement Cooperative Sole Source Other _____

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting Public Works Staff Name Curt Temple

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 checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	RFP
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Evaluation Committee Report
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ITB
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bib Tab
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Quotes (3 valid current quotes)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cooperative Agreement
<input checked="" type="checkbox"/>	<input 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"/>	Executed 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"/>	All documentation presented to Committees
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other: _____

<u>Curt Temple</u>	<u>Project Administrator</u>	<u>2/04/2021</u>
Department Rep Printed Name (attesting that all information included)	Title	Date

Fran Duaway (Mar 22, 2021 13:33 MDT)

<u>Purchasing Officer (attesting that all information is reviewed)</u>	<u>Title</u>	<u>Date</u>
--	--------------	-------------

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

*

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

Between

CITY OF SANTA FE

and

DALKIA ENERGY SOLUTIONS, LLC

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

THIS GLOBAL MANAGEMENT PERFORMANCE CONTRACT (together with the schedules and appendices attached hereto, this "Agreement") is made this _____ day of _____, 2021, ("Effective Date") by and between Dalkia Energy Solutions US, Inc. and its successors and permitted assigns ("CONTRACTOR") and the City of Santa Fe, a political subdivision of the State of New Mexico ("CLIENT"). (CONTRACTOR and CLIENT being sometimes referred to herein as a "Party" or collectively as the "Parties").

WITNESSETH

WHEREAS, CONTRACTOR is party to a Global Management Performance Contract with the City of Albuquerque, dated October 9, 2015 (the "Albuquerque GMPC");

WHEREAS, pursuant to a letter, dated January 22, 2021, CONTRACTOR confirmed its willingness to extend the pricing, terms and conditions of the Albuquerque GMPC to the City of Santa Fe;

WHEREAS, the City of Santa Fe is using the "Procurement under Existing Contracts" methodology under Section XIV(B) of the City of Santa Fe Procurement Manual 2020 for purposes of entering into this Agreement;

WHEREAS, CLIENT desires to engage CONTRACTOR to among other things: install, operate and maintain certain high-efficiency Infrastructure (as defined herein) for the purpose of reducing energy consumption, increase Energy Savings (as defined herein), improve public and traffic safety, enhance economic development, and achieve long-term operating cost reductions and other budget savings for the System (as defined herein); all of which shall be subject to the terms and conditions of this Agreement;

WHEREAS, CLIENT has an ordinance to regulate outdoor lighting in order to reduce light pollution, reduce or prevent glare, reduce or prevent light trespass, conserve energy, promote a sense of safety and security and ensure aesthetically appropriate outdoor lighting in keeping with the character of Santa Fe;

WHEREAS, CONTRACTOR provides technical, engineering, and physical infrastructure works and management performance services (to perform energy efficient, sustainable lighting system solutions on a global basis) and designs, installs and operates Artistic Lighting (as defined herein) and Smart City Instruments (as defined herein);

WHEREAS, CLIENT and CONTRACTOR seek to enter into this Agreement and set out the terms and conditions by which CONTRACTOR develop, install and construct, operate and maintain the Infrastructure and the System, develop and install Artistic Lighting and Smart City Instruments projects and provide the Works (as defined herein) and Services (as defined herein) for CLIENT; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, CLIENT and CONTRACTOR hereby covenant and agree as follows:

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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ARTICLE 1: DEFINITIONS; COMMENCEMENT AND TERM

1.1 Definitions

Capitalized terms used in this Agreement and the Schedules and not otherwise defined shall have the meanings given to such terms in Schedule 1 (Definitions).

1.2 Commencement and Duration

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL EXECUTED BY BOTH PARTIES. This Agreement shall terminate fifteen (15) years after acceptance of the completed LED conversion unless terminated pursuant to Article 9 (Termination), or Article 6.2 (Appropriations), or as otherwise agreed to by the Parties.

1.3 Term Extensions

This Agreement may be extended for the period and under the circumstances that follow:

- a. Upon mutual agreement in writing by the Parties to extend the Term of this Agreement for one five (5) year period.
- b. If a Supervening Event occurs, the CONTRACTOR shall, in addition to any other rights which it may have under this Agreement, be entitled to an extension of time for the performance of its obligations hereunder, which extension shall be determined as set forth below.
 1. The CONTRACTOR shall give notice in writing to CLIENT within a reasonable time of the occurrence of a Supervening Event, but in any event not later than ten (10) Business Days after the CONTRACTOR becomes aware of the occurrence of the Supervening Event, which shall include the following: (i) a statement of the nature of the Supervening Event; (ii) details of the circumstances from which the Supervening Event arises; (iii) details of the consequences, whether direct or indirect, financial or non-financial, which such Supervening Event may have, including any estimate of the required extension of time for the performance by the CONTRACTOR of its obligations hereunder (the "Extension Estimate"); and (iv) details of any measures which the CONTRACTOR proposes to adopt to mitigate the consequences of such Supervening Event.
 2. CLIENT shall indicate whether it agrees or not with the Extension Estimate as soon as reasonably practicable and, in any event, within twenty (20) Business Days of receipt of any notice issued by the CONTRACTOR. If CLIENT does not agree with the Extension Estimate, the Parties may refer the matter for determination in accordance with the applicable dispute resolution procedure as set forth herein. If CLIENT so agrees, or any extension is settled pursuant to the dispute resolution procedure the term of the Agreement shall be extended by a period equal to such agreed/settled extension.

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ARTICLE 2: GENERAL OBLIGATIONS

2.1 Engagement. CLIENT hereby engages and CONTRACTOR hereby accepts the engagement to perform and/or to provide the Works and the Services, each in accordance with the terms and conditions of this Agreement.

2.2 Independent Contractor. CONTRACTOR shall provide the Infrastructure, Smart City Instruments and Artistic Lighting at its sole cost and expense, perform the Works and provide the Services, as an independent CONTRACTOR with exclusive control of the manner and means of performing the Works and Services in accordance with the requirements of this Agreement. CONTRACTOR has no authority to act or make any agreements or representations on behalf of CLIENT. This Agreement is not intended, and shall not be construed to create, between CLIENT and CONTRACTOR, the relationship of principal and agent, joint-venturers, copartners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of CONTRACTOR shall be, or shall be deemed to be, an employee or agent of CLIENT. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax.

2.3 Conditions Precedent. This Agreement and all obligations of the CONTRACTOR hereunder or in respect hereof are subject to and conditioned upon all necessary approvals of this Agreement and all terms and conditions hereof by CLIENT and/or applicable executive board, commission, council or other governing body or Governmental Authority with jurisdictional authority over CLIENT.

2.4 CLIENT General Obligations. The CLIENT, without cost to CONTRACTOR, shall:

- a. Designate a contact person with authority to make decisions for CLIENT regarding the Works and Services and provide CONTRACTOR with information sufficient to contact such person in an emergency;
- b. Coordinate the aspects of the Works and Services under CLIENT's sole control so as not to disrupt the performance of the Works and Services proceeding in an efficient manner;
- c. Provide CONTRACTOR reasonable and scheduled access to the System and the Smart City Instruments and Artistic Lighting project sites where Works or Services are to be performed so that Works or Services may proceed in an efficient manner;
- d. Permit CONTRACTOR to control and/or operate all Infrastructure, Artistic Lighting, Smart City Instruments, System, apparatus, and related machinery necessary to perform the Works or Services, including granting the CONTRACTOR all necessary rights and licenses therein;
- e. Furnish CONTRACTOR with all blueprints, surveys, legal descriptions and documentation, and all other available information pertinent to the Works as the same may be reasonably requested by CONTRACTOR that is in the control of the CLIENT. Such plans, blueprints, surveys and all other pertinent information, along with an executed copy of this Agreement with its schedules, shall be kept and maintained in CLIENT'S and CONTRACTOR's files from the Commencement Date until at least five (5) years after the termination of this Agreement;

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- f. Furnish or assist CONTRACTOR with all approvals, permits and consents from Governmental Authorities and others as may be required for performance of the Works and Services;
- g. Make available to CONTRACTOR any safety requirements and other policies, plans or programs that are in the CLIENT's possession and relate to the System, Smart City Instruments and Artistic Lighting and that could reasonably be determined to affect the Works or Services, as applicable;
- h. Coordinate with the local utility all needed servicing for utility owned facilities needed for System operation. Any costs therein shall be borne by CLIENT.

2.5 Confidential and Proprietary Information. Subject to Applicable Law, CLIENT acknowledges that the technical and pricing information contained in Schedule 2 and Schedule 3 and conspicuously marked therein is confidential and proprietary to CONTRACTOR and agrees not to disclose it or otherwise make it available to others unless required by Applicable Law. In the event that such disclosure is required by Applicable Law, CLIENT shall make best effort to provide timely written notice of the demand for such disclosure to CONTRACTOR and work with CONTRACTOR to limit disclosure of confidential and proprietary information.

2.6 Receipt of Title. CLIENT acknowledges that it shall receive and take title to the Infrastructure, Smart City Instruments and Artistic Lighting on the Acceptance Date for each Segment of the Works and it shall receive title to repaired or replaced System assets upon installation.

2.7 Addressing Safety Issues During Works and Services. CONTRACTOR may voluntarily address suspected health or safety issues observed, but not caused by CONTRACTOR while at a facility during the course of CONTRACTOR's performance of the Works or the Services on the System, Smart City Instruments and Artistic Lighting. In the event CONTRACTOR does address such issues by making observations, reports, and suggestions or otherwise, CLIENT shall not hold, or attempt to hold, CONTRACTOR liable or responsible on account thereof.

ARTICLE 3: WORKS PHASE

3.1 Performance of the Works

- a. Commencing no later than the Commencement Date, CONTRACTOR shall perform the Works pursuant to and in accordance with Schedule 2 (Scope of Works). The activities of CONTRACTOR related to its performance of the Works shall be limited solely to those duties and obligations set forth in Schedule 2 (Scope of Works).
- b. The Works will be performed in Segments and each Segment of the Works will be accepted independently upon completion of the Segment in accordance with the procedures set forth in Section 3.7 below. The Segments of the Works may be performed simultaneously.
- c. At the written request of either Party and under the terms of a separate Change Order and if both CONTRACTOR and CLIENT agree to the terms of the Change Order, CONTRACTOR will perform additional Works which are not detailed in this Agreement.

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3.2 CONTRACTOR's Works Phase Obligations

In furtherance of Section 3.1 above, CONTRACTOR undertakes and covenants to CLIENT that it shall:

- a. be responsible for performing the Works, which shall include constructing and installing the Infrastructure, Smart City Instruments and Artistic Lighting in a manner consistent with the work schedule set forth in Schedule 2 (Scope of Works), the Implementation Plan, Applicable Law, and Prudent Industry Practice; provided, however, that CONTRACTOR is not required to conduct safety, acceptance or other tests, install new devices or Infrastructure, Smart City Instruments and Artistic Lighting or make modifications to any part of the System unless included as a part of the Works identified in the Schedule 2 (Scope of Works);
- b. perform all Works Phase activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Agreement;
- c. subject to the provisions of this Agreement, comply with and assist CLIENT to ensure compliance with all Applicable Law;
- d. exercise commercially reasonable efforts not to interrupt the operation of the System during its performance of the Works. In cases where an interruption is necessary to complete any installation of Infrastructure, the CLIENT and CONTRACTOR shall make reasonable efforts to agree on the timeframe and dates of the service interruption in order to limit citizen inconvenience; and
- e. use its best efforts to not impede, impair or interrupt CLIENT's electrical service to the System during the performance of the Works; provided however, the Works Phase will cause periodic electrical service interruptions and CONTRACTOR will make a reasonable effort to notify CLIENT of any interruptions and to minimize the interruptions.
- f. require all of its subcontractors to comply with Applicable Law and carryout the subcontracted Works in accordance with Prudent Industry Practices.

3.3 CLIENT's Works Phase Obligations

In addition to all duties and obligations identified in Article 2, CLIENT undertakes and covenants to CONTRACTOR that it shall:

- a. comply with all Applicable Law;
- b. provide such reasonable assistance to and not unreasonably impede CONTRACTOR in the performance of the Works under this Agreement;
- c. perform all CLIENT responsibilities related to the Works, as the same is set forth in Schedule 2 (Scope of Works) and Schedule 5 (Acceptance Procedures); and
- d. review and check, or have an agent or contractor review and check, the Works for each Segment performed by CONTRACTOR from time to time as set forth in the Commissioning Plan and Quality Assurance Plan and provide any related comments in writing to CONTRACTOR.

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3.4 Program for the Sequence and Timing of Works; Field Inspections

- a. CONTRACTOR shall record and maintain a Works schedule program or protocol as set forth in Schedule 2 (Scope of Works) and the Implementation Plan, and such Works schedule shall detail the Segments, sequence and timing of the activities necessary for the delivery and completion of the Works. CONTRACTOR shall record, update and maintain such Works schedule documentation and make such information available to CLIENT upon request. CONTRACTOR shall make commercially reasonable efforts to proceed with the Works in accordance with the Works schedule timeframes and shall give CLIENT reasonable notice of probable events or circumstances which may materially adversely affect or materially delay the execution of the Works in accordance with the Works schedule.
- b. For the entire duration of the Works, the representatives of the CLIENT will be able to access the System, Smart City Instruments and Artistic Lighting project sites provided that they have informed the CONTRACTOR within a reasonable timeframe. CLIENT may perform such field tests as it deems necessary to verify that the Works meets the performance standards required herein. CONTRACTOR shall be permitted to witness such tests. All inspections and tests by CLIENT shall be performed in such manner as not to unnecessarily delay the Works. CLIENT shall not exercise any prerogatives of project management or of project supervision when on the work sites.

3.5 Time for Completion of the Works

The expected date of completion of all of the Works shall be 6 months from the Commencement Date (hereinafter the "Expected Completion Date").

3.6 Extension of Time

Notwithstanding Section 3.5, CONTRACTOR shall be entitled to a reasonable extension of time for the completion of the Works beyond the Expected Completion Date, equal to but not greater than the period of delay, if and to the extent that completion is or will be delayed by any of the following:

- a. a Change Order; or
- b. any CLIENT failure to perform a Material Obligation under this Agreement; or
- c. any Supervening Event; or
- d. any delay, restriction or prevention of CONTRACTOR from performing the Works caused by or attributable to the CLIENT, its employees or agents, or the CLIENT's other contractors; or
- e. any delay, restriction or prevention of CONTRACTOR from performing the Works caused by or attributable to any relevant Governmental Authority, other than the CLIENT, from which a consent is necessary for execution of the Works provided CONTRACTOR has diligently, steadfastly and without delay pursued such consent in good faith.

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If CONTRACTOR incurs or is likely to incur loss and/or expense as a result of an extension of time pursuant to subsection (a), (b) and (d) above, then Contractor and Client shall discuss how to mitigate the actual losses and expenses and shall work in good faith to share the responsibility for costs associated with unanticipated extensions of time. CONTRACTOR's actual loss or expenses may include overhead, additional System operation and maintenance costs or expenses and other losses or costs incurred, which such agreed to amounts shall be set forth in the immediately succeeding monthly invoice issued to CLIENT in accordance with the terms and conditions contained in Schedule 4 (Payment Mechanism).

If CONTRACTOR incurs losses and expenses as a result of an extension of time pursuant subsection (c) and (e) above, then subject to CONTRACTOR taking all reasonable steps to mitigate the losses and expenses, the CLIENT and CONTRACTOR shall enter into negotiations to equitably allocate the losses and expenses between the Parties, unless agreed to otherwise in writing. If CLIENT and CONTRACTOR do not agree on an equitable allocation, the Parties may refer the matter for determination in accordance with the applicable dispute resolution procedure as set forth herein.

3.7 Acceptance

The Acceptance Date for each Segment of the Works shall occur when:

- a. a Segment of the Works is complete, in accordance with Schedule 5 (Acceptance Procedures), the start-up and commissioning thereof is complete, and the Infrastructure, Smart City Instruments and Artistic Lighting (if applicable) included in the Segment of the Works, as detailed in Schedule 2 (Scope of Works), may be utilized for their intended use;
- b. CONTRACTOR shall have delivered to CLIENT, lien waivers, sworn statements, guarantees, full releases, discharges or other evidence reasonably satisfactory to CLIENT that there are no liens, claims, or notices in respect thereof pending, filed, or threatened against CLIENT, CONTRACTOR, or the Infrastructure, Smart City Instruments and Artistic Lighting whatsoever in respect to that Segment of the Works. CONTRACTOR may, if any subcontractor refuses to furnish a release, discharge or receipt in full, furnish a bond satisfactory to CLIENT to indemnify the CLIENT against any such lien;
- c. CONTRACTOR shall have delivered all certificates of inspection or approval in respect of the Segment of the Works to the extent required under Applicable Law from any Governmental Authority; and
- d. CLIENT has issued a Certificate of Acceptance for the Segment of the Works in accordance with Schedule 5 (Acceptance Procedures).

3.8 Title to Infrastructure, Smart City Instruments and Artistic Lighting

- a. Upon Acceptance for each Segment of the Works, (1) legal title to and ownership of the upgraded Infrastructure, Smart City Instruments and Artistic Lighting therein shall transfer to CLIENT free and clear of any and all liens, claims, or other encumbrances and (2) the CLIENT shall have all duties and responsibilities for the payment of Services Payments.
- b. All materials developed or acquired by the Contractor for the City under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

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c. Notwithstanding Section 3.8(a) above, if any Software Products are installed or otherwise used to operate the System, Smart City Instruments or Artistic Lighting or provided to CLIENT under this Agreement, any such Software Products shall remain CONTRACTOR property, including the Intellectual Property conceived or developed by CONTRACTOR in the Software Products. All CONTRACTOR Pre-existing Intellectual Property that may be included in the Infrastructure, Smart City Instruments, Artistic Lighting, Works or the Services provided to CLIENT under this Agreement shall also remain CONTRACTOR's property. Any Software Products provided to CLIENT are for Permitted Users' use and only for the purposes disclosed to CONTRACTOR. CONTRACTOR hereby grants CLIENT a royalty-free (once payments due under this Agreement are paid to CONTRACTOR), non-transferable, nonexclusive license for the Term to use any CONTRACTOR's Intellectual Property solely as incorporated into the Infrastructure, Smart City Instruments and Artistic Lighting and CONTRACTOR's Intellectual Property as incorporated into any Software Products provided to CLIENT under this Agreement. Under such license, to the extent allowable by Applicable Law, Permitted Users shall have a right to:

1. Use, in object code form only, the Software Products included in the Works and/or Services, if any;
2. Make and retain archival and emergency copies of such Software Products except if the Software Product is embedded in the System, Smart City Instruments or Artistic Lighting; and,
3. Use all such Software Products; provided however, the Software Products shall not be used or relied upon by any parties other than Permitted Users, and such use shall be limited to the particular project and location for which the Software Products are provided or used relative to the System, Smart City Instruments or Artistic Lighting.

All Software Products provided to CLIENT are for Permitted Users' use only for the purposes disclosed to CONTRACTOR, and CLIENT shall not transfer them to others or use them or permit them to be used for any extension of the Works or Services or any other project or purpose, without CONTRACTOR's express written consent, to the extent allowable by Applicable Law.

d. In the event Contractor (a) ceases to do business or ceases to support the Project, or (b) fails to make adequate provision for continued support of the Software that Contractor develops or provides to CLIENT, or (c) if Contractor Defaults hereunder, or (d) if this Agreement is terminated, Contractor will, within a one hundred and eighty (180) day period, make all of the following items available to CLIENT: (i) the latest available Source Code and documentation related to the Software that Contractor develops or provides according to the SOW; (ii) the Source Code and compiler/utilities necessary to maintain CLIENT'S system; and, (iii) Contractor's related documentation for Software developed by third parties to the extent Contractor is authorized to disclose such Software to CLIENT. In any of the above circumstances (a), (b), (c) or (d), Contractor will, by virtue of this Section, grant CLIENT an automatic, uncontested and unlimited right to use, modify and copy the Software, the Source Code and all of their related documentation.

3.9 Workmanship Warranty

Except as otherwise expressly provided herein, CONTRACTOR warrants that all work performed during the Works Phase is in compliance with the terms of the Agreement and will be free from workmanship defects for a period of one (1) year from the Acceptance Date of the Final Segment of the Works. Should any defects develop during the warranty period, CONTRACTOR shall remedy the defects at no expense to the CLIENT, provided that CLIENT gives CONTRACTOR written notice of any such defect promptly after discovery.

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3.10 Manufacturer Warranty

CONTRACTOR hereby transfers to CLIENT all transferable warranties and remedies provided to the CONTRACTOR by any manufacturer(s) or suppliers of the Infrastructure, Smart City Instruments and Artistic Lighting. CLIENT hereby grants the CONTRACTOR the authority and the right to, on behalf of the CLIENT, exercise all the CLIENT's rights and remedies under all transferable warranties during the Term.

ARTICLE 4: SERVICES PHASE

4.1 Performance of Services after Acceptance

No later than the Acceptance Date of the Final Segment of the Works, or such other date agreed to in writing between the Parties, CONTRACTOR shall commence performance of the Services Phase, consisting of those activities set forth in Schedule 3 (Scope of Services), including, but not limited to, the operation, maintenance, and management of the System and provide such Smart City Instrument and Artistic Lighting services set forth therein.

4.2 Performance of Commitments of the CONTRACTOR

CONTRACTOR commits to achieving the Energy Savings and operation and maintenance Services objectives described in Schedule 3 (Scope of Services), and commits to performing the Services in accordance with the Key Performance Indicators ("KPI") outlined in Appendix 3A (Services Performance Objectives and Penalties) to Schedule 3 (Scope of Services) (hereinafter the "Services Performance Objectives").

4.3 CONTRACTOR's Services Phase Obligations

In furtherance of Sections 4.1 and 4.2 above, CONTRACTOR undertakes and covenants to CLIENT that it shall:

- a. be responsible for performing the Services in a manner to achieve the Services Performance Objectives consistent with Schedule 3 (Scope of Services), Applicable Law, and Prudent Industry Practice.
- b. not impede, impair or interrupt CLIENT's utilization of the System or achievement of any Energy Savings, except with the express written consent of CLIENT when necessary for additional construction or maintenance, which consent will not be unreasonably withheld.

4.4 CLIENT's Services Phase Obligations

In addition to all duties and obligations identified in Article 2, CLIENT undertakes and covenants to CONTRACTOR that during the performance of the Services it shall:

- a. be obligated to compensate CONTRACTOR for the performance of the Services pursuant to and in accordance with the terms and conditions established in Schedule 4 (Payment Mechanism) and any other amounts due hereunder by the required due date(s) established therein;
- b. to the provisions of this Agreement, comply with Applicable Law;

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- c. provide such reasonable assistance to and not unreasonably impede CONTRACTOR in the performance of the Services under this Agreement; and
- d. perform all CLIENT responsibilities related to the Services.

ARTICLE 5: ENERGY SAVINGS PERFORMANCE ASSURANCE

5.1 System Baseline and Performance Baseline

- a. CONTRACTOR and CLIENT agree that the System Baseline data results set forth in Appendix 3A (Services Performance Objectives and Penalties) to Schedule 3 (Scope of Services), is a reasonably accurate reflection of the System's equipment, operation, business use and energy usage as of the Effective Date, and that such System Baseline data will be the basis on which all future energy use will be compared in order to determine the Annual Realized Savings. The System Baseline data will be confirmed upon completion of the inventory at the conclusion of the conversion.
- b. CONTRACTOR and CLIENT agree that the Performance Baseline set forth in Appendix 3A (Services Performance Objectives and Penalties) to Schedule 3 (Scope of Services) will represent the new operating and/or equipment profile of the System resulting from the installation of the Infrastructure and implementation of the Services.
- c. Notwithstanding any provision of this Agreement, no later than thirty (30) days prior to the Acceptance Date of the Final Segment of the Works, CONTRACTOR shall conduct an audit and inventory of the operational performance of the System. If additional Energy Savings are recognized after the audit and inventory, CONTRACTOR shall integrate and use all resulting data to calculate and revise the Performance Baseline accordingly.

5.2 Performance Guarantee and Measurement

- a. Commencing on the Acceptance Date of the Final Segment of the Works, the Annual Realized Savings calculated at the end of each Annual Period will be no less than the Guaranteed Annual Savings for the corresponding Annual Period (hereinafter the "Performance Guarantee"). The measurement and verification calculation methodology for determining the Energy Savings shall be established in the M&V Plan, in accordance with Section 2.9 of Schedule 2 (Scope of Works).
- b. Except as otherwise provided, Guaranteed Annual Savings will be calculated as the System Baseline for each Annual Period as units of energy (kWh) minus the Performance Baseline for each month of each annual phase, assuming that the Performance Baseline has been maintained, as set forth in Appendix 3A (Services Performance Objectives and Penalties) to Schedule 3 (Scope of Services).
- c. A Performance Guarantee Period savings reconciliation as identified in Section 1.2 of Appendix 3A of Schedule 3 will be performed by CONTRACTOR at the end of each Annual Period.
- d. Prior to the beginning of the Performance Guarantee Period, CONTRACTOR will have inspected all portions of the System and reported any deficiencies to CLIENT which are outside of the scope of the Works and which will impact Energy Savings of the System. To the extent that the deficiencies are not remedied by CLIENT prior to the Acceptance Date of the Final Segment of the Works, the adverse effect(s) on the ability of the System to attain the necessary Guaranteed Annual Savings shall be factored into the Annual Performance Report and, if necessary, the Performance Guarantee shall be adjusted accordingly.

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5.3 Material Change

- a. As part of CONTRACTOR's performance of the Services, CLIENT and CONTRACTOR shall review the Performance Baseline and the Energy Savings data derived from the inventory and monitor the System in order to determine if a Material Change has occurred. If a Material Change has occurred, the Parties will determine what, if any, adjustments to the Performance Baseline and Services Performance Objectives are required by such Material Change. Any disputes between CLIENT and CONTRACTOR concerning any such adjustment shall be resolved in accordance with the applicable dispute resolution procedure as set forth herein.
- b. If any portion of the System or Infrastructure, or related facilities or substructure that supports or may affect the System or Infrastructure, is materially altered or moved by any person (including the CLIENT) other than CONTRACTOR or a person authorized by CONTRACTOR, CONTRACTOR reserves the right to perform a reacceptance test on, or if necessary, a re-commissioning of the System or Infrastructure in order to determine if a Material Change has occurred. If the Parties agree that a Material Change has occurred after the reacceptance testing or re-commissioning, CLIENT agrees to pay reasonable costs on a time and materials basis for such testing.

5.4 Additional Provisions:

Except as otherwise provided, CONTRACTOR payments to CLIENT for Savings Shortfalls in accordance with Sections 1.1 and 1.2 of Appendix 3A of Schedule 3, if any, are the sole remedy of CLIENT under this Performance Guarantee contemplated in this Agreement. The Contractor will provide a bond, letter of credit or other financial guarantee acceptable to the Client as a security for performance of this Guarantee.

- a. This provision shall not in any way effect the CLIENT'S warranty rights set forth herein.
- b. As a mutual goal of the Parties is to maximize Energy Savings, if CONTRACTOR determines it can correct a Savings Shortfall through an operational improvement at no expense or material inconvenience to the CLIENT and without future operational expenses and without compromising lighting performance, then the Parties shall in good faith work to effectuate the operational improvement. Any disputes between CLIENT and CONTRACTOR concerning the implementation of such operational improvements shall be resolved in accordance with the applicable dispute resolution procedure as set forth herein.
- c. The Guaranteed Annual Savings are dependent upon and are subject to the express condition that the CLIENT does not intentionally and knowingly prevent, impede or obstruct the CONTRACTOR from operating and maintaining the System within a five percent (5%) variance from the Performance Baseline.
- d. CONTRACTOR will have no liability or obligation to continue providing the Services or to guarantee Energy Savings under the Performance Guarantee in the event that CLIENT unreasonably impairs CONTRACTOR's access to any part of the System where Services are to be performed.

ARTICLE 6: COMPENSATION; GENERAL OBLIGATION

6.1 Compensation

CLIENT shall pay CONTRACTOR for performance of the Works and Services as provided in Schedule 4 (Payment Mechanism), as the same may be modified from time to time in accordance with this Agreement.

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6.2 Appropriations

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

6.3 General Obligation

Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the goods or services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action.

Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. Payment shall be made by ACH. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

6.4 Special Limited Obligation; Revenue Fund; Energy Savings Pledged Revenues - deleted

ARTICLE 7: INSURANCE; LIMITATION OF LIABILITY; BONDING

7.1 CONTRACTOR Insurance

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall, at its sole cost and expense, maintain in force during the entire term of this Agreement or for such additional time as set forth herein, the following insurance coverage(s), naming the City as additional insured.

- a. Workers' Compensation Insurance with statutory limits, and Employer's Liability insurance with limits of not less than \$1,000,000 per accident or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City, its directors, officials, officers, employees, agents, and volunteers.
- b. Commercial General Liability Insurance which shall be written on an occurrence basis and be at least as broad as the latest version of ISO form CG 00 01 with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage, including a \$2,000,000 aggregate for products-completed operations. Such policy shall include Broad Form Contractual Liability coverage and shall be endorsed to include the City, its directors, officials, officers, employees, agents, and volunteers as additional insureds on all primary and excess policies for ongoing and completed operations performed by, or behalf of Contractor. Such additional insured coverage shall be as broad as that provided by ISO form CG 20 10 (ongoing operations) and CG 20 37 (completed operations).

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- c. Business Automobile Liability insurance which shall be as broad as ISO form CA 00 01 covering bodily injury and property damage with a combined single limit of not less than \$1,000,000 per accident for all owned, non-owned, and hired automobiles used in connection with the services or operations to be performed under this Agreement. The policy shall be endorsed to include the City, its, directors, officials, officers, employees, agents, and volunteers as additional insureds.
- d. Professional Liability insurance (Errors & Omissions) with limits of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate.
- e. Subcontractors/Subconsultants: Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by the City from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by City representative(s) at any reasonable time.
- f. Additional Insurance Requirements.
 - 1. Acceptability of Insurers. Unless otherwise reviewed and accepted by the City, all required insurance must be placed with insurers with a current A.M. Best rating of not less than A- VII and be admitted to do business in California, or approved by the Surplus Lines Association.
 - 2. Verification of Coverage. Contractor shall furnish the City with Certificates of Insurance and applicable endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates of insurance shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received by the City before work commences. Acceptance of Contractor's Certificates of Insurance does not relieve Contractor of the insurance requirements, nor decrease the liability of Contractor under this Agreement. It is Contractor's responsibility to ensure its compliance with these insurance requirements. Any actual or alleged failure on the part of the City to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the City, in this or any regard.
 - 3. Primary and Noncontributory. The insurance required to be maintained by Contractor shall primary and any insurance or self-insurance maintained by the City shall be excess only, and not be required to contribute with it.
 - 4. Umbrella or Excess Insurance. Any Umbrella or Excess insurance shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance or self-insurance shall be called upon to protect it as a Named Insured.
 - 5. Waiver of Subrogation. Contractor shall obtain waiver of subrogation endorsements stating that Contractor and its insurers waive any and all rights of recovery against the City, its directors, officials, officers, employees, agents, and volunteers. Contractor shall pay all damages and costs arising out of Contractor's failure to provide a waiver of subrogation from its insurers.

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6. 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.
7. Severability of Interest (Cross Liability). A severability of interest provision must apply for the additional insureds, ensuring that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policy's(ies') limits.
8. Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any policy required to be maintained under this Agreement, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is canceled or materially reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Contract does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Contractor or the City may withhold amounts sufficient to pay premium from Contractor payments. In the alternative, the City may suspend or terminate this Agreement. No policy required to be maintained by Contractor shall be canceled and not replaced with equivalent coverage without thirty (30) days prior written notice to the City, unless cancellation is due to the non-payment of premium, in which case, ten (10) days prior written notice shall be provided.

7.2 Limitation of Liability

Each Party assumes full responsibility and liability of its own actions, including all claims, demands, liabilities, suits, damages, costs and expenses arising out of or caused by its own acts or the acts of its respective directors, officers, members, shareholders, agents and employees to the extent such claims, demands, liability, suits, damages, costs and expenses arise out of this Agreement and are (a) attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property, (b) the result of a Party's gross negligence or willful misconduct, (c) the result of a Party's violation of Applicable Law. Nothing herein is intended to serve as a waiver of sovereign immunity, nor shall anything herein be construed as consent by either Party to be sued by any third party for any cause or matter related to this Agreement. The Parties assume no liability for the actions or omission of the other's agents, representatives, employees, contractors or subcontractors.

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7.3 Bonding

Prior to the Commencement Date and through the Acceptance Date of the Final Segment of the Works, CONTRACTOR shall secure a surety bond(s) in the amount of compensation defined in the Payment Terms each as a security for the faithful performance of the Works Phase of the Project and for the payment of all labor and materials therein. These bonds must be furnished to CLIENT within thirty (30) days of the Commencement Date. The aforementioned surety bonds for the Works shall expire and automatically be released, without request from CONTRACTOR, one (1) year from the date of CLIENT's execution of a Certificate of Acceptance of the Final Segment of the Works.

Bonds to be provided:

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

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

Notwithstanding anything to the contrary herein, the surety bonds described in this Section 7.3 shall have no obligations therein and the surety of those surety bonds shall have no obligations hereunder with regard to CONTRACTOR's obligations under Article 5 above.

ARTICLE 8: HAZARDOUS MATERIALS AND PROVISIONS

8.1 The Works and Services may require installation or removal of System assets, Infrastructure, Smart City Instruments and Artistic Lighting that may contain de minimus amounts of hazardous materials and the identification, handling, storage, removal, and transportation of hazardous materials expressly identified in the Implementation Plan ("Hazardous Materials Within Scope"). CONTRACTOR shall properly install, handle, remove and transport such Hazardous Materials Within Scope. Where pursuant to the Works or Services, CONTRACTOR is to remove Hazardous Materials Within Scope, CONTRACTOR shall properly handle, remove and transport such Hazardous Materials Within Scope to a collection point located at an authorized disposal facility.

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8.2 Except for Hazardous Materials Within Scope, the Works or Services does not include directly or indirectly performing or arranging for the detection, testing, handling, storage, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination of any part of the System, Smart City Instruments or Artistic Lighting project site at which Works or Services is performed and any part of the System, Smart City Instruments or Artistic Lighting project site where soil or groundwater is contaminated by petroleum or petroleum products (collectively called "Oil"), asbestos, PCBs or hazardous, toxic, radioactive or infectious substances, including any substances regulated under Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or any other Applicable Law (collectively called "Hazardous Materials"), including without limitation: ionization smoke detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, and refrigerant. CONTRACTOR will notify CLIENT immediately if it discovers or reasonably suspects the presence of any previously undisclosed Oil or Hazardous Material. The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at any part of the System, Smart City Instruments or Artistic Lighting project site where CONTRACTOR is to perform Works or Services, or of contamination of any part of the System, Smart City Instruments or Artistic Lighting project site by Oil or Hazardous Materials not previously identified shall entitle CONTRACTOR to suspend the Works or Services in the contaminated area immediately, subject to mutual agreement of terms and conditions applicable to any further Works or Services, or to terminate the Works or Services in the contaminated area and to be paid for Works or Services previously performed.

ARTICLE 9: TERMINATION

9.1 Termination Events

a. NON-DEFAULT TERMINATION

1. Voluntary. Either Party may terminate this Agreement without cause by serving one hundred eighty (180) days prior written notice on the other Party.
2. Supervening Event. Either Party may terminate this Agreement at its sole discretion if a Supervening Event has occurred and is continuing for a period of ninety (90) consecutive days, or one hundred eighty (180) days in aggregate in any Annual Period by serving the non-terminating Party one hundred eighty (180) days prior written notice. CLIENT shall be obligated to make all Works Payments and Service Payments up to the termination date.
3. Change in Law. In the event that that CONTRACTOR is prevented from performing its obligations under the Agreement due to a Change in Law that cannot be remedied, CONTRACTOR may terminate this Agreement by serving one hundred eighty (180) days prior written notice to the CLIENT. CLIENT shall be obligated to make all Works Payments and Service Payments up to the termination date.

b. TERMINATION BY THE CLIENT FOR CONTRACTOR'S DEFAULT

CLIENT may terminate this Agreement by thirty (30) days written notice to CONTRACTOR upon the occurrence of an Event of Default by CONTRACTOR. An Event of Default occurs with respect to CONTRACTOR when:

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1. Failure to Perform: Beyond any grace or notice period CONTRACTOR fails to provide all or a substantial part of the Works or Services in accordance with this Agreement, other than:
 - i. a failure to meet the Performance Guarantee or other Services Performance Objectives or Works Performance Objectives, the sole remedies for which are set forth in Schedule 4 (Payment Mechanism), in Schedule 2 (Scope of Works) and Schedule 3 (Scope of Services); or
 - ii. where such failure is a consequence of a breach by CLIENT of its obligations under this Agreement; or
 - iii. where such failure is a consequence of CLIENT's failure to comply with any of the provisions of the Schedules except in the event of an emergency (where CLIENT's notice is not required), in which case CONTRACTOR shall immediately and with due diligence proceed to completion any cure or remedy of a breach.

In respect of all other failures which are capable of remedy, CLIENT shall provide written notice to the CONTRACTOR giving reasonable particulars of the failure, whereby CONTRACTOR shall upon receipt of notice have thirty (30) days to undertake and diligently proceed to remedy such failure. For the purpose of this Section 9.1 (b) failure shall be considered capable of remedy if CONTRACTOR can comply with the provision in question in all respects other than as to the time of performance; or

2. Insolvency

Without prejudice to any other right or remedy it may have, CLIENT may terminate this Agreement immediately by notice given in writing to CONTRACTOR if upon the dissolution or liquidation of CONTRACTOR or the filing by CONTRACTOR of a voluntary petition in bankruptcy, or failure by CONTRACTOR promptly to cause to be lifted any execution, garnishment or attachment of such consequence as will impair CLIENT's ability to carry on its obligations hereunder, or the entry of any order or decree granting relief in any involuntary case commenced against CONTRACTOR under any present or future federal bankruptcy act or any similar federal or state law, or a petition for such an order or decree shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof, or if CONTRACTOR shall admit in writing its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of CONTRACTOR shall be appointed in any proceeding brought against CONTRACTOR and shall not be discharged within ninety (90) days after such appointment or if CONTRACTOR shall consent to or acquiesce in such appointment, or assignment by CONTRACTOR for the benefit of its creditors, or the entry by CONTRACTOR into an agreement of composition with its creditors, or a bankruptcy, insolvency or similar proceeding shall be otherwise initiated by or against CONTRACTOR under any applicable bankruptcy, reorganization or analogous law as now or hereafter in effect and if initiated against CONTRACTOR shall remain undismissed (subject to no further appeal) for a period of ninety (90) days; or

3. Indictment

If, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations article herein.

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Except as otherwise allowed or provided under this Agreement, the sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement or as otherwise agreed by the Parties. 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 CLIENT'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

TERMINATION MANAGEMENT

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

c. TERMINATION BY CONTRACTOR FOR CLIENT'S DEFAULT

CONTRACTOR may terminate this Agreement by written notice to CLIENT in accordance with sections above and due to the occurrence of an Event of Default by CLIENT. An Event of Default with respect to CLIENT shall occur upon any one of the following:

1. CLIENT fails to pay any Works Payment when due; or
2. CLIENT fails to pay any Services Payment when due; provided however, CLIENT shall not be in default hereunder if it fails to pay any Services Payment amount as result of Service Payment setoff pursuant to Section 4.1.1 (e) of Appendix 3A of Schedule 3; or
3. Failure of CLIENT to observe and perform any covenant, condition or agreement on its part required to be observed or performed by this Agreement (other than as provided in clause (a) or (b) above), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to CLIENT by CONTRACTOR, unless CONTRACTOR shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, CONTRACTOR will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by CLIENT within the applicable period and diligently pursued until the default is corrected; or
4. CLIENT consistently and purposefully fails to allow reasonable access to the System, Smart City Instruments or Artistic Lighting; or
5. Any representation or warranty made by CLIENT in connection with this Agreement shall prove to be untrue in any material respect on the date as of which it was made; or

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6. The dissolution or liquidation of the CLIENT or the filing by CLIENT of a voluntary petition in bankruptcy, or failure by CLIENT promptly to cause to be lifted any execution, garnishment or attachment of such consequence as will impair CLIENT'S ability to carry on its obligations hereunder, or the entry of any order or decree granting relief in any involuntary case commenced against CLIENT under any present or future federal bankruptcy act or any similar federal or state law, or a petition for such an order or decree shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof, or if CLIENT shall admit in writing its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of CLIENT shall be appointed in any proceeding brought against CLIENT and shall not be discharged within ninety (90) days after such appointment or if CLIENT shall consent to or acquiesce in such appointment, or assignment by CLIENT for the benefit of its creditors, or the entry by CLIENT into an agreement of composition with its creditors, or a bankruptcy, insolvency or similar proceeding shall be otherwise initiated by or against CLIENT under any applicable bankruptcy, reorganization or analogous law as now or hereafter in effect and if initiated against CLIENT shall remain undismissed (subject to no further appeal) for a period of ninety (90) days.

9.2 Provisions Governing Any Termination

a. Continued Effect - No Waiver

Any waiver by either Party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provisions. Any waiver by either Party of a breach of any provisions shall in no way relieve either Party of any of its responsibilities, duties or obligations under this Agreement, nor shall it constitute a waiver or relinquishment either Party's rights.

9.3 Compensation on Termination

- a. if CLIENT or CONTRACTOR terminates this Agreement in accordance with Section 9.1 (a) above, or if CONTRACTOR terminates this Agreement pursuant to Section 9.1 (c) above, then the Termination Payment shall be:
1. any outstanding Works Payments or Service Payments; plus
 2. other amounts owed to CONTRACTOR under this Agreement, including payment for Works performed prior to the Acceptance, taking due account of any payments already made; plus
- b. if CLIENT terminates this Agreement in accordance with Section 9.1 (b) above then the Termination Payment shall be:
1. any outstanding Works Payments or Service Payments, as applicable, plus other amounts owed to CONTRACTOR under this Agreement, including Works performed prior to Acceptance, taking due account of any payments already made; plus
 2. payments in respect, if any, by CONTRACTOR and all other accrued costs and expenses, including amounts spent on spare equipment.

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9.4 Additional Termination Remedy Provisions

- a. CONTRACTOR may take whatever action Applicable Law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of CLIENT under this Agreement;
- b. Upon an Event of Default by CLIENT, with or without terminating this Agreement, CONTRACTOR may by written notice require CLIENT, at CLIENT's expense, to promptly return any or all of such Infrastructure, Smart City Instruments and Artistic Lighting to the possession of CONTRACTOR at such place within the United States as CONTRACTOR shall specify, or sell or lease such Infrastructure, Smart City Instruments and Artistic Lighting or, for the account of CLIENT, sublease such Infrastructure, Smart City Instruments and Artistic Lighting, continuing to hold CLIENT liable for the difference between (i) the amounts payable by CLIENT hereunder, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of CONTRACTOR in exercising its remedies hereunder, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Infrastructure, Smart City Instruments and Artistic Lighting and all brokerage, auctioneer's and attorney's fees). CLIENT's obligation to remove and return any Infrastructure, Smart City Instruments and/or Artistic Lighting to CONTRACTOR is subject to (i) Applicable Law and (ii) CLIENT's option, at CLIENT's expense, to resolve within 180 days of notice of such termination any public safety requirements related to the return of such assets.
- c. No remedy herein conferred upon or reserved to a Party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing under Applicable Law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
- d. In the event any agreement or covenant contained in this Agreement should be breached by a Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
- e. The Parties agree that the formulations of damages described in this Article 9, are fair and reasonable approximations of the damages each Party would incur upon a termination based on an Event of Default and are not intended to be, nor should they be interpreted to result in, a penalty.
- f. The defaulting Party shall reimburse the other Party for all reasonable costs (including all applicable taxes and all legal or professional services) properly incurred by the other Party in exercising its rights and remedies hereunder, including any relevant increased administrative expenses.

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ARTICLE 10: ASSIGNMENT

CONTRACTOR may, upon prior written consent by CLIENT (not to be unreasonably withheld), transfer, assign, mortgage, charge or dispose of any rights under this Agreement or otherwise delegate any of its rights and/or obligations hereunder; provided that if CONTRACTOR makes such transfer, assignment or takes such other action pursuant to this Article 10, CONTRACTOR acknowledges and agrees that it shall remain liable to CLIENT in relation to all of its obligations under this Agreement unless CLIENT approves the assignee's assumption of all of CONTRACTOR's rights, obligations and liabilities under this Agreement in writing. CLIENT agrees to execute all notices, consents or other documents as may be reasonably required to facilitate such action. CLIENT may not, without the prior written consent of CONTRACTOR, transfer, assign, mortgage, charge or dispose of any of its rights under this Agreement or otherwise delegate any of its obligations under it.

ARTICLE 11: FINANCING - deleted

ARTICLE 12: REPRESENTATIONS AND WARRANTIES

12.1 CONTRACTOR represents, warrants and covenants to the CLIENT that:

- a. It has all requisite corporate power to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of CONTRACTOR's organizational documents, any Applicable Law, or any agreements with third parties;
- b. It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
- c. This Agreement is the legal, valid and binding obligation of CONTRACTOR, in accordance with its terms, and all requirements have been met and procedures have been followed by CONTRACTOR to ensure the enforceability of the Agreement;
- d. To CONTRACTOR's best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting CONTRACTOR that affects the validity or enforceability of this Agreement; and,
- e. It is duly authorized to do business in all locations where the Works and Services are to be performed.
- f. CONTRACTOR has consulted with its legal counsel and is relying on the advice of its counsel concerning all legal issues related to this Agreement, and is not relying on CLIENT in this regard.
- g. Neither of the execution or delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the organizational documents of CONTRACTOR, or any Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which CONTRACTOR is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.
- h. The information provided by CONTRACTOR to CLIENT relating to this Agreement and the Project is true, correct and complete, to the best of the CONTRACTOR's knowledge, in every material respect and contains no untrue statement of material fact or omits no material fact necessary to make the statements contained therein not misleading.

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12.2 CLIENT represents, warrants and covenants to CONTRACTOR that:

- a. It is a political subdivision of the State of New Mexico and has all requisite corporate power and/or statutory authority to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any Applicable Law, or any agreements with third parties;
- b. Acknowledging CLIENT's rights herein to terminate this Agreement for convenience, the CLIENT has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
- c. This Agreement is the legal, valid and binding obligation of CLIENT, in accordance with its terms, and all requirements have been met and procedures have been followed by CLIENT to ensure the enforceability of the Agreement;
- d. To CLIENT's best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting CLIENT that affects the validity or enforceability of this Agreement; and,
- e. CLIENT has consulted with its legal counsel and is relying on the advice of its counsel concerning all legal issues related to this Agreement, and is not relying on CONTRACTOR in this regard.
- f. CLIENT is not in violation of any Applicable Law promulgated or judgment entered by any federal, State, local or governmental authority that individually or in the aggregate, would affect its performance of any obligations under this Agreement.
- g. CLIENT is the holder of all federal, State, local or other governmental consents, licenses, permits, or other authorizations required to permit it to operate or conduct its business now and as contemplated by this Agreement.
- h. Neither of the execution or delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the organizational documents of CLIENT, or any Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which CLIENT is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.
- i. CLIENT intends to continue to use the System in a manner similar to its present use of such System.
- j. The System will be used by CLIENT only for the purpose of performing essential governmental or proprietary functions of CLIENT consistent with the permissible scope of CLIENT's authority.
- k. The information provided by CLIENT to CONTRACTOR relating to this Agreement and the Project is true, correct and complete, to the best of the CLIENT's knowledge, in every material respect and contains no untrue statement of material fact or omits no material fact necessary to make the statements contained therein not misleading.

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ARTICLE 13: DISPUTE RESOLUTION

13.1 In the event of any dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the aggrieved Party shall promptly provide written notification of the dispute, claim, question or disagreement to the other Party within thirty (30) days of the dispute, claim, question or disagreement. The Parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement, including seeking the intervention and opinion of an expert. To this effect, the Parties shall consult and negotiate with each other in good faith and recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach such solution within a period of thirty (30) days of the notice, then, upon notice by either Party to the other, all disputes, claims, questions or differences shall be submitted to mediation pursuant to the Public Works Mediation Act, NMSA 1978, secs. 13-4C-1 through 13-4C-11.

13.2 Notwithstanding any dispute that CONTRACTOR may have undertaken or be involved with, whether pursuant to this Article 13 or otherwise, and regardless of the basis thereof or grounds therefor, CONTRACTOR agrees that it will, for so long as this Agreement has not been terminated, diligently perform the Works and Services in accordance with the terms of this Agreement, provided that CLIENT pays all undisputed amounts invoiced and at the times required as set forth herein pursuant to the terms and provisions of the Agreement and otherwise performs its obligations in accordance with the terms of this Agreement.

13.3 Notwithstanding any dispute that CLIENT may have undertaken or be involved with, whether pursuant to this Article 13 or otherwise, and regardless of the basis thereof or grounds therefor, CLIENT agrees that it will, for so long as this Agreement has not been terminated, pay all undisputed amounts invoiced and at the times required pursuant to the terms and provisions of the Agreement and otherwise perform its obligations in accordance with the terms of this Agreement.

13.4 If a Party fails to pay any such amounts as described in Sections 13.2 and 13.3 above, the dispute resolution procedure under this Article 13 shall not apply and the Parties may proceed to enforce any rights and remedies under Article 9 above.

ARTICLE 14: AUDITS AND INSPECTIONS

At any time during normal business hours and as often as the CLIENT may deem necessary, there shall be made available to the CLIENT for examination all of the CONTRACTOR's records with respect to all matters covered by this Agreement. The CONTRACTOR shall permit the CLIENT to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of five (5) years from the date of payment for the work under this Agreement. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 **Subcontractors.** CONTRACTOR may use subcontractors in the performance of the Works or Services, provided however that 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.

15.2 **Construction and Venue.** This Agreement and the construction and enforceability thereof shall be interpreted under and governed by the laws of the State of New Mexico, irrespective of its choice of law provisions, and venue shall only be in Santa Fe County, New Mexico.

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15.3 **Change in Law.** If CONTRACTOR suffers (or will suffer) delay and/ or incurs additional costs as a result of a Change of Law, then The CONTRACTOR must deliver a notice to CLIENT identifying the Change of Law and the impact of that Change of Law. Upon receiving notice, CLIENT and CONTRACTOR will proceed in good faith to negotiate an adjustment to the contract price and/or extension of time. If mutual consent is not reached, either Party may seek relief under Article 13 above. If CONTRACTOR is prevented from performing its obligations under the Agreement, but would be able to proceed if an amendment or Change Order were made to the Agreement, then the CONTRACTOR should submit a notice to CLIENT stating such. However, in the event that that CONTRACTOR is prevented from performing its obligations under the Agreement and this cannot be remedied by an amendment or Change Order, then CONTRACTOR may give notice of termination pursuant to Section 9.1 (a) (3) above. If a Change of Law occurs, CONTRACTOR is obliged to take all reasonable steps to mitigate the adverse impact of such Change of Law upon the Agreement.

15.4 **Gross Inequity.** Any gross proven inequity that may result in severe economic conditions not contemplated by the Parties at the time of the execution of this Agreement may be corrected by mutual consent; provided however that any gross proven inequity shall not in any way apply to, alter or affect the CLIENT's obligation to make Works Payments hereunder when due. Each Party shall in the case of a claim of gross inequity furnish the other with whatever documentary evidence may be necessary to assist in affecting a settlement.

15.5 **Prevailing Wage.** As applicable, CONTRACTOR shall insure compliance with the New Mexico Public Works Minimum Wage Act and any other binding prevailing wage determinations

15.6 **Non-substitution.** In the event of termination of this due to the non-appropriations of funds, CLIENT agrees, to the extent permitted by Applicable Law, not to purchase, lease, rent, borrow, seek appropriations for, acquire or otherwise receive the benefits of any of the same and unique services performed by CONTRACTOR under the terms of this Agreement for a period of three-hundred sixty-five (365) days following such termination of this Agreement due to non-appropriations.

15.7 **Representatives.** CLIENT Representative and CONTRACTOR Representative (collectively "Authorized Representatives") are the following designees:

CLIENT Representative

Name: Ms. Regina Wheeler
Title: Public Works Director
Address: 500 Market Station
Santa Fe, NM 87501

Phone: 505-690-4197

CONTRACTOR Representative

Name: Kevin Kaye
Title: Director of Operations
Address: 4000 Vassar Drive NE, Albuquerque, NM 87107

Phone: 860-384-3024

CLIENT and CONTRACTOR may change its Authorized Representative by giving written notice to the other. CLIENT Representative and CONTRACTOR Representative is the person authorized to make decisions on behalf of the CLIENT and CONTRACTOR, respectively, under the terms of this Agreement.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

15.8 Notice. Without prejudice to any other method of giving notice, all communications provided for or permitted hereunder shall be in writing and delivered to the addressee by prepaid private courier or sent by telecopy or other direct written electronic means (provided that a written record is kept in respect of any such electronic communication), to the applicable address and to the attention of the officer of the addressee as follows:

To CLIENT:

City of Santa Fe

Attention: Regina Wheeler, Public Works Director
500 Market Station
Santa Fe, NM 87507

Phone: 505-600-4107

To CONTRACTOR:

Dalkia Energy Solutions, LLC

Attention: Kevin Kaye, Director of Operations
4000 Vassar Drive NE
Albuquerque, NM 87107

Phone: 860-384-3024

Any notice or other communication made by personal delivery, telecopy or other direct written electronic means on a Business Day shall be deemed to have been given, received and made on such Business Day so long as it is actually received prior to 5:00 p.m. (Mountain Standard time) on such Business Day, and otherwise shall be deemed to have been made on the next following Business Day (any such notice given, received or made on a day which is not a Business Day shall be deemed to have been made on the next following Business Day).

15.9 Accounting and Tax Representations. CONTRACTOR makes no representation or warranty with respect to CLIENT's treatment of any federal or state tax laws, any applicable accounting treatment or conventions or the assessment of any rating agency in connection with this Agreement, the project documents or any Infrastructure, Smart City Instruments and Artistic Lighting.

15.10 Provision of Information and Action. Parties agree to provide such information, execute and deliver any instruments and documents, and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

15.11 Expenses. Except to the extent otherwise provided herein, each Party hereto shall be responsible for their own fees, expenses and disbursements (including, without limitation, legal fees and disbursements) in connection with the preparation, execution, delivery and/or performance under this Agreement and all other documents and instruments associated with any of the same.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

15.12 Assent. CONTRACTOR's performance of the Works and Services is expressly conditioned on the Parties assenting to all of the terms of this Agreement, notwithstanding any different or additional terms contained in any writing at any time submitted or to be submitted by a Party to the other Party relating to the Works or Services, even if signed by the Parties, unless the written statement expressly indicates that such terms supersede the terms of this Agreement.

15.13 Waiver. The failure of CONTRACTOR or CLIENT to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of CONTRACTOR or CLIENT.

15.14 Severability. If any provision of the Agreement becomes or is found to be illegal or unenforceable for any reason, such provision may be modified to the extent necessary to make this Agreement legal and enforceable. If such provision cannot be so modified, it shall be severed from this Agreement and the remainder of this Agreement shall remain in full force and effect.

15.15 Entire Agreement. This Agreement, when executed, together with all Schedules, Implementation Plan and other project documents in this Agreement, shall constitute the entire agreement between the Parties with respect to the subject matter hereof and this Agreement may not be amended or modified except by a written agreement signed by the Parties hereto. This Agreement supersedes all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals, either written or oral relative to the same.

15.16 Arm's Length Negotiation. The Parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and among the Parties equally sophisticated and knowledgeable as to the subject matter of this Agreement. Each party has conferred, or has had the opportunity to confer, with their respective legal counsel. Accordingly, in the event any claim is made relating to any conflict, omission, or ambiguity in this Agreement, no presumption, burden of proof, or persuasion shall be implied by virtue of the fact that this Agreement was drafted by or at the request of a particular party or its legal counsel.

15.17 Counterparts. This Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original and which counterparts taken together shall constitute one and the same Agreement. This Agreement may be executed by facsimile or electronic mail in portable document format ("pdf") and any signature contained hereon by facsimile or electronic mail in pdf shall be deemed to be equivalent to an original signature for all purposes.

15.18 Conflict of Interest; Governmental Conduct Act

- a. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
- b. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

- c. Contractor's representations and warranties in Paragraphs A and B of this Article 13 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 13 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 13 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.

15.19 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 herein, or to agree to the reduced funding.

15.20 Merger.

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

15.21 Penalties for violation of law.

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

15.22 Equal Opportunity Compliance.

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

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

15.23. 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 in accordance with article 15.2 of this agreement. 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.

15.24. 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.

15.25. 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.

15.26. 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.

15.27. 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.

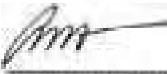
15.28. Authority.

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

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

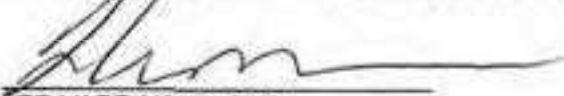
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:


ALAN WEBBER, MAYOR

DATE: Mar 22, 2021

CONTRACTOR: DALKIA ENERGY SOLUTIONS, LLC


LEE VARDAKAS, CEO

DATE: 3/18/2021

CRS # 03-526533-00-7
Registration # 6168566

ATTEST:


Kristine Mihelcic (Mar 22, 2021 18:06 MDT)

KRISTINE BUSTOS MIHELICIC, CITY CLERK ~~GC~~
GB MTG 02/24/2021

CITY ATTORNEY'S OFFICE:


Marcos Martinez (Mar 22, 2021 18:06 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED BUDGET:


MARY MCCOY, FINANCE DIRECTOR

Funding Sources: TBD AL
AL

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

SCHEDULE 1: DEFINITIONS

The following terms shall for all purposes have the meanings stated herein, unless the context otherwise specifies or requires, or unless otherwise defined in the Agreement:

"Acceptance" means the conditions contained in Section 3.7 have been completed and CLIENT has signed, or is deemed to have signed and delivered, a Certificate of Acceptance.

"Acceptance Date" means the date on which Acceptance has occurred or been completed for each Segment of the Works.

"Annual Performance Report" means the document prepared by CONTRACTOR and submitted to the CLIENT, which identifies the results achieved (KPIs) for the applicable Annual Period.

"Annual Period" means an annual period beginning on the Commencement Date or on any anniversary date thereafter.

"Annual Realized Savings" means the actual Energy Savings achieved by the System during an Annual Period derived from the sum of the measured and verified savings plus any Stipulated Savings.

"Applicable Law" means any Laws in force in the State of New Mexico where the System is located, or that is otherwise binding on a Party or those for whom, at law, they are responsible.

"Artistic Lighting" means the artistic lighting projects and equipment and infrastructure required to be provided by the CONTRACTOR as described in accordance with Schedule 2 (Scope of Works).

"Authorized Representative" means collectively CLIENT Representative and CONTRACTOR Representative.

"Business Day" means any calendar day other than a Saturday, Sunday or federal holiday in the United States, except that in the event that an obligation to be performed under this Agreement falls due on a day other than a Business Day, the obligation shall be deemed due on the next Business Day thereafter.

"Calendar of Execution" refers to the calendar detailed in the Implementation Plan.

"Certificate of Acceptance" means a written non-recourse certificate of acceptance in the form substantially similar to the certificate of acceptance attached hereto in Schedule 5.

"Change in Law" means the coming into effect or repeal (without re-enactment or consolidation) in the state or commonwealth or the United States of any Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in the state or commonwealth, in each case after the date of this Agreement which has a material adverse effect on a Party's ability to perform under this Agreement, provided that a Change in Law shall not apply to any Party's obligation to pay hereunder when due.

"Change Order" means modification of the Works pursuant to Schedule 2 (Scope of Works).

"Charter" means the Charter of the City of Santa Fe adopted by the voters of the City of Santa Fe, New Mexico, at a Special Municipal Election held on December 9, 1997; amended by the voters of the City of Santa Fe at a Regular Municipal Election held on March 4, 2008; amended by the voters of the City of Santa Fe at a Regular Municipal Election held on March 4, 2014; amended by the voters of the City of Santa Fe at a General Election held on November 6, 2018; and amended by the Governing Body on March 11, 2020.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

"CLIENT" means City of Santa Fe, a political subdivision of the State of New Mexico.

"CLIENT Representative" means the person identified to CONTRACTOR by CLIENT as the person authorized to make decisions on behalf of CLIENT, as further set forth in Section 15.7 of the Main Body of the Agreement.

"CMMS" refers to a Centralized Maintenance Management Software, which is a data and tracking system for asset data, installation and repair data, maintenance data, energy consumption data and other System data.

"Commencement Date" shall mean the date that the Client issues a Purchase Order.

"Commissioning and Quality Assurance Plan" means the plan for commissioning the Infrastructure during the Works Phase.

"CONTRACTOR" means Dalkia Energy Solutions US, Inc. and its successor and assigns.

"CONTRACTOR Pre-existing Intellectual Property" means any Intellectual Property: (i) that has been conceived or developed by an employee or subcontractor of CONTRACTOR before CONTRACTOR performs any Works or Services under this Agreement; (ii) that is conceived or developed by such employee or subcontractor at any time wholly independently of CONTRACTOR performing the Works under this Agreement; or, (iii) if developed while performing the Works under this Agreement, where the development of Intellectual Property for the benefit of the CLIENT is not expressly identified as part of the Works. CONTRACTOR Pre-existing Property is included in all reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for CONTRACTOR.

"CONTRACTOR Representative" means the person identified to CLIENT by CONTRACTOR as the person authorized to make decisions on behalf of CONTRACTOR, as further set forth in Section 15. 7 in the Main Body of the Agreement.

"Constant Energy Rate" means an energy rate of \$0.0561839 per kWh, as the customer owned metered lighting rate as described in Section B of Public Service Company of New Mexico Electric Service, 15th Revised Rate No. 20, Canceling 14th Revised Rate No. 20, incorporated in the Implementation Plan. The Constant Energy Rate shall be reviewed and revised every five years in accordance with any changes in the Public Service Company of New Mexico Electric Service rate.

"Contingency Deadline" shall be thirty (30) days after the Effective Date of this Agreement.

"Damage Amount" refers to the annual damage amount covered under the Service Payments for Repairs as identified in Section 2.3.2 of Schedule 3.

"Day(s)" shall mean calendar day.

"Demobilization Costs" shall mean all activities and costs for transportation of personnel, equipment and supplies from the site; disassembly, removal, and site cleanup of offices, buildings, and other facilities; all reasonable costs associated early termination incurred by CONTRACTOR with its subcontractors, vendors, providers; reasonable ongoing lease costs or lease termination costs for vehicles, warehouse space, office space and other leased items for this Agreement; accrued costs and expenses, including amounts spent on equipment and inventory. CONTRACTOR shall take all reasonable steps to mitigate demobilization costs and expenses upon termination of the agreement.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

"Energy Savings" means all reductions in energy or utility consumption, a changed utility rate classification, a combination thereof, or other savings contemplated herein derived from installation of the Infrastructure and performance of the Services, in accordance with Schedule 3 (Scope of Services). Energy Savings are measured and expressed in kilowatt hours (kWh).

"Equipment" means installed physical street light equipment, which includes luminaires and smart controls, that is required to be provided by CONTRACTOR as part of Schedule 2 (Scope and Works).

"Event of Default" refers to the terms of Event of Default prescribed in Section 9.1 (b) and (c) in the Main Body of the Agreement.

"Existing System" refers to the non-upgraded portions of the System during the Works.

"Extension Estimate" refers to the definition found in Section 1.3 (b) (1) in the Main Body of the Agreement.

"Final Segment of the Works" means the last Segment of the Works which upon completion and acceptance completes the CONTRACTOR's obligations under the Works Phase of this Agreement.

"Governmental Authority" means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over the Project, any aspect of the performance of this Agreement or any of the other project documents, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.

"Guaranteed Annual Savings" are the Energy Savings that CONTRACTOR guarantees will be achieved in an Annual Period of the Performance Guarantee Period, as identified in the Appendix 3A (Services Performance Objectives and Penalties) to Schedule 3 (Scope of Services).

"Hazardous Materials Within Scope" refers to those materials listed in the Implementation Plan.

"IESNA Guide for Photometric Measurement of Roadway Lighting Installations" means the ANSI/IES RP-8-14, ISBN# 978-0-87995-299-0, published by the Illuminating Engineering Society of North America, 2014.

"Implementation Plan" refers to the documented steps that will be taken by the Contractor and the Client to successfully achieve implementation pursuits, including but not limited to works phase sequence and timeline, products specifications, measurement and verification process.

"Infrastructure" means the Equipment and other physical street light infrastructure which includes street light poles, arms, wiring, foundations and other related infrastructure and equipment that is part of the System, Client-owned, and that is required to be installed by CONTRACTOR as part of Schedule 2 (Scope of Works).

"Intellectual Property Rights" or "Intellectual Property" means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

"IPMVP" means the International Performance Measurement and Verification Protocol, Volume 1, EVO 10000-1.2007 as prepared by the Efficiency Valuation Organization.

"KPI" means Key Performance Indicator.

"Lamp" means apparatus designed as the source of light.

"Law" means any applicable constitution, charter, act, statute, law (including common law), ordinance, code, rule, regulation, judgment, decree, writ, order, permit, approval, or the like, as any of the foregoing may change from time to time, of any federal, state or local government or any agency, department, authority, court, political subdivision or other instrumentality thereof.

"kW" and "kWh" means kilowatt and kilowatt hour, respectively.

"Main Body" refers to Articles 1-15 in the main body of the Agreement above.

"Material Change" means a measurable deviation in the Performance Baseline and/or lighting performance metrics that is not caused by CONTRACTOR such that there is an adverse impact on the Annual Realized Savings which results or will result in a Savings Shortfall. A Material Change includes, but is not limited to: (a) changes in the manner of use of the System, (b) changes in the hours of operation of System, (c) changes in the quantities and types of materials used in the System, (d) modification, renovation or construction at or around the System, (e) any significant damage to the System caused by Supervening Event, or (f) any substantially changed condition affecting the energy use in the System.

"Material Obligation" means an obligation under this Agreement that is significant, as opposed to trivial, the breach of which would deprive the other Party of benefits it would have received under this Agreement, and includes any obligation the breach, waiver or modification thereof could (a) have an adverse effect on any Works Payment or Termination Payment (including the amount and due date thereof), or (b) impair the originally intended value, function or use of the Infrastructure, Smart City Instruments or Artistic Lighting.

"Measurement and Verification Plan" or "M&V Plan" shall mean the measurement and verification plan described in Section 2.9 of Schedule 2.

"Non-Upgraded System Assets" shall mean System components that are not upgraded or replaced during the Works Phase. Any component of the Non-Upgraded System Assets that is replaced pursuant to Section 2.3.2 of Schedule 3 shall be treated as Infrastructure for the remainder Services Phase.

"Normal Wear and Tear" means damage that naturally and inevitably occurs as a result of normal wear or aging.

"Oil" means petroleum or petroleum products.

"Operating Center" shall mean the operating center as described in Section 2.6.3 of Schedule 2 and Section 2.6 of Schedule 3.

"Operations and Maintenance" or "O&M" shall mean the operation, maintenance, monitoring, management, repair and replacement of the System during the Services Phase.

"Parties" means the CLIENT and CONTRACTOR.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

"Performance Assurance Reconciliation" is the process of ascertaining whether the System is performing at the level necessary to achieve the Guaranteed Annual Savings for an Annual Period.

"Penalties Cap" means the maximum cumulative amount of all Savings Shortfall payments and O&M penalty amounts the CONTRACTOR is obligated to make to the CLIENT, as more particularly described in Appendix 3A (Services Performance Objectives and Penalties) to Schedule 3 (Scope of Services).

"Performance Baseline" means the operating profile of the System after all Works have been completed and Infrastructure installed, based on parameters described in the Appendix 3A (Services Performance Objectives and Penalties) to Schedule 3 (Scope of Services), which is relied upon by CONTRACTOR for the calculation of Guaranteed Annual Savings as provided in the Appendix 3A (Services Performance Objectives and Penalties) to Schedule 3 (Scope of Services).

"Performance Guarantee" means CONTRACTOR's guarantee that the Annual Realized Savings calculated at the end of each Annual Period will be no less than the Guaranteed Annual Savings for the corresponding Annual Period.

"Performance Guarantee Period" means the timeframe from the Acceptance Date of the Final Segment of the Works until the termination of this Agreement.

"Permitted Users" means the CLIENT, its employees and authorized agents.

"Project" means Works and Services provided in the Agreement.

"Prudent Industry Practice" means those practices, methods, equipment, specifications and standards of safety and performance, as the same may be changed from time to time, as are generally used in the installation and operation and maintenance of street light systems, which in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, are considered good, safe and prudent.

"Repair(s)" means repairs of outages, malfunctions, damages or deteriorations to the Non-Upgraded System Assets or repairs made to the System caused by accidents, acts of vandalism or acts of God.

"Savings Excess" means the Annual Realized Savings less the Guaranteed Annual Savings for the Annual Period resulting in an amount greater than zero.

"Savings Shortfall" means the Annual Realized Savings less the Guaranteed Annual Savings for the Annual Period resulting in an amount less than zero.

"Schedule(s)" refers to the Schedules 1 through 6 herein.

"Schedule and Breakdown of the Works" refers to the schedule detailed in the Implementation Plan.

"Scheduled Maintenance" refers to proactive maintenance provisions identified in Section 2.3.1 of Schedule 3.

"Segment(s)" means collective labor, Infrastructure, Smart City Instruments, Artistic Lighting and related services to be performed by or on behalf of CONTRACTOR for each segment of the Works, as further identified and described in Schedule 2 (Scope of Works).

"Services" means those services to be provided by CONTRACTOR as described in Article 4 and Schedule 3 (Scope of Services).

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

"Service(s) Payment" means payments for the operation and maintenance of System during the Works Phase pursuant to Section 2.3 of Schedule 2 and the operation, maintenance, management, repair and replacement of the System, Smart City Instruments and Artistic Lighting services during the Services Phase.

"Services Performance Objectives" shall mean the Service Phase KPIs or performance objectives, descriptions and metrics that are subject to penalties as described in Schedule 3.

"Service(s) Phase" refers to the phase in the Agreement in which Services are performed after Acceptance Date of the Final Segment of Works.

"Smart City Instruments" refers to the physical nodes, instruments and equipment used in smart city and safety applications as required to be provided by the CONTRACTOR as described in accordance with Schedule 2 (Scope of Works)

"Software Product" means any software that is owned or licensed by CONTRACTOR or its affiliates and that is either separately deliverable for use in the Infrastructure, Smart City Instruments or Artistic Lighting or for use in a computer system owned by the CLIENT or delivered as firmware embedded in the Infrastructure, Smart City Instruments or Artistic Lighting.

"State" means the State of New Mexico.

"Stipulated Savings" are a sub-category of Guaranteed Annual Savings that do not require post-FIM implementation measurement and verification because they are agreed upon by the Parties based upon representations made to CONTRACTOR by the CLIENT and through the application of generally accepted analytical formulae. As such, Stipulated Savings are agreed upon in advance by the Parties and cannot be changed. When used as a methodology for representing a FIM's energy savings, such methodology is not recognized as a measurement and verification methodology under IPMVP. Therefore, where the IPMVP measurement methodologies are required, a methodology other than Stipulated Savings must be used to calculate energy savings.

"Supervening Event" means any of the following to the extent, in each case, it has a material adverse effect on CONTRACTOR's ability to perform its obligations under this Agreement: (a) any civil disobedience or dissent, including measures taken or threatened to be taken after the date hereof by one or more persons protesting or demonstrating against the realization of all or part of the Project, including the execution of the Works and the performance of the services hereunder; (b) fire, explosion, lightning, storm, tempest (including, but not limited to, an ice storm), hurricane, tornado, flood or any other natural disaster, ionizing radiation, earthquake, riot, theft, vandalism or civil commotion or any declared State of Emergency at the Federal, State or local level; (c) failure by any utility supplier, any Governmental Authority or other similar entity to provide the requisite approvals, permits, and consents or requisite access or make the requisite repairs required for the performance of the Works and Services; (d) instability and/or unavailability of the power grid; (e) irreparable disruption of the economy or solvency of the Agreement that is no fault of CONTRACTOR; (f) blockade or embargo; (g) strikes, lockouts, or other labor-related disputes affecting the System, the construction sector or maintenance of infrastructure sector or a significant part thereof; (h) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities; (i) third-party bid protest, or (j) nuclear, radioactive, chemical or biological contamination of the System, Smart City Instruments and Artistic Lighting or any real or personal property adjacent thereto that prevents the CONTRACTOR from performing a material part of its obligations under this Agreement.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

"System" means the street light system owned, maintained or controlled by CLIENT which is located within the limits of the city of Santa Fe, New Mexico and where the Works and Services will be performed, and which is used primarily to illuminate a road, street, highway or interstate freeway and includes the street light system's physical infrastructure and equipment: luminaires, photocells, street light poles, arms, wiring, pole foundations; more specifically, the System refers to the street lights owned or controlled by CLIENT as identified in the inventory provided by the CLIENT to the Contractor. The System specifically excludes Smart City Instruments and Artistic Lighting and any utility owned street lights.

"System Baseline" means the measurements of System taken as part of the Inventory, and the System operating practices in effect on the Agreement Effective Date, as set forth in Appendix 3A (Services Performance Objectives and Penalties) in Schedule 3 (Scope of Services).

"Technical Watch Committee" means a committee created at CLIENT's request to ensure ongoing technical monitoring and advancements in streetlighting and to remain informed about changes in standards and regulations. The Technical Watch Committee will consist of an equal number of representatives from CLIENT and from CONTRACTOR and shall meet at the end of each year at the request of CLIENT.

"Technological Advancements" shall mean advances in lighting technology that occur subsequent to the execution of this Agreement that will improve the performance of the System.

"Term" means the fixed duration of this Agreement as identified in Section 1.2 of the Main Body of the Agreement.

"Termination Payment" means the sum paid in consequence of the termination of this Agreement in accordance with Article 9 in the Main Body of the Agreement.

"Unit Prices" means the lists provided in the Implementation Plan.

"Unscheduled Maintenance" means the repair of outages or malfunctions that are caused by Normal Wear and Tear of the Infrastructure or outages that are a result of defective Infrastructure.

"Work(s)" means collective labor, Infrastructure, Smart City Instruments, Artistic Lighting and related services for all Segments to be performed by or on behalf of CONTRACTOR in the Works Phase, as further identified and described in Schedule 2 (Scope of Works).

"Work(s) Amount" means principal amount of the project for this Agreement. Works Amount does not include interests on the principal or any Service Payment amounts.

"Work(s) Payment" means payments for Works performed during the Works Phase, specifically excluding the operation and maintenance of the System during the Works Phase.

"Work(s) Performance Objectives" shall mean the KPIs or performance objectives, descriptions and metrics that are subject to penalties as described in Schedule 2.

"Work(s) Phase" shall mean the phase of the Agreement in which the Works are performed.

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SCHEDULE 2: SCOPE OF WORKS

ARTICLE 1: DESCRIPTION OF THE SYSTEM, ARTISTIC LIGHTING AND SMART CITY INSTRUMENTS

a. System Layout

The layout of CLIENT's System is described in the Implementation Plan as the information received by CONTRACTOR from CLIENT about the current streetlight system. CONTRACTOR shall upgrade the Infrastructure of the System during the Works as set forth in the Implementation Plan. The scope of the System may be amended for the installation of additional street lights in the System.

b. System Data Inventory

CLIENT'S street light assets that make up the System are set forth in the Implementation Plan. Assets vary in size (wattage), type (HPS, MV, etc.), and style (Cobra, post top, wall pack, etc.). The System assets are property of the CLIENT and/or CLIENT has the requisite rights to upgrade, operate and maintain the assets. CLIENT'S street light assets subject to this Agreement do not include any utility-owned street lights.

c. Artistic Lighting

Artistic Lighting may be requested by CLIENT at any time during the project. Technical specifications and drawing will be incorporated into the Implementation Plan accordingly.

d. Smart City Instruments

Smart City Instruments shall be installed on CLIENT'S System. The Smart City Instrument installation may include street light control nodes, Wi-Fi hotspots, and additional smart city instruments. Technical specifications and drawing will be incorporated into the Implementation Plan accordingly.

Smart City Credit

In addition to other obligations of the Contractor, Contractor will provide an annual "credit" of Twenty Thousand dollars (\$20,000.00) worth of materials and installation of Smart City infrastructure, or other infrastructure as agreed by the Parties. Installation costs will be determined in accordance with the Implementation Plan. Material costs will be determined in accordance with the Implementation Plan. This Smart City infrastructure "credit" will be available annually on the anniversary of the implementation of the Services phase. This "credit" may only be used for infrastructure and may not be used as an offset to any payment due to Contractor.

e. Deferred Maintenance

During the Works phase, Contractor will implement Deferred Maintenance Work up to the amount of Eighty-Five Thousand Four Hundred and Seventeen Dollars and no Cents (\$85,417.00) plus applicable Gross Receipts Tax in the amount of \$7,209.19. This Work will be prioritized by Client in consultation with Contractor. Costs of Work will be determined in accordance with the Implementation Plan. Work will be accepted by Client as set forth in Article 3 Section 3.7.

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ARTICLE 2: GENERAL SCOPE OF WORKS

2.1 General Principles

The Works, as described herein and in the Implementation Plan, shall be performed by CONTRACTOR in conformity with current standards, Applicable Laws and regulations, and in accordance with the prescriptions of this Schedule and associated appendices. Except as otherwise expressly provided herein, CONTRACTOR shall provide all items necessary for the performance of the Works.

2.2 Interim Period

The Interim Period shall be the period between the Agreement's Effective Date and the Commencement Date. During the Interim Period, CONTRACTOR may perform any preparatory work and operations needed to mobilize for the Works, which may include, but is not limited to, the following:

- a. Movement to, placement and set-up on project site of personnel, equipment, supplies and accessory items;
- b. Establishment of offices, buildings and other needed facilities as well as utility work and connections needed for these facilities;
- c. Scheduling details, coordination and any other work and expense appropriate prior to the start of Works under Agreement.

The Client shall not be responsible for costs incurred until a Purchase Order has been issued.

2.3 Operation and Maintenance System

- a. Commencing after the Acceptance Date of the Final Segment of the Works, CONTRACTOR will operate and maintain the Existing System that has not been upgraded and that is part of the scope of Works.

2.4 Works: Project Upgrade

CONTRACTOR shall perform the installation of the Infrastructure, Smart City Instruments and Artistic Lighting in accordance with the Implementation Plan.

2.4.1 Modifications to Calendar of Execution and Schedule of Works

CLIENT may request adaptations and modifications to the work schedule set forth in the Implementation Plan, provided that the request is made in writing and made no later than thirty (30) days before the submission of the required authorizations and applicable approvals. Notwithstanding the foregoing, for any adaptation and modifications to the work schedules for urban redevelopment or city-owned projects, CLIENT shall request any modifications at least sixty (60) days prior to the submission of the required authorizations.

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Upon CLIENT's request, CONTRACTOR shall study and define the technical, economic and financial impacts of the scheduling adaptations and modifications and provide the CLIENT with a proposal for CLIENT'S requests. Any scheduling adaptations or modifications must be agreed to in writing by both Parties and any financial or other consequences related to any requested scheduling adaptations or modifications that are subsequently implemented will be borne by CLIENT. If a change of the schedule requested by CLIENT directly causes a delay in the acceptance of any Segment, the direct or indirect consequences, including costs, will be borne by CLIENT.

2.4.2 Conditions of Execution of the Works and Safety Program

Conditions of Execution of the Works. Prior to starting the Works, CONTRACTOR will obtain all requisite information and authorizations and fulfill all administrative requirements necessary for the performance of the Works. CONTRACTOR shall provide CLIENT an organizational plan of the Works to be performed, indicating the access requirements and installation requirements for the worksites and any plans to limit the impacts on the surrounding areas.

Safety Program. CONTRACTOR will make a commercially reasonable effort to ensure safety at the worksites and their surroundings areas for the entire duration of the Works in accordance with all Applicable Law. In carrying out its responsibilities herein, CONTRACTOR shall (a) protect the lives and health of persons performing the Work and other persons who may be affected by the Work and shall erect and maintain all necessary safeguards for such safety and protection; (b) prevent damage and theft to materials, supplies, and equipment whether on worksites or stored off worksites; and (c) prevent damage to other property at worksites or adjacent thereto. CONTRACTOR shall provide CLIENT with a safety plan within thirty (30) days from Commencement Date.

2.4.3 Progress Reports; Status Meetings

Progress Reports. CONTRACTOR shall periodically, but at least monthly, provide CLIENT progress reports pertaining to the Works detailing all ongoing tasks and the progress made with respect to the Calendar of Execution and the Schedule and Breakdown of the Works.

Status Meetings. Status meetings during the Works Phase will be held on a bi-weekly basis, and may be attended by Authorized Representatives and all persons designated by CLIENT and CONTRACTOR. Meeting times and frequency will be modified upon CONTRACTOR or CLIENT mutual agreement. Meeting minutes shall be recorded by CONTRACTOR for each meeting.

2.4.4 Project Commissioning and Acceptance

Project Commissioning. The Commissioning and Quality Assurance Plan in the Implementation Plan establishes procedures for commissioning each Segment of the Works. Upon completion of a Segment of the Works, CONTRACTOR, in concert with CLIENT, shall conduct a thorough and systematic performance test of each element of the completed Segment of the Works per the terms of the plan. CONTRACTOR shall correct or adjust any deficiencies in accordance with Schedule 5 and the Commissioning and Quality Assurance Plan.

Acceptance. Acceptance of Work or Segment of Work shall be in accordance with the procedures established in Section 3.7 of the Main Body of the Agreement and Schedule 5.

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2.5 Modification of the Works

2.5.1 Change Orders

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

- a. Deliverable requirements, as outlined in the Scope of Work;
- b. Due date of any Deliverable, as outlined in the Scope of Work;
- c. Compensation of any Deliverable, as outlined in the Scope of Work;
- d. Agreement compensation, as outlined in Article 2; or
- e. Agreement termination, as outlined in Article 4.

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

- a. The Project Manager shall draft a written Change Request for review and approval by the City Manager to include:
 1. the name of the person requesting the change;
 2. a summary of the required change;
 3. the start date for the change;
 4. the reason and necessity for change;
 5. the elements to be altered; and
 6. the impact of the change.
- b. The City Manager shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the City Manager are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

The Change Order shall constitute full and final settlement of all claims arising from or related to any Work either covered or affected by the Change Order or related to the events.

2.6 Monitoring of the Works

2.6.1 CMMS: Real-Time Monitoring of Works

Throughout the Works Phase, CONTRACTOR will implement its Computerized Maintenance Management System ("CMMS"), to monitor the progress of the Works. The CONTRACTOR will use CMMS to measure the timeline of the upgrades and monitor its crews on a real-time basis. All Infrastructure and Artistic Lighting installations and repairs made to the System, including poles and fixture types, drivers, LED kit, etc., will be updated in CMMS to reflect new field conditions. Built-in work order schedules will be entered into CMMS to ensure that the proper equipment and materials are on the trucks before they leave the facility.

CLIENT shall have a real-time access to CMMS to monitor the status of the streetlight asset upgrade.

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2.6.2 Construction Monitoring

CONTRACTOR shall perform checks at the end of each workday to ensure that all work performed is functioning as intended.

2.6.3 Operating Center

Within ten (10) days of the Commencement Date, an Operating Center will be established which shall have the requisite personnel, technology and equipment to monitor the indicators (CMMS reports), System alerts for a holistic status of the System, Smart City Instruments and Artistic Lighting installations.

The Operating Center shall be equipped to analyze problems, communicate with site technicians and supervisors, track issues through resolutions, and escalate problems when appropriate. For emergencies or disasters, the Operating Center shall have established procedures in place to immediately contact the correct team and respond appropriately.

Responsibilities of Operating Center personnel will include:

- Streetlight monitoring
- Emergency response
- Repairs and upgrade monitoring
- Communication and reporting between the field teams, headquarters, and the CLIENT
- CMMS administration (database updates and treatment of the work orders)

2.7 Waste Management and Recycling during the Work Phase

During the Works Phase, recycling management processes will be integrated throughout CONTRACTOR's day- to-day operation (ISO 9001-14001). CONTRACTOR shall procure and/or maintain the appropriate recycling and disposal facilities.

2.8 Project and Performance Baseline Inventory

Pursuant to Section 5.1 of the Main Body of the Agreement, prior to the Acceptance Date of the Final Segment of the Works, CONTRACTOR shall conduct an audit and inventory of the operational performance of the System after all the Infrastructure is installed. If additional Energy Savings are recognized after the audit and inventory, CONTRACTOR shall integrate and use all resulting data to calculate and revise the Performance Baseline and adjust Section 1.1 of Appendix 3A "Services Performance Objectives and Penalties" of Schedule 3, accordingly.

2.9 Measurement and Verification Plan: Energy Savings

Within sixty (60) days of the Commencement Date, CONTRACTOR shall provide CLIENT with a written Measurement and Verification Plan (M&V Plan), which shall be based on the International Performance Measurement and Verification Protocol (IPMVP). The M&V Plan shall provide the CLIENT with an accurate assessment of Energy Savings for an Annual Period and identify any Savings Excess or Savings Shortfall for the corresponding Annual Period in accordance Performance Assurance Reconciliation of Appendix 3A of Schedule 3 below.

ARTICLE 3: TECHNICAL SCOPE OF WORKS

The technical Scope of Works is detailed in the Implementation Plan.

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ARTICLE 4: TECHNICAL SPECIFICATIONS AND DRAWINGS

The Works shall be performed in accordance with the technical specifications and drawing set forth in the Implementation Plan.

APPENDIX 2A TO SCHEDULE 2 - Works Performance Objectives and Penalties

The Works Performance Objectives and Penalties are set forth below. Section 1 details the Key Performance Indicators (KPIs) that will be measured and evaluated during the Works Phase and serve as CONTRACTOR's performance metrics for the Works Phase. Section 1 details each KPI that will be measured and provides the respective formula used during the Agreement to measure the Works KPIs. Section 2, below, provides a quick reference table that details the Works KPIs and commitments. Section 3, below, depicts the penalties calculations applied for each KPI should CONTRACTOR not satisfy its respective commitments.

1. Works Phase Commitments

1.1 Starting Date of Works (Ksd)

Contract start date will commence when Dalkia receives the Notice to Proceed from the City of Santa Fe.

1.2 Commissioning (Kc)

Within nine (9) months of the Commencement Date, CONTRACTOR commits to submitting the certificate of substantial completion for the Final Segment of the Works, pursuant to the Commissioning and Quality Assurance Plan.

1.3 Recycling/Disposal (Kr)

CONTRACTOR shall recycle or properly dispose of the Lamps, housing and miscellaneous electronics of the existing fixtures. CONTRACTOR commits to achieving a 90% recycling rate, which shall be measured in accordance with the below KPI formula (Kr). Per the below formula, one (1) Lamp and associated housing and one (1) miscellaneous electronics per street light shall equal one (1) set of materials for the terms of this KPI. This commitment will be measured at the completion of the Works Phase and be based on CONTRACTOR's disposal records.

$$K_r = \frac{R}{S}$$

With S = number of upgraded street lights
R = number of sets of materials recycled/property disposed

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2. KPI Table

Category	Sub-category	Designation	Commitment	Unit	Periodicity
Construction	Operation and Maintenance	Ksd - Starting date	Commence Operation and Maintenance of System on or before Commencement Date	Business Day	Once
	Construction	Kc - Commissioning	15 months after Commencement of Works Phase for the Final Segment of the Works	Month	Once
	Kr – Recycling/ Disposal rate	Kr - Recycling/ Disposal rate	90%	% of recycled/disposed sources	Once

3. Performance Penalties for Works Phase

3.1 General

Works Phase penalties shall be identified, documented and agreed to by CLIENT and CONTRACTOR at the respective status meetings. Upon receipt of CLIENT's penalty notification, CONTRACTOR shall have ten (10) days to notify CLIENT in writing whether the CONTRACTOR disputes any penalty. If CONTRACTOR disputes a penalty notification, then CONTRACTOR and CLIENT shall set a meeting within twenty (20) days to review the penalty claim. Notwithstanding the foregoing, the CONTRACTOR shall timely notify the CLIENT of any KPI penalties CONTRACTOR identifies.

Non-compliance with the Works Performance Objectives will result in the application of below penalties, except where the non-compliance was caused by, wholly or partially, a Supervening Event, or delays in the start of the Works or delays in installation or commissioning of Infrastructure, Smart City Instruments or Artistic Lighting that were caused by actions not attributable to CONTRACTOR.

The payments for penalties, if any, are the sole remedy of CLIENT under the Works Performance Objectives of this Schedule. Any penalties under the Works Performance Objectives shall be deducted from the Service Payments until satisfied.

3.2 Works Phase Penalties

If CONTRACTOR does not comply with its commitments set forth above for the respective KPIs, the following penalties shall apply:

Delay in starting the Works (Ksd) = \$ 1,000.00 per Business Day, until effective starting date.

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Delay in commissioning (Kc) =

- From 1 to 30 calendar days = 0.5 % of the non-commissioned Works Amount
- From 31 to 60 calendar days = 1 % of the non-commissioned Works Amount
- More than 61 calendar days = 2% of the non-commissioned Works Amount

The penalties for a delay in commissioning (Kc) are not cumulative. For example, the total penalty assessed for a delay in commissioning of 45 days would be 1 % of the Works Amount.

Recycling (Kr)

Penalties for noncompliance of the recycling rate (Kr) for the total amount of Lamps and miscellaneous electronics =

80 % ≤ Kr < 90 % = Penalties of \$ 3,000.00

70 % ≤ Kr < 80 % = Penalties of \$ 5,000.00

Kr < 70 % = Penalties of \$10,000.00

The penalties for a recycling (Kr) are not cumulative. For example, the total penalty assessed for a recycling rate of 75% would be \$5,000.00.

SCHEDULE 3: SCOPE OF SERVICES

Performance of Services after Acceptance ("Services Phase")

No later than the Acceptance Date of the Final Segment of the Works, or such other date agreed to in writing between the Parties, CONTRACTOR shall commence performance of the Services Phase. During the Services Phase, CONTRACTOR shall be responsible for ensuring the technical operation and maintenance of the System to achieve Energy Savings and Services objectives. CONTRACTOR shall also render such Smart City Instrument and Artistic Lighting services as described herein.

ARTICLE 1: SYSTEM ENERGY SAVINGS

The following sections of this Article 1 identify and detail the programs that serve to measure, reconcile and optimize Energy Savings.

1.1 Performance Guarantee: Performance Assurance Reconciliation

The Energy Savings commitments, specifically the Performance Guarantee as described in Article 5 in the Main Body of the Agreement (Performance Guarantee), shall be measured and reconciled annually pursuant Performance Assurance reconciliation process set forth in Section 1.1 and 1.2 of Appendix 3A "Services Performance Objectives and Penalties" of this Schedule. An Annual Performance Report will be issued upon completion of reconciliation detailing any Savings Shortfall or Saving Excess. The Contractor will provide a bond, letter of credit or other financial guarantee acceptable to the Client as a security for performance of this guarantee.

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1.2 Measurement and Verification of the Energy Savings

During the Services Phase, CONTRACTOR shall implement the M&V Plan to measure, verify and reconcile Annual Realized Savings as part of the Performance Assurance reconciliation. Annual Period measurement and verification results shall be detailed in the Annual Performance Report.

Commencing on the Acceptance Date of Final Segment of the Works, CONTRACTOR shall provide CLIENT with read-only access to real-time System measurement and verification data in CMMS used to measure, verify and reconcile Annual Realized Savings.

ARTICLE 2: SYSTEM OPERATION AND MAINTENANCE

The following sections of this Article 2 detail the scope of the System's Operations and Maintenance program that will be implemented during the Services Phase. The first two sections set forth the System's asset inventory and analysis program. The third and fourth sections set forth the maintenance and repair program for the System's assets and response measures instituted during emergencies. The fifth, sixth and seventh sections depict the monitoring program for the System: CMMS, Operating Center. The final section details the recycling program for the System that will be instituted throughout the Services Phase.

2.1 Photometric Analysis

Each Annual Period CONTRACTOR shall randomly measure 1% of the System's Infrastructure to assess the System's lighting performance compliance with the IESNA Guide for Photometric Measurement of Roadway Lighting Installations. The results of the photometric analysis will be included in the Annual Performance Report and will be the basis for the KPI commitments for lighting performance (Kip).

2.2 Inventory of the assets

Throughout the Services Phase, CONTRACTOR shall maintain a continuous inventory of the System's assets in CMMS. CONTRACTOR shall deliver to CLIENT an audit report of the inventory for the System in each Annual Performance Report. The inventory report shall include:

1. A summary description of the System; and
2. A summary of the condition of System and its conformity to the applicable standards and procedures established in the Schedule 2 (Scope of Works).

2.3 Maintenance and Repairs

CONTRACTOR shall operate and maintain the System's lighting performance and malfunctions in accordance with below provisions and the response times and monitoring commitments defined in Appendix 3A, "Services Performance Objectives and Penalties" to this Schedule.

The Operation and Maintenance of the System is split into two categories:

- Scheduled and Unscheduled Maintenance pertains to CONTRACTOR's proactive maintenance and/or restoration of the Infrastructure to its proper functioning status.
- Repair(s) pertains to CONTRACTOR's repairs rendered necessary by the history of the System (including but not limited to repair and replacement of Non-Upgraded System Assets) and/or unforeseen events (including, but not limited to, abnormal use, vandalism and accidents).

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2.3.1 Scheduled and Unscheduled Maintenance

Scheduled Maintenance, CONTRACTOR's Scheduled Maintenance program is designed to optimize the lighting performance and reduce the outage rate through proactive monitoring of the System. As part of its Scheduled Maintenance program, CONTRACTOR shall perform preventative maintenance on the System as set forth below.

- Complete audit of the assets at the beginning of Services Phase to identify general asset conditions for preventive maintenance planning.
- Cleaning of the fixtures as needed.
- Use of the CMMS and other advanced tools for predicting issues, scheduling preventive maintenance, and maintaining asset inventory and stock management.

Unscheduled Maintenance. Unscheduled Maintenance refers to CONTRACTOR's obligations to maintenance and repair any Infrastructure outages and malfunctions that are caused by Normal Wear and Tear of the Infrastructure or caused by defective Infrastructure. Unscheduled Maintenance will also include outages caused by Normal Wear and Tear to System assets that have been upgraded in accordance with Section 2.3.2 below. Unscheduled Maintenance does not include repairing outages caused by deterioration (i.e. abnormal wear or aging), accidents, acts of vandalism or acts of god.

All Scheduled Maintenance and Unscheduled Maintenance activities are covered under the monthly Services Payment amounts during the Service Phase.

2.3.2 Repairs

CONTRACTOR shall make the necessary Repairs for System outages, System malfunctions and damages to the System that are caused by the Normal Wear and Tear of Non-Upgraded System Assets or caused by deterioration (i.e. abnormal wear or aging), accidents, acts of vandalism or acts of God.

The cost of the Repairs made to the System shall be based on the list of Unit Prices for the category "Current Maintenance", as set forth in the Implementation Plan. CONTRACTOR shall submit to CLIENT, for written approval, a work order that includes the cost provisions of each Repair within ten (10) days of the reported outage, malfunction or damage. In the absence of written approval from CLIENT to perform the Repairs within fifteen (15) Business Days following receipt of CONTRACTOR's costs provisions and work order, all related KPIs and their associated penalties shall be temporarily suspended and unenforceable and CONTRACTOR shall not be obligated to make any such Repairs until receipt of CLIENT written authorization.

Any costs for Repairs shall be separately billed or surcharged and paid by CLIENT. If the CLIENT lacks other available funds to pay for the Repairs above the Damage Amount, CONTRACTOR shall not be obligated to make any such Repairs and all related KPIs and their associated penalties shall be temporarily suspended and unenforceable until such other funds are made available.

CLIENT acknowledges that it shall receive and take title to any repaired or replaced parts of the System described under this Section upon completion of installation, inspection and acceptance.

2.3.3 Incident Report

In cases of System damage, outage or malfunction caused by a third party or act of God, CONTRACTOR shall administratively manage the matter as follows.

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Once the damage, outage or malfunction is observed or reported, CONTRACTOR shall:

- secure the concerned part of the System;
- make reasonable efforts to identify the third party at fault, if any;
- make reasonable efforts to collect information and document the incident (driver information, contact information, police report number, etc.);
- assist, if applicable, with assessment activities.

CONTRACTOR shall generate a report of each incident and provide it to CLIENT.

2.4 Emergency Response

As part of the Services Payment, CONTRACTOR shall maintain on-call field personnel who are operational 24 hours per day, 365 days per year. On-call technicians shall have the authority to take initiatives and make decisions in emergency situations. On-call technicians shall have all necessary tools and plans (keys, operating diagrams, city on-call numbers, etc.) at their disposal to make the conditions safe and/or re-establish the System elements within the response times defined in Appendix 3A, "Services Performance Objectives and Penalties" to this Schedule.

Emergency response scenarios include:

- Those caused by outside influences, presenting an immediate danger to the public, such as a vehicle striking a pole or downed wires;
- Those caused by faulty System elements, such as a faulty cable or bad splice causing a mass outage; and
- Those that would not normally be deemed an emergency but for extenuating circumstances, such as a "light out" in an already under-lit area or a missing base door on a pole in close proximity to a school or day care center.

In the event of the first type of emergency, such as a pole down, CONTRACTOR shall secure the area, the extent of the damage shall be surveyed, and a report shall be generated recommending the next course of action. The appropriate action will then be placed on the schedule for Repairs.

In the event of the second type of emergency, such as faulty System equipment or infrastructure, CONTRACTOR shall visit the site immediately to do a visual inspection of the area. His/her observations shall then be relayed to the appropriate teams in order to expedite the Repair or Unscheduled Maintenance. In the event of the third type of emergency, a CONTRACTOR shall direct a team to the site to affect immediate Repairs or Unscheduled Maintenance actions.

In each case, if the damage is due to a third party or act of God, CONTRACTOR shall take pictures and generate a report that includes all of the pertinent information (driver information, contact information, police report number, etc.) in accordance with Section 2.3.3 of this Schedule. The report shall be sent to CLIENT.

2.5 Centralized Maintenance Management Software (CMMS)

During the Services Phase, CONTRACTOR will use its Computerized Maintenance Management System ("CMMS"), to monitor the entire scope of the System and Artistic Lighting installations. CLIENT shall have access to CMMS database, which shall be updated on a real-time basis.

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CMMS shall provide the following:

- The System asset data (database, cartography, condition of the System assets, photo, description of Artistic Lighting sites)
- The current maintenance data (tickets, work orders, feedback, response time)
- The rate energy consumptions data (wattage, control)

The CONTRACTOR will provide Client access to the CMMS records during the contract and upon contract termination will coordinate with CLIENT to allow continued access to the system or the data in the system.

2.5.1 CMMS: Daily Work Schedules

Throughout the Services Phase, CONTRACTOR shall implement CMMS in order to organize each team's daily work. CONTRACTOR shall implement the following process to prioritize and execute work schedules in response to outage reports:

- Step 1: An outage is reported by any source (Operating Center, CLIENT, etc.);
- Step 2: CONTRACTOR's management team prioritizes the reported outage and distributes it to the appropriate maintenance team using CMMS's advanced prioritization functionalities;
- Step 3: CMMS electronically sends work order to maintenance team;
- Step 4: The maintenance team completes repair / maintenance work and submits completion report to the central CMMS server;
- Step 5: The management team checks the job and automatically updates the CMMS asset database.

All actions shall be recorded and stored in the CMMS, establishing a record of maintenance for each asset and a detailed history of each work order.

2.5.2 CMMS: Performance Monitoring

During the Services Phase, CONTRACTOR will use CMMS to measure the timeline of the maintenance and repairs as well as the performance of the System. All System changes, including poles and fixture types and/or LED kits, shall be updated in CMMS on a regular basis to reflect the new field conditions.

2.6 Operating Center

CONTRACTOR shall continue to operate throughout the Services Phase the Operating Center established in the Works Phase.

Responsibilities of Operating Center personnel shall continue to include:

- Streetlight monitoring
- Emergency response
- Repairs and upgrades monitoring
- Communication and reporting between the field teams, headquarters, and the CLIENT

2.7 Waste Management and Recycling

Recycling management processes shall be integrated throughout CONTRACTOR's day- to-day operation (ISO 9001-14001). CONTRACTOR shall procure and/or maintain the appropriate recycling and disposal facilities.

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ARTICLE 3: SERVICES PHASE SYSTEM REPORTS

3.1 Monthly Reports

CONTRACTOR shall provide a monthly report of the operations and maintenance activities for the preceding month, including the KPI values, within seven (7) Business Days after the conclusion of each calendar month.

3.2 System Annual Performance Report

CONTRACTOR shall provide an Annual Performance Report of the System's operating results for each Annual Period, which shall detail the achieved Energy Savings and the Services objectives of the System. The Annual Performance Report will be provided to CLIENT for review and acceptance within thirty (30) days after the close of each Annual Period.

ARTICLE 4: SMART CITY INSTRUMENTS AND ARTISTIC LIGHTING OPERATION AND MAINTENANCE

CONTRACTOR shall maintain the Artistic Lighting Installations and Smart City Instruments in a fully operable and functional condition throughout the Services Phase. Any repairs or replacement of Artistic Lighting installations and Smart City Instruments shall be authorized in writing by the CLIENT and separately billed or surcharged to CLIENT on a time and materials basis and paid by CLIENT. If the CLIENT does not have other available funds to pay for the repair or replacement of Artistic Lighting installation and Smart City Instruments, CONTRACTOR shall not be obligated to make such repairs and all related KPIs and their associated penalties shall be temporarily suspended and unenforceable until such other funds are made available.

Any maintenance activities performed on the Artistic Lighting installations and Smart City Instruments shall be included in the monthly report described above.

ARTICLE 5: SERVICES PHASE PENALTIES, SITE VISITS AND STATUS MEETINGS

5.1 Penalties

In fulfilling its obligations as detailed hereunder, CONTRACTOR shall be subject to the Services Performance Objectives, as defined in Appendix 3A of this Schedule, "Services Performance Objectives and Penalties ". In the interest of both Parties, penalty metrics based on performance indicators are established in Appendix 3A of this Schedule as basis to measure the Services Performance Objectives.

Non-compliance with the Services Performance Objectives shall result in the application of penalties, as defined in the Appendix 3A of this Schedule, except where the non-compliance was caused by, wholly or partially, a Supervening Event or accidents, acts of vandalism or malfunction of the System due to actions not attributable to CONTRACTOR.

The penalties, if any, are the sole remedy of the CLIENT under the Services Performance Objectives of this Schedule, except as provided for in Section 4.1.1 (e) of Appendix 3A.

5.2 Site Visits

Upon request and within a reasonable timeframe, the CLIENT Representative or his designee will be afforded the opportunity to visit and inspect the System during the Services Phase. A report summarizing the inspection will be provided to the CLIENT by the CONTRACTOR following the CLIENT'S inspection.

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5.3 Status Meetings

Status meetings during the Services Phase will be held on a bi-weekly basis, and may be attended by all persons designated by the CLIENT and the CONTRACTOR. Meeting times and frequency will be modified upon CONTRACTOR or CLIENT mutual agreement. CONTRACTOR shall record and provide the CLIENT with the meeting minutes for each meeting.

ARTICLE 6: TECHNICAL MONITORING COMMITTEE; TECHNICAL ADVANCEMENTS

6.1 Technical Monitoring Committee

The CONTRACTOR commits to ensure ongoing technical monitoring in order to allow the CLIENT to benefit from Technological Advancements and to remain informed about changes in standards and regulations.

A Technical Watch Committee shall be created for this purpose. The Technical Watch Committee shall consist of an equal number of representatives from the CLIENT and from the CONTRACTOR and shall meet at the end of each Annual Period. The agenda of the meetings shall be established by the CONTRACTOR with the CLIENT's input. The purpose of these meetings shall be to inform the CLIENT about:

- potential Technological Advancements and their impact on the execution of the Agreement; and
- potential changes in any standards and regulations and about their impact on the performance of the Agreement.

6.2 Installation of Technological Advancements

CONTRACTOR shall develop a technical and financial analysis for any Technological Advancements the CLIENT requests implemented. The technical and financial analysis shall include a draft implementation and cost schedule for the installation of the Technological Advancements, as well as identify impacts the installation will have on the operating and maintenance costs of the System. Any installation of Technological Advancements shall be agreed to in writing by the Parties. The cost of the installation of any Technological Advancements will be entirely borne by the CLIENT.

The installation of Technological Advancements may have a positive or negative impact on Energy Savings and the costs of Services. Any adjustments whether in the form of savings or increased costs will be reflected in the Services Payments. If the installation of Technological Advancements causes a Material Change in the System, then the Performance Guarantee shall be adjusted in accordance with Article 5 of the Main Body of this Agreement.

ARTICLE 7: ADDITIONAL STREET LIGHTS, ARTISTIC LIGHTING AND SMART CITY PROJECTS

7.1 Addition of Street Lights to System

Upon mutual written agreement executed by both the Parties, CLIENT may request and CONTRACTOR will install and/or provide Services for additional street lights that were not part of the System on the Acceptance Date. CLIENT will provide official documents detailing the number and the nature of the additional street lights, and all other related documentation and drawings. The remuneration for the construction and installation of any additional street lights shall be agreed to by the Parties and shall be separately billed or surcharged to the CLIENT. Adjustments to the Service Payments for Services rendered for any additional street lights will be made in accordance with Section 1.1.2 of Schedule 4.

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Any additional street lights integrated into the System after the Acceptance Date will be considered a Material Change to the System. The Parties shall modify the Performance Baseline and Services Performance Measures Objectives to account for the Material Change without resulting in a Savings Shortfall or penalties.

7.2 Additional Artistic Lighting and Smart City Projects

Upon mutual written agreement that is executed by both Parties, CLIENT and CONTRACTOR may modify this Agreement for the provision of additional artistic lighting projects and/or smart city installations to be provided during the Services Phase. The modification shall specify the agreed upon terms and conditions for any additional artistic lighting projects and/or smart city installations.

7.3 Additional Funding Sources

By execution of this Agreement, the CLIENT, without any further approvals needed, has been duly authorized by its respective authorities to use (but is not required to use) additional savings and additional funding sources derived herein and from ancillary engagements to fund the construction and maintenance of additional street lights, artistic lighting and smart city projects.

APPENDIX 3A TO SCHEDULE 3 - Services Performance Objectives and Penalties

The Services Performance Objectives and Penalties for the System are detailed below. Sections 1 and 2 describe the System's Key Performance Indicators (KPIs) that will be measured and evaluated during the Services Phase and serve as CONTRACTOR's performance metrics for the System during the Services Phase. Sections 1 and 2 below describe each KPI that will be measured and provide the respective formula used during the Agreement to calculate the KPIs. Section 3, below, details CONTRACTOR's commitments for each KPI, which will be measured in accordance with Section 1 and 2. Section 4, below, depicts the penalties applied to each commitment.

The below KPIs apply only to the System. The below KPIs do not apply to the Artistic Lighting installations or Smart City Instruments.

1. Energy Savings: System Performance Guarantee KPI

1.1 System Guaranteed Annual Savings (Ke)

Guaranteed Annual Savings reflects the annual savings in kWh that CONTRACTOR commits to under the Performance Guarantee. Guaranteed Annual Savings is the difference in kWh between the System Baseline and the Performance Baseline over an Annual Period. CONTRACTOR commits to achieving the Guaranteed Annual Savings during the Performance Guarantee Period. The Guaranteed Annual Savings commitment is reconciled through the calculation of the Annual Realized Savings for an Annual Period and comparing that result to the Guaranteed Annual Savings for the corresponding Annual Period, pursuant Section 1.2 of this Appendix 3A, below.

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In accordance with the M&V Plan, CONTRACTOR shall calculate Annual Realized Savings by taking the difference in kWh between the actual energy consumption of the System and the System Baseline for the respective Annual Period. The commitment in terms of Guaranteed Annual Savings is set forth below:

The KPI associated to the Guaranteed Annual Savings (K_e) is calculated as follow:

$$K_e = K_{sb} - K_{pb}$$

Where:

$K_e = 2,234,042$ kWh per Annual Period
 $K_{sb} = 3,955,572$ kWh per Annual Period
 $K_{pb} = 1,721,530$ kWh per Annual Period

And

$$K_{sb} = K_{sb \text{ metered}} + K_{sb \text{ unmetered}}$$

Where:

K_{sb} = System Baseline: Total consumption in kWh for an Annual Period prior to Works, the sum of metered and unmetered lights.

$K_{sb \text{ metered}}$ = Total measured kWh usage of metered street lights in the System Baseline for an Annual Period, as measured and billed by Public Service Company of New Mexico

$K_{sb \text{ unmetered}}$ = Total expected kWh usage of unmetered street lights in the System Baseline for an Annual period, as defined by the corresponding "Monthly kWh Usage" (multiplied by 12) in the Implementation Plan for each streetlight in the inventory.

And

$$K_{pb} = K_{pb \text{ metered}} + K_{pb \text{ unmetered}}$$

Where:

K_{pb} = Performance Baseline: Total consumption in kWh for Annual Period after completion of Works, the sum of metered and unmetered lights.

$K_{pb \text{ metered}}$ = Total measured kWh usage of metered street lights in Performance Baseline for an Annual Period, as measured and billed by Public Service Company of New Mexico.

$K_{pb \text{ unmetered}}$ = Total expected kWh usage of unmetered street lights in the Performance Baseline for an Annual period, as defined by the corresponding "Monthly kWh Usage" (multiplied by 12) defined in PNM Rate 20 for each streetlight in the to-date CMMS defined inventory.

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1.2 Performance Assurance Reconciliation

A Performance Guarantee Period savings reconciliation will be performed at the end of each Annual Period as follows unless otherwise agreed:

- a. At the conclusion of each Annual Period, CONTRACTOR will calculate the System's Annual Realized Savings and compare the result to the Guaranteed Annual Savings for the corresponding Annual Period.
 - I. Should the Annual Realized Savings be greater than the Guaranteed Annual Savings for the corresponding Annual Period, a Savings Excess shall be recorded accordingly and be available for other work under this agreement.
 - II. Should the Annual Realized Savings be less than the Guaranteed Annual Savings, a Savings Shortfall shall be recorded and paid in accordance with the terms below and Section 4.1.2 of this Appendix 3A.
- b. Within sixty (60) days following issuance and acceptance by CLIENT of the Annual Performance Report for the corresponding Annual Period, CONTRACTOR shall pay to CLIENT the Savings Shortfall, if any, identified in the Annual Performance Report and shall have fulfilled its obligations under the Performance Guarantee for the applicable Annual Period and the Shortfall Payment being then equal to the Guaranteed Annual Savings for the applicable Annual Period.
- c. The payments and credits based on Savings Shortfalls, if any, are the sole remedy of CLIENT under this Performance Guarantee; provided, however, if the Penalties Cap is exceeded, CLIENT shall have the right to terminate the Agreement pursuant to Section 9.1 (b) (1) of the Main Body of the Agreement.

2. System Operations and Maintenance KPIs

CONTRACTOR will operate and maintain the System throughout the Services Phase of the Agreement, subject to the penalties for the below KPIs.

2.1 Accuracy of CMMS Database (Km)

During Services Phase, CONTRACTOR will implement its CMMS software to monitor the assets. Through the software, CLIENT will be able to monitor CONTRACTOR's performance objectives (KPIs) and CONTRACTOR'S contractual commitments. The KPI for the accuracy of the CMMS database reflects CONTRACTOR's commitment to providing accurate and timely data inputs for System monitoring. CONTRACTOR commits to a 97% accuracy rate for a given month. The following formula shall be used to calculate the Accuracy of CMMS Database (Km):

$$Km = 1 - \frac{D}{S}$$

With:

D =	Number of major discrepancies in CMMS CLIENT has notified CONTRACTOR of during the respective month (except additional assets or changes CLIENT has not communicated to CONTRACTOR)
S =	Number of street lights existing in the inventory during the month

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2.2 Outage rate (Ko)

CONTRACTOR will measure the number of street light outages that occur each month. This KPI measures the Scheduled Maintenance program's efficiency in proactively servicing the System to prevent outages.

CONTRACTOR commits to a less than 2% outage rate for existing inventory for the respective month. The KPI associated with the monthly outage rate is calculated as follows:

$$Ko = \frac{P}{S}$$

With:

P =	Number of outages during the month
S =	Number of street lights existing in the inventory during the month

Notwithstanding the foregoing, outages caused by CLIENT or third-party actions, whether construction or otherwise, accidents, vandalism, or CLIENT's decision to turnoff or shutdown the System or any part thereof for any reason will not be included in the outage rate measurement.

2.3 Availability of the Assets (Ka)

The KPI for the availability of the assets (Ka) measures the average percentage of time that the System is operating on a monthly basis. For this KPI, CONTRACTOR reviews each street light individually to calculate the number of days that each street light is operating and functioning within the respective month. The KPI associated with the monthly availability of the assets is calculated as follow:

$$Ka = \frac{\sum_i^N \left(\frac{d_i}{D_m} \right)}{N}$$

With:

N =	The number of fixtures existing in the inventory for the month (i.e. the total number of street lights less accepted or scheduled outages)
D _m =	Days in the given month
d _i =	Days that the given fixture (i) was out during the month
Ka =	The average amount of time all fixtures were out each month (calculated on an individual basis)

The operational or functional status of streetlight for the terms of calculating this KPI does not include malfunctions or operational issues caused by CLIENT or third-party actions, whether construction or otherwise, accidents, vandalism, or CLIENT'S decision to turnoff or shutdown the System or any part thereof for any reason.

CONTRACTOR commits to Ka meets or exceeds 98%.

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2.4 Self-detection (Ks)

Self-detection of outages reflects CONTRACTOR's commitment to proactively monitor the System. Through its self-detection program, CONTRACTOR monitors the System in order to proactively locate and repair outages. CONTRACTOR commits that it will self-detect at least 75% of the outages inputted into CMMS in a given month. The KPI associated for the monthly self-detection rate is calculated as follow:

$$Ks = \frac{NOC}{P}$$

With:

NOC =	Number of outages CONTRACTOR detects in a month
P =	Total number of inputted outages in a month (which includes CLIENT's and third party reported detections)

2.5 Emergency Response time / Delay of Unscheduled Maintenance or Repairs:

Under the below subsections, CONTRACTOR commits to intervene in cases of outages, malfunctions or damages to the System in order to:

- Secure the installation in emergencies, if necessary
- Proceed with the repairs within the response times

Notwithstanding anything herein, if CONTRACTOR is required to obtain approval from CLIENT or permit for maintenance of traffic (MOT) or if the malfunction or outage is inaccessible due to no fault of CONTRACTOR or if materials need to be procured, CONTRACTOR shall diligently work to obtain the requisite approval, permits, access and/or materials and shall be allotted a reasonable amount additional time to meet the KPI commitments set forth below.

2.5.1 Emergency Response time (Kt)

In cases of System outage, malfunction or damage that are a public safety concern as set forth in Section 2.4 of Schedule 3, CONTRACTOR commits to respond to the outage, malfunction or damage within three (3) hours of the detection or notice. CONTRACTOR commits to be at the location of the outage, malfunction or damage and to commence the necessary actions to secure the site within the stated timeframe. The KPI associated with the emergency response time (Kt) is calculated as follow:

- From the detection of the street light outage or damage that is a public safety concern by CONTRACTOR or receipt of an email/fax/call from authorized person(s) (CLIENT, police, firemen, or other persons designated by CLIENT and CONTRACTOR is on notice of)
- And shall continue until CONTRACTOR is onsite to secure the installation.

This KPI is calculated only for the cases where the installation must be secured in CONTRACTOR's professional judgment. If simultaneous street light outages or damages occur that are of a public safety concern, Kt penalty metric shall only apply to the first received report. CONTRACTOR shall respond to subsequent reported emergencies in order of priority and/or receipt.

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2.5.2 Delay of Unscheduled Maintenance or Repairs (Kd1, Kd2, Kd3)

Kd₁ and Kd₂ In cases of street light outages caused by or related to the Equipment malfunction only, CONTRACTOR commits to repair the outage within the timeframes described below for Kd₁ and Kd₂. The metrics used to determine compliance with delay of Unscheduled Maintenance or Repairs for Kd₁ and Kd₂ shall be calculated as follows:

- From the detection of the Equipment malfunction by CONTRACTOR or receipt of an email/fax/call from authorized person(s) (CLIENT or other persons designated by the CLIENT and CONTRACTOR is on notice of)
- And shall continue until CONTRACTOR repairs outage.

Commitments for the Delay of Unscheduled Maintenance or Repairs for Kd₁ and Kd₂ are as follows:

- The KPI for Kd₁ shall apply for single street light outage or malfunction. CONTRACTOR commits to repair a single outage or malfunction within 5 business days of detection or notice.
- The KPI for Kd₂ shall apply when more than three (3) street lights in a row are out or malfunctioning. CONTRACTOR commits to repair such outages within 2 business days of detection or notice.

Kd₃ In cases of street light outages caused by or related to damage to the poles, arms or foundations, CONTRACTOR commits to repair the outage within the timeframes described below for Kd₃. The metrics used to determine compliance with delay of Unscheduled Maintenance or Repairs commitments for Kd₃ shall be calculated as follows:

- From the detection of the outage by the CONTRACTOR or receipt of an email/fax/call from authorized person(s) (CLIENT or other persons designated by the CLIENT and CONTRACTOR is on notice of)
- And shall continue until CONTRACTOR repairs outage.

Commitments for the Delay of Unscheduled Maintenance or Repairs for Kd₃ is as follows:

- For KPI for Kd₃, CONTRACTOR commits to repair the outage within 6 weeks.

2.6 Monthly Reports (Kq)

CONTRACTOR shall provide a monthly report of its operations and maintenance activities for the preceding month, including the KPI values, within seven (7) Business Days after the conclusion of each calendar month.

2.7 Lighting Performance (Kip)

During the Services Phase, CONTRACTOR shall randomly measure 1 % System's Infrastructure each Annual Period to assess the System's lighting performance compliance with the IESNA Guide for Photometric Measurement of Roadway Lighting Installations. CONTRACTOR will measure the lighting performance of the sampled lights to determine compliance with the illuminance standards set forth in the IESNA Guide for Photometric Measurement of Roadway Lighting Installations for the respective roadway.

CONTRACTOR commits to achieving 100% compliance for lighting performance in the sampled street lights, considering the space-to-mounting ratio is between 3 and 5. Calculations to determine compliance with lighting performance commitment shall be based on the below formula:

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The KPI associated with the lighting performance is calculated as follow:

Considering: $3 \leq \frac{S}{MH} \leq 5$

$$KPI = \frac{I + (E_{avg} / E_{min})}{I_0 + (E_{avg0} / E_{min0})}$$

With:

S/MH =	Spacing-to-mounting height ratio, ratio of the distance between luminaires centers, along the center line of the street, to the mounting height above the roadway
I =	Average measured Illuminance (Lux)
I ₀ =	IES reference value for the considered type of configuration (see tab below)
E _{avg} =	Minimum maintained average horizontal illuminance at pavement
E _{avg0} =	IES reference value for the minimum maintained average horizontal illuminance at pavement (see tab below)
E _{min} =	Minimum maintained horizontal illuminance at pavement
E _{min0} =	IES reference value for the minimum maintained horizontal illuminance at pavement (see tab below)

Road Type	Average Illuminance Level	Eavg0/ Emin0
Urban Local	7	6
Collector	9	4
Major	13	3
Freeway B	6	3

As budget allows, Client will prioritize addition of light fixtures. If directed, Contractor will install additional fixtures pursuant to Schedule 3 Article 7.1.

2.8 Average Installed Wattage (Kw)

The average installed wattage (Kw) reflects the total wattage of the System upon completion of the Works. Maintenance of the averaged installed wattage at a consistent rate throughout Agreement plays an important role in maintaining Energy Savings and lighting performance. The average installed wattage metric reflects CONTRACTOR's commitment to repairing and/or replacing street lights with infrastructure that is consistent with the System's wattage output after Acceptance. CONTRACTOR's commitment for average installed wattage (Kw) is 96 Watts which shall be measured in accordance with the below KPI formula Kw. The KPI Kw shall be calculated on an annual basis and included in the Annual Performance Report.

$$Kw = \frac{W}{S}$$

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With:

W =	Total Wattage after Acceptance of Works
S =	Number of street lights taken into account during the Annual Period

3. KPI Table

Category	Sub-Category	Designation	Commitment	Unit	Periodicity
Energy	Consumptions	Ke - Guaranteed Annual Savings	2,234,042	kWh	Each Annual Period
Operations & Maintenance	Operations & Maintenance	Km - Accuracy of CMMS database	97%	% of assets	Monthly
	Maintenance	Ko - Outage rate	Less than 2%	% of assets	Monthly
	Maintenance	Ka - Availability of the assets	More than 98%	% of assets	Monthly
	Operations	Ks - Self-detection	More than 75%	% of tickets	Monthly
	Operations	Kt - Emergency Response time	3 hours	Hour	Per Occurrence
	Operations	Kd ₁ - Delay of Unscheduled Maintenance or Repairs- single SL*	5 business days	Business Day	Per Occurrence
	Operations	Kd ₂ - Delay of Unscheduled Maintenance or Repairs - more than 3 SL* in a row	2 business days	Business Day	Per Occurrence
	Operations	Kd ₃ - Delay of Unscheduled Maintenance or Repairs - Poles, Arms and Foundation	6 Weeks	Business Week	Per Occurrence
	Operations	Kq - Monthly Report	one report	Report	Monthly
	Operations	Kip - Lighting Performance	100 %	% of IES standard values	Each Annual Period
Operations	Kw - Average Installed Wattage	99 W	W	Each Annual Period	

*SL = Street Light

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4. Performance Penalties

4.1 Penalties

4.1.1 General Conditions

- a. CMMS. CMMS shall be platform used to verify compliance with Operation and Maintenance commitments for the penalties hereunder (except for the KPI for lighting performance which will be reconciled in a separate report).
- b. Savings Shortfalls. Any Saving Shortfalls will be reconciled on an annual basis in accordance with the terms and conditions of Section 1.1 and 1.2 of this Appendix 3A.
- c. O&M Penalties: Notice. If CLIENT observes any delay, lack of performance or other failures of CONTRACTOR to achieve its KPI commitments which are not then properly documented and reflected in CMMS or in the lighting performance report, CLIENT shall notify CONTRACTOR at the next status meeting of the observed occurrence or deficiency. Upon receipt of the notification, CONTRACTOR shall have ten (10) Business Days to notify CLIENT in writing whether CONTRACTOR disputes CLIENT's claim. If CONTRACTOR disputes the penalty notification, then CONTRACTOR and CLIENT shall set a meeting within twenty (20) days to review CLIENT's penalty claim. If CONTRACTOR does not dispute the claim, CONTRACTOR shall reduce the CLIENT's next monthly invoice by the appropriate penalty amount. Notwithstanding the foregoing, the CONTRACTOR shall timely notify the CLIENT of any KPI penalties CONTRACTOR identifies.
- d. Application of O&M Penalties. The penalties apply on the monthly Services Payments only. No penalties will apply on Works Payments.
- e. Service Payment Setoff. If CONTRACTOR incurs monthly KPI penalties that amount to more than seventy-five percent (75%) of the amount of the monthly Service Payment in three (3) consecutive months, then CLIENT, without being in default hereunder, has the right to withhold or setoff the next month's Service Payment and every months' Service Payment thereafter until CONTRACTOR's monthly penalties for a subsequent month are less than seventy-five percent (75%) of the amount for that subsequent month's Services Payment amount. CLIENT shall be obligated to pay the CONTRACTOR any setoff or withheld Service Payment amount, less any penalties, upon a subsequent month's penalty amount being less than seventy-five percent (75%) of that month's Service Payment amount.
- f. Penalties Cap. The Parties agree that cumulative amount of all Savings Shortfall and O&M penalty payments made to CLIENT or deducted from the Services Payments under the terms of this Agreement shall not exceed \$100,000.00 ("Penalties Cap"). CONTRACTOR shall have no obligation to pay or deduct any penalties or shortfall amounts above the Penalties Cap. Notwithstanding Section 9.1 (b) (1) (i) in the Main Body of the Agreement, CLIENT shall have the right to terminate the Agreement pursuant to Section 9.1 (b) (1) in the Main Body of the Agreement, subject to the applicable Termination Payment, if cumulative amount of all Savings Shortfall and O&M penalty payments equals or exceeds Penalties Cap.

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- g. Supervening Event; CLIENT Breach of Obligation. All penalties stated herein under the Services Phase and the enforcement thereof shall be suspended during any Supervening Event or during any duration CLIENT is in breach of its obligations under this Agreement. The penalties will not be reinstated until the cause of the event has been resolved and the System has been restored to its pre-event condition and/or CLIENT has cured any breach.

4.1.2 Energy: Savings Shortfall

If CONTRACTOR doesn't reach its commitments for an Annual Period for K_e , then a Savings Shortfall occurs and CONTRACTOR will reimburse the balance to CLIENT as described below and in accordance with the "Performance Assurance Reconciliation" described in Section 1 of this Appendix 3A.

KPI	KPI Value	Penalty Value (PE)
Guaranteed Annual Savings (K_e)	$K_eY \geq K_e$	-1.0 x AES

With:

K_e =	Contractual reference (see Section 3 above, KPI) (Guaranteed Annual Savings)
K_eY =	Real value of the considered Annual Period (Annual Realized Savings)
AES =	Difference between the expected and real kWh ($K_eY - K_e$) consumed multiplied by the Constant Energy Rate.

4.1.3 Operations and Maintenance

For each following KPI below, if CONTRACTOR fails to reach its commitments, the associated coefficient or amount will be applied to or deducted from the next month's Services Payment.

Monthly Measured O&M KPIs

KPI	KPI's Value	Penalties Coefficient (P_m)
Accuracy of CMMS Database (K_m)	$95\% \leq K_mM < 99\%$	0.99
	$90\% \leq K_mM < 95\%$	0.95
	$80\% \leq K_mM < 90\%$	0.90
	$70\% \leq K_mM < 80\%$	0.75
	$K_mM < 70\%$	0.60
KPI	KPI's Value	Penalties Coefficient (P_o)
Outage Rate (K_o)	$4\% \geq K_oM > 2\%$	0.97
	$6\% \geq K_oM > 4\%$	0.90
	$8\% \geq K_oM > 6\%$	0.75
	$K_oM > 8\%$	0.60
KPI	KPI's Value	Penalties Coefficient (P_a)
Availability of Assets (K_a)	$99\% \leq K_aM < 99.5\%$	0.97
	$94\% \leq K_aM < 99\%$	0.90
	$90\% \leq K_aM < 94\%$	0.75
	$K_aM < 90\%$	0.60
KPI	KPI's Value	Penalties Coefficient (P_s)
Self-Detection (K_s)	$70\% \leq K_sM < 75\%$	0.99
	$60\% \leq K_sM < 70\%$	0.95
	$50\% \leq K_sM < 60\%$	0.80
	$K_sM < 50\%$	0.60

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With:

KmM =	Value of the considered month
Pm =	Penalties coefficient applied on the corresponding monthly Services Payment
KoM =	Value of the considered month
Po =	Penalties coefficient applied on the corresponding monthly Services Payment
KaM =	Value of the considered month
Pa =	Penalties coefficient applied on the corresponding monthly Services Payment
KsM =	Value of the considered month
Ps =	Penalties coefficient applied on the corresponding monthly Services Payment

- Emergency Response Time (Kt): If CONTRACTOR fails to meet the designated Response times, Kt, in accordance with the terms of the Agreement, then CONTRACTOR shall be penalized \$100.00 per hour for every hour CONTRACTOR's response time exceeds the established metric.
- Delay of Unscheduled Maintenance or Repairs--single street light (Kd1): If CONTRACTOR fails to meet the designated Unscheduled Maintenance or Repairs times under Kd1, then CONTRACTOR shall be penalized \$100.00 per Business Day, until outage, malfunction or damage has been fixed.
- Delay of Unscheduled Maintenance or Repairs--more than 3 street lights in a row (Kd2): If CONTRACTOR fails to meet the designated Unscheduled Maintenance or Repairs times under Kd2 then CONTRACTOR shall be penalized \$20.00 per hour, until outage, malfunction or damage has been fixed.
- Delay of Unscheduled Maintenance or Repairs--Poles, Arms and foundations (Kd3): If CONTRACTOR fails to meet the designated Unscheduled Maintenance or Repairs times under Kd3 then CONTRACTOR shall be penalized \$100.00 per Business Day, until outage, malfunction or damage has been fixed.
- Monthly Report (Kq): If there is a delay in CONTRACTOR's submission the operation and maintenance monthly report, then CONTRACTOR shall be penalized \$15.00 per Business Day, until the delivery of the report.

Annually Measured O&M KP/s

CONTRACTOR shall measure Kip and Kw once each Annual Period. If CONTRACTOR fails to reach its commitments for Kip in an Annual Period, then a penalty coefficient will be applied as set forth below.

KPI	KPI's Value	Penalties Coefficient (Pip)
Lighting Performance (Kip)	$90\% \leq Kip_y < 100\%$	0.99**
	$80\% \leq Kip_y < 90\%$	0.95**
	$70\% \leq Kip_y < 80\%$	0.85**
	$60\% \leq Kip_y < 70\%$	0.75**
	$Kip_y < 60\%$	0.60**

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With:

K_{lp} =	Value of the considered Annual Period
P_{lp} =	Penalties coefficient applied on each corresponding monthly Services Payment thereafter until the Lighting Performance deficiency is corrected. **If the Lighting Performance deficiency is not related to CONTRACTOR's design or implementation of the Works (e.g. insufficient tree trimming, caused by third-party action, etc.), then the above penalty shall not apply. CONTRACTOR and CLIENT will jointly perform a new Lighting Performance measurement upon mitigation of deficiency.

If CONTRACTOR fails to reach its commitments for Kw in an Annual Period, then a penalty coefficient will be applied as described set forth below.

KPI	KPI's Value	Penalties Coefficient (Pw)
Average Installed Wattage (Kw)	$Kw < KwY < 1.01 \times Kw$	0.99
	$1.01 \times Kw < KwY \leq 1.03 \times Kw$	0.97
	$1.03 \times Kw < KwY \leq 1.05 \times Kw$	0.90
	$1.05 \times Kw < KwY \leq 1.10 \times Kw$	0.80
	$1.10 \times Kw < KwY$	0.60

With:

Kw =	Contractual reference (see Section 3 above, KPI)
KwY =	Real value of the considered Annual Period
Pw =	Incentive coefficient applied on the preceding Annual Period's Services amount

4.2 Incentives - deleted

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SCHEDULE 4: PAYMENT MECHANISM

1. Compensation

- a. The City shall pay to the Contractor in full payment for services satisfactorily performed as described below:

1. LED Street Light Conversion:

The City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work for the LED Street Light Conversion at the rate established by the Implementation Plan⁷) in an amount not to exceed Two Million Five Hundred Forty-Three Thousand One Hundred and Ninety-Five Dollars (\$2,543,195.00), excluding gross receipt tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (\$214,582.10) shall be paid by the City to the Contractor. **The total amount payable to the Contractor under this paragraph of this Agreement, including gross receipts tax and expenses, shall not exceed (\$2,757,777.10).** This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

2. Routine Street Light Maintenance:

The City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work for Routine Street Light Maintenance (As Detailed in the Implementation Plan "A-3") the amount of One Hundred Seventy-Nine Thousand Seventy-Four Dollars and Sixty Cents (\$179,074) per fiscal year excluding gross receipt tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement per fiscal year (\$15,109.42) shall be paid by the City to the Contractor. The amount due shall be paid monthly in twelve equal payments. **The total amount payable to the Contractor under this paragraph of this Agreement, including gross receipts tax and expenses, shall not exceed (\$194,184.02) per fiscal year.** This amount is based upon 3,499 street lights in the Santa Fe system. These amounts may be adjusted to account for current inflation rates based on the Consumer Price Index (CPI) as established by the Bureau of Economic Analysis (BEA) of the United States Department of Commerce or increase or decrease in street light numbers. Any adjustments can be performed administratively at the time a Purchase Order is opened and/or amended and does not necessitate amendment to this agreement.

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

Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. Payment shall be made by ACH. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

1.1 Price Adjustments to Service Payments: CPI

Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI) for the Santa Fe area. The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average (January through June 2017) and each January through June six month average thereafter. The percentage difference between those two CPI issues will be the price adjustment rate for the Services Payments, Unit Prices and other applicable pricing. The price adjustment rate shall be determined at the beginning of each Annual Period and applied thereafter.

1.2 Adjustment to Services Payments for Additional Street Lights

A fixed price of \$5.00 per additional street light (with smart control) per month will be applied on Services Payments for each additional streetlight receiving Services pursuant to Article 7 of Schedule 3. Section 1.1.1 above shall apply to any adjustments to Services Payments for Services rendered to additional street lights.

2. Non-recourse Limitation; Unconditional Payment Obligation.

CLIENT'S acceptance of Works and Acceptance of any Segment of the Works is non-recourse and final. After the Acceptance of each Segment of the Works, the obligations of CLIENT to make Works Payments under this Agreement for the accepted Segments of the Works and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason whatsoever.

3. Adjustments for Performance.

Penalties apply on the Services Payments only, in accordance with Schedule 2 and Schedule 3. Notwithstanding the foregoing, any Savings Shortfalls or Savings Excess will be accounted for in accordance with Appendix 3A to Schedule 3.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

4. Services Payment and Works Payment Schedule

Price: As consideration of CONTRACTOR's performance of the Works and the Services as described in Schedule 2 (Technical Scope and Works) and Schedule 3 (Scope of Services), CLIENT shall pay to CONTRACTOR the amounts identified below which shall be invoiced on a monthly basis beginning on the Acceptance Date for the corresponding Segment of the Works for the Works Payments, and on Commencement Date for the Services Payments.

If the Acceptance of any Segment of the Works is delayed, the payment schedule for the Works Payments and Services Payments will be adjusted accordingly.

5. Payments.

CLIENT agrees it will make all amounts payable by CLIENT under or with respect to this Agreement within thirty (30) days of receipt of the invoice by electronic funds transfer of immediately available funds as directed in writing by CONTRACTOR.

CLIENT shall pay CONTRACTOR a charge on any payment not paid on the date such payment is due at the rate of six percent (6.00%) per annum or the maximum amount permitted by law, whichever is less, from such date.

If CLIENT disagrees with any portion of an invoice, it shall notify CONTRACTOR in writing of the amount in dispute and the reason for its disagreement within twenty-one (21) days of receipt of the invoice, and shall pay the portion not in dispute. If CLIENT fails to pay CONTRACTOR within thirty (30) days after receipt of an invoice, the CLIENT shall pay interest to CONTRACTOR beginning on the twenty-second day after payment was due, computed at rate per annum as set forth above.

SCHEDULE 5: ACCEPTANCE PROCEDURES

Project Commissioning

CONTRACTOR shall implement the Commissioning and Quality Assurance Plan in partnership with the CLIENT during the Works Phase. CONTRACTOR shall implement a rolling Works commissioning process. As quickly as lights are being installed, CONTRACTOR shall work with the CLIENT to get them certified and approved. This will be repeatable and fair for both Parties and allows the project to proceed with the utmost quality and speed.

Acceptance Procedures

In accordance with the Commissioning and Quality Assurance Plan, when CONTRACTOR believes that all, or an independent, definable phase or portion, of a Segment of the Works is substantially complete, CONTRACTOR will submit a certificate of substantial completion to CLIENT which shall be subject to the following:

- a. If CLIENT concurs that the described Segment of the Works as performed is substantially complete, CLIENT will accept that Segment of the Works by signing a Certificate of Acceptance and returning it to CONTRACTOR;
- b. If CLIENT does not concur that the Segment of the Works is substantially complete, then CLIENT shall notify CONTRACTOR within five (5) Business Days of any discrepancies;

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

- c. To the extent CONTRACTOR does not dispute the discrepancies raised by CLIENT, CONTRACTOR shall correct the Works to conform to the description of the Work set forth herein, and resubmit the certificate of substantial completion to CLIENT;
- d. If CONTRACTOR disagrees with the discrepancies raised by CLIENT, CONTRACTORS shall notify CLIENT of a dispute and such dispute shall be resolved in accordance with the dispute resolution provisions of the Agreement;
- e. If the CLIENT Representative does not deliver written notice to CONTRACTORS within ten (10) Business Days of receiving the certificate of substantial completion, in the mutual interests of the Project proceeding in a timely manner, the Parties shall immediately refer the matter for determination in accordance with the applicable dispute resolution procedure as set forth herein.

To the extent that any Segment requires multiple certificates of substantial completion, the final non-recourse Certificate of Acceptance for each Segment shall determine the date on which the Acceptance Date of that Segment of the Works is achieved.

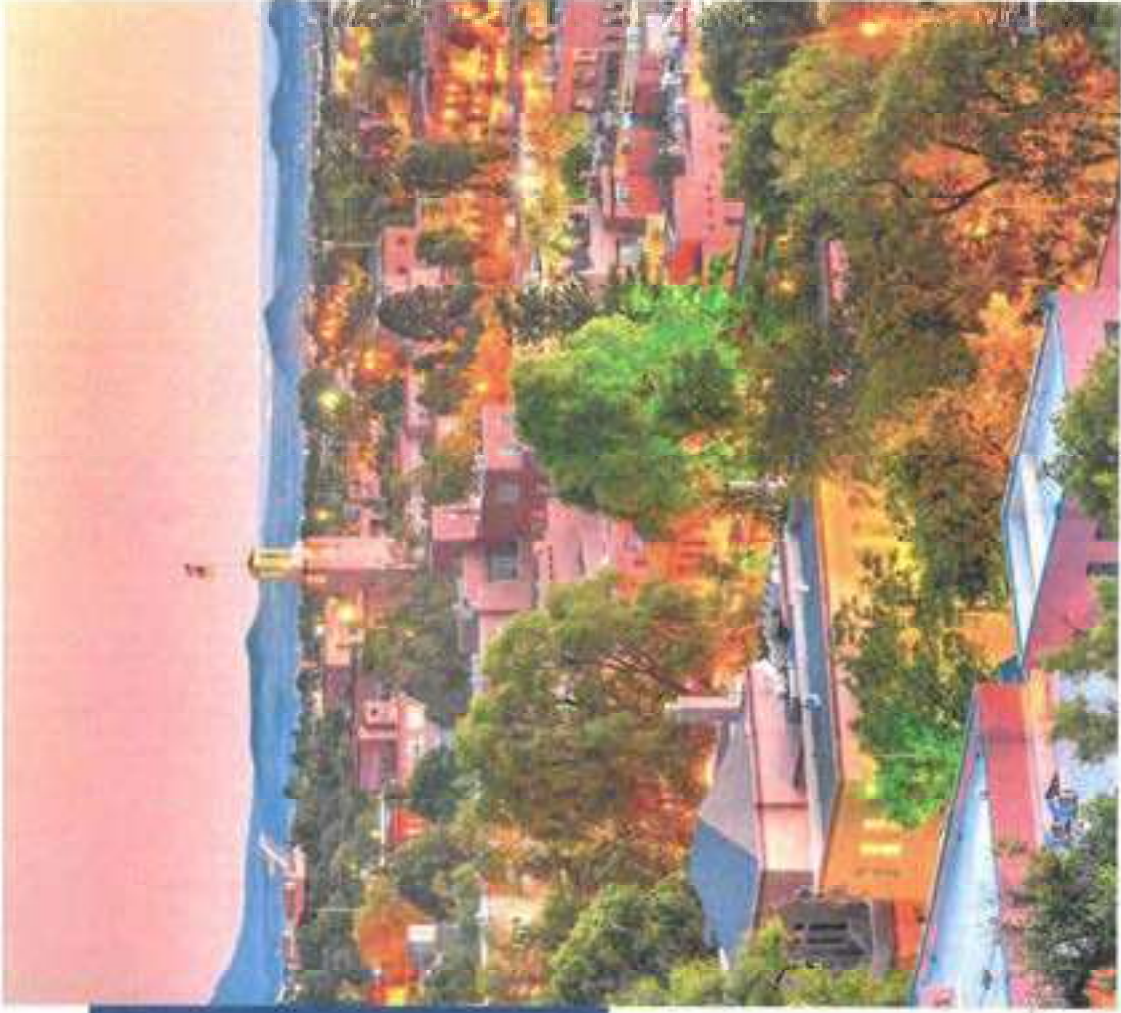
Certificate of Acceptance

The Final Segment of the Works has been measured against its acceptance criteria and deemed substantially complete, and is therefore formally accepted by the City of Santa Fe.

CITY OF SANTA FE

NAME AND TITLE

DATE: _____



Santa Fe Implementation Plan

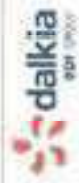


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Logistics/Planning Phase

Design Finalization

The system upgrade to LED will be viewed holistically considering goals and concerns of stakeholders, existing conditions, neighborhood and road characteristics, regulatory requirements, energy conservation and product specifications. The lighting design process will be the opportunity to engage with the community, organize demonstration and/or mock-ups and analyze scenarios in order to finalize the lighting design. The lighting design will be submitted to the governing body for its approval before the work phase begins.

Dalkia has developed an upgrade plan and phasing schedule to complete the conversion of all 3,499 City-owned luminaires to LED technology within 9 months from project commencement. The upgrade plan was developed with consideration for the following factors:

- Improvement of the lighting performance and look and feel of the City
- Reduction of traffic and lane closure requirements by scheduling a majority of disruptive work overnight or during low volume periods

Equipment and Workforce

In order to complete the project within a six-month period from the project commencement, Dalkia anticipates the need for four-six field crews. Each crew will be composed of two workers: a Journeyman Electrician (EL-01J or EE-98J) and a ground man.

Depending on the nature of work and location of poles, crews will be equipped with either forty-foot or sixty-five-foot bucket trucks for luminaire replacement, and derrick trucks will be available when pole replacement is necessary. Dalkia will run all operations out of a centrally located warehouse, where we will store equipment, vehicles, and the inventory upgrade materials.

The proposed six-month timeline is based on the following variables:

- 3,499 City-owned light points
- 4-6 teams, 12 light points upgraded per day per team, 6-8 weeks of material lead time
- 4 months field work, 20 working days per month

These numbers are estimates based on Dalkia's performance commitment to conduct all upgrade tasks within six months, including for mobilization and material supply availability.



**Santa Fe Contract Unit Prices
as of January 27, 2021**

Unit prices will be updated annually to reflect cost increases or decreases, technological advancements and the addition or deletion of items based on the work performed.

Line	Item	Description	Unit	Road Type	Total	Road Type	Total
1	Fixture Installation: Cobra head	Installation of (1) LED cobra head. Price includes luminaire, photocell, rewiring, and labor.	EA	Residential	\$342.26	Local	\$462.89
2	Fixture Installation: Cobra head	Installation of (1) LED cobra head. Price includes luminaire, photocell, rewiring, and labor.	EA	Major/Highway			\$607.85
3	Arm Installation: 5 ft or less	Installation of (1) arm made of aluminum, steel or comparable material. Price includes labor and wiring.	EA	Pipe	\$610.77	Davit	\$1,016.00
4	Arm Installation: Greater than 5 ft	Installation of (1) arm made of aluminum, steel or comparable material. Price includes labor and wiring.	EA	Davit	\$1,100.97	Twin Davit	\$2,177.60
5	Pole Installation: Less than 25 ft	Installation of pole made of aluminum, steel, or comparable material. Price includes labor and wiring.	EA	Local			\$2,484.36
6	Pole Installation: 25 to 35 ft	Installation of pole made of aluminum, steel, or comparable material. Price includes labor and wiring.	EA	Local			\$3,101.85
7	Pole Installation: Greater than 35 ft	Installation of pole made of aluminum, steel, or comparable material. Price includes labor and wiring.	EA	Up to 45 ft	\$3,911.12	Greater than 45 ft	\$5,957.64
8	Pole Base: 18"	Installation of an 18" pole base. Price includes base and labor.	EA	All			\$778.91
9	Pole Base: 24"	Installation of a 24" pole base. Price includes base and labor.	EA	All			\$942.31
10	Wiring Material: Copper Wire	Underground Copper 10/2 UF Wire. Price per foot, material only.	FT	All			\$1.12
11	Wiring Material: Aluminum Wire	Underground Aluminum Triplex Wire. Price per foot, material only.	FT	All			\$1.48
12	Overhead Wiring Material: Copper Wire	Overhead #8 Copper THHN Wire. Overhead requires 2 wires per pole. Price per foot, material only.	FT	All			\$0.45
13	Overhead Wiring Material: Aluminum Wire	Overhead #4 ACSR Wire. Overhead requires 2 wires per pole. Price per foot, material only.	FT	All			\$0.77
14	Pole Installation: Reusable	Installation of a reusable pole. Price includes labor and wiring.	EA	All			\$1,188.46
15	Arm Installation: Reusable	Installation of a reusable arm. Price includes labor and wiring.	EA	All			\$564.64
16	Fixture Installation: Reusable	Installation of a reusable fixture. Price includes labor and wiring.	EA	All			\$191.49
18	Materials for Repair	Extra materials needed to complete works will be itemized and priced on an individual basis.	EA	All			TBD
17	General Labor	Hourly rate for an electrician team composed of 1 Journeyman, 1 Groundman, 1 bucket truck plus equipment. MoT not included.	HR	All			\$174.48
19	Excavation	Hourly rate for an electrician team composed of 1 Journeyman, 1 Groundman, 1 bucket truck plus mini excavator	HR	All			220.96
20	Locating	Hourly rate for 1 technician, 1 vehicle, plus line locating machine	HR	All			204.48
21	Boring	Boring w/2-2" dia conduit & 2-#2 triplex, does not include set up fee	FT	All			\$27.69
22	Troubleshooting	Hourly rate for a troubleshooting team composed of 1 Journeyman, 1 Groundman, 1 bucket truck. MoT not included.	HR	All			165.85
23	Maintenance of Traffic	Traffic control comprised of 1 Groundman, 1 truck, 1 snow board, and additional equipment for 1 hour.	HR	City	\$89.17	DOT	\$178.33
24	Labor for Smart Ready Controls	Hourly rate for a Smart Ready Control team composed of 1 Journeyman, 1 Groundman, 1 bucket truck plus	HR	All			\$230.80
25	IT Support	Hourly rate for technical support of Smart Ready Controls	HR	Basic	\$126.00	Expert	\$205.00

Deferred Maintenance

Budget

- \$89k budgeted for deferred maintenance during Works Phase
- Priorities
 - Priority 1: Brittle/Damaged Wiring in Pole Infrastructure
 - Priority 2: Pole Components: Hand-hole covers, vandal deterrent banding

Action Plan (Planned Maintenance)

- Throughout the Works Phase, Dalkia will record detailed notes around future planned maintenance that falls outside of the plan for deferred maintenance
- Priorities
 - Log vandalism, damage to build plan for proposed maintenance
 - Allow city to properly budget for upcoming maintenance in the Service Phase

City of Santa Fe NM – LED Implementation Plan
 Dalkia Schedule of Works Phase

2021

January						
Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

February						
Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

March						
Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

April						
Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

May						
Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

June						
Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

July						
Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

August						
Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

September						
Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

October						
Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

November						
Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

December						
Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Date	Event
Months 1-2 (March-April 2021)	<ul style="list-style-type: none"> • Community Engagement Phase • Design Finalization
Month 3 (May 2021)	<ul style="list-style-type: none"> • Council Approval for Finalized Design • Product Ordering
Month 4 (June 2021)	<ul style="list-style-type: none"> • Delivery of Product • Begin Installation of Phase 1 • Weekly Construction Meetings
Month 5 (July 2021)	<ul style="list-style-type: none"> • Closeout of Phase 1 • Weekly Construction Meetings
Month 6 (August 2021)	<ul style="list-style-type: none"> • Closeout of Phase 2 • Weekly Construction Meetings
Month 7 (September 2021)	<ul style="list-style-type: none"> • Closeout of Phase 3 • Weekly Construction Meetings
Month 8 (October 2021)	<ul style="list-style-type: none"> • Closeout of Phase 4 • Weekly Construction Meetings
Month 9 (November 2021)	<ul style="list-style-type: none"> • Closeout of Phase 5 • Weekly Construction Meetings • Project Completion/Commencement of Services Phase

Lighting Plan/Energy Savings

Energy Savings

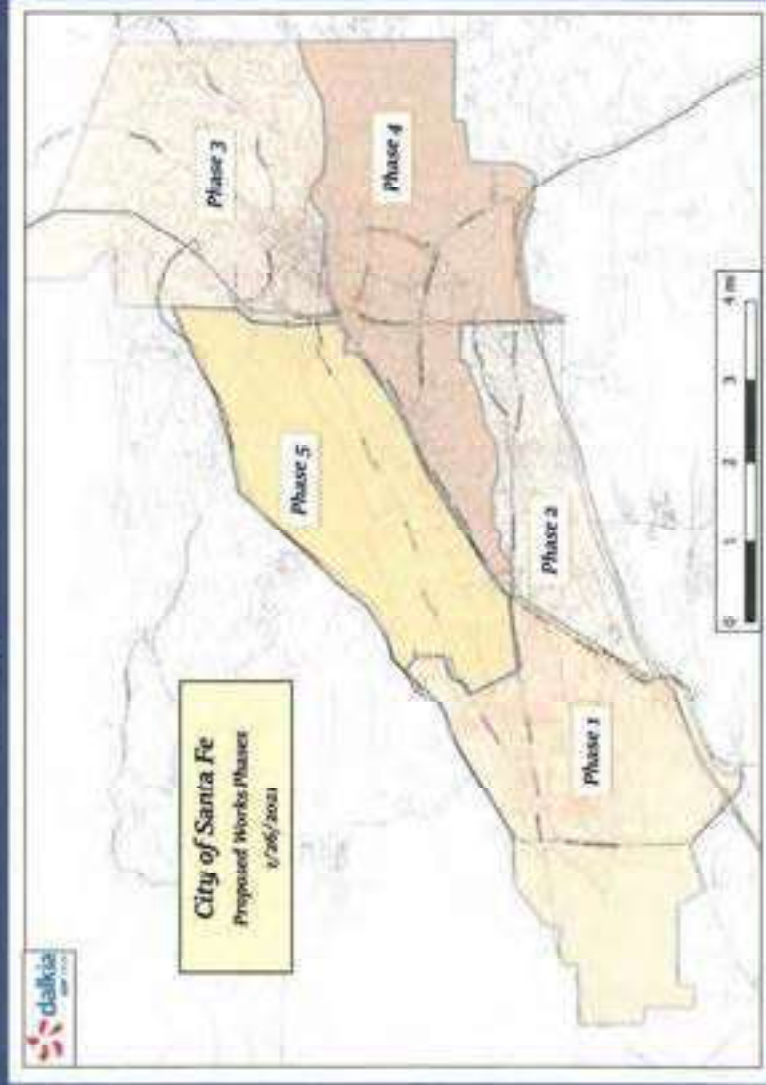
Streetlight Type	Units	kWh/Month	Current kWh/Year	Non-Fuel Rate/Month	Current Non-Fuel Charge/Year	LED Equivalent Wattage	LED Equivalent kWh/Month	LED kWh/Year	Non-Fuel Rate/Month	LED Non-Fuel Charge/Year	LED kWh/Year Savings	LED Non-Fuel Savings/Year
100W HPS	1,316	45.0	710,640	\$3.42	\$54,008.64	28	14.2	224,246	\$0.60	\$9,475.20	486,394	\$ 44,533.44
250W HPS	1,404	107.0	1,802,736	\$8.12	\$135,805.76	118	42.7	719,410	\$2.40	\$40,435.20	1,083,326	\$ 96,370.56
400W HPS	635	165.0	1,257,300	\$12.53	\$95,478.60	190	92.4	704,088	\$3.79	\$28,879.80	553,212	\$ 66,598.80
175W MV	0	73.0	0	\$5.54	\$0.00	40	14.2	0	\$0.80	\$0.00	0	\$ -
400W MV	0	162.0	0	\$12.30	\$0.00	120	42.7	0	\$2.40	\$0.00	0	\$ -
Decorative 250W	144	107.0	184,896	\$8.12	\$14,031.36	118	42.7	73,786	\$0.60	\$1,036.80	111,110	\$ 12,994.56
Subtotal	3,499	94.2	3,955,572		\$286,293.00		41.0	1,721,530		79,827	2,234,042	\$ 220,497.36

LED Models

Streetlight Type	Model #	LED Wattage	LED Qty
100W HPS	ATBX P40 MVOLT R2 3K MP P7	28.0	1316
250W HPS	A TBM P30 MVOLT R2 3K/4K MP P7	118.0	1404
400W HPS	A TBM P70 MVOLT R2 3K/4K MP P7	190.0	635
Decorative 250W	MSPL2 P50 30K AS SN6SS P7 PCS	120.0	144



Comprehensive Install Plan/Mapping



Phased Install Approach

Phase 1/2 - South

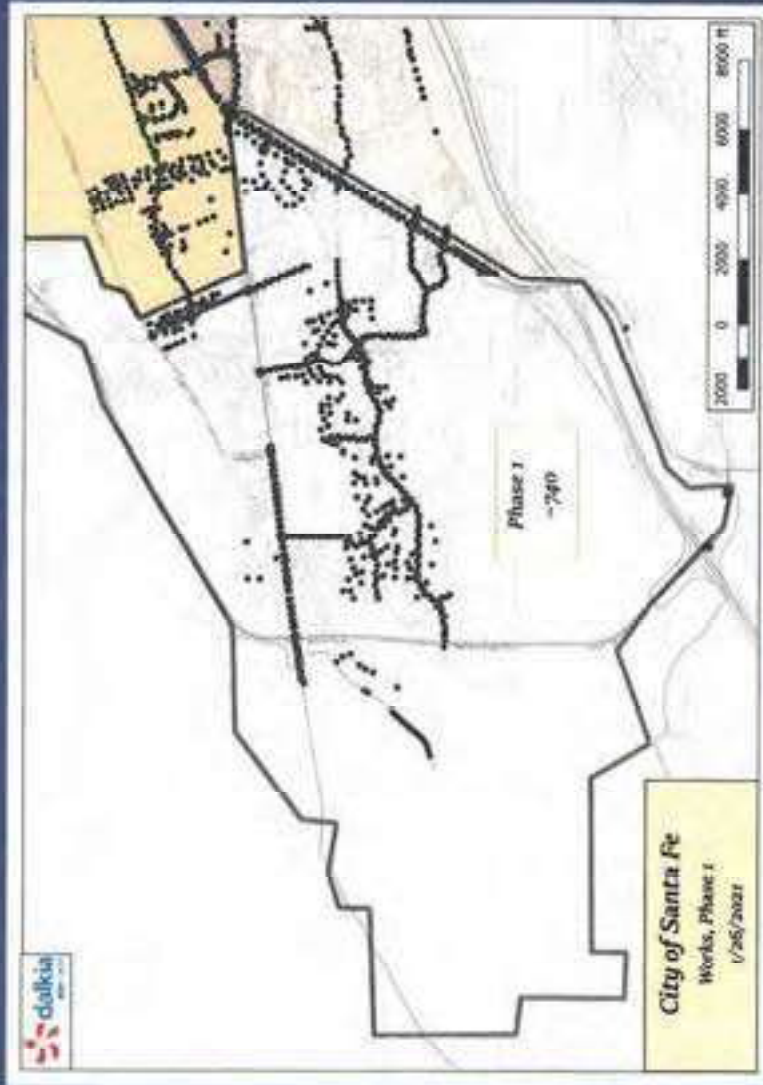
Phase 3 - Downtown

Phase 4 - East

Phase 5 - North

Based on the priorities of the City of Santa Fe, Dalkia will implement the upgrade in phases to convert existing lighting to LED.

Phase 1



Details

VIEWPOINT
 South/Southwest

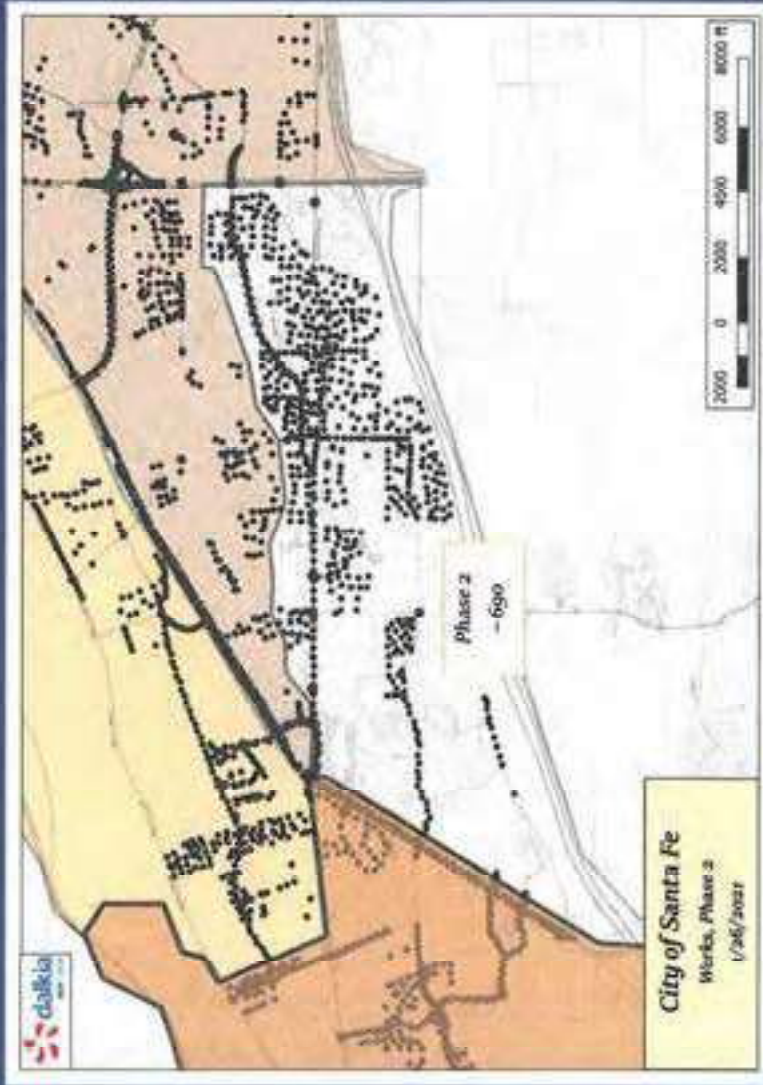
NUMBER OF TEAMS/TIME OF DAY
 All teams/Day

DESCRIPTION
 North of I-25, South of 284, West of 14.

NUMBER OF POLES
 741

DURATION
 1 month

Phase 2



Details

OVERVIEW
South

NUMBER OF TEAMS/TIME OF DAY
All teams/Day

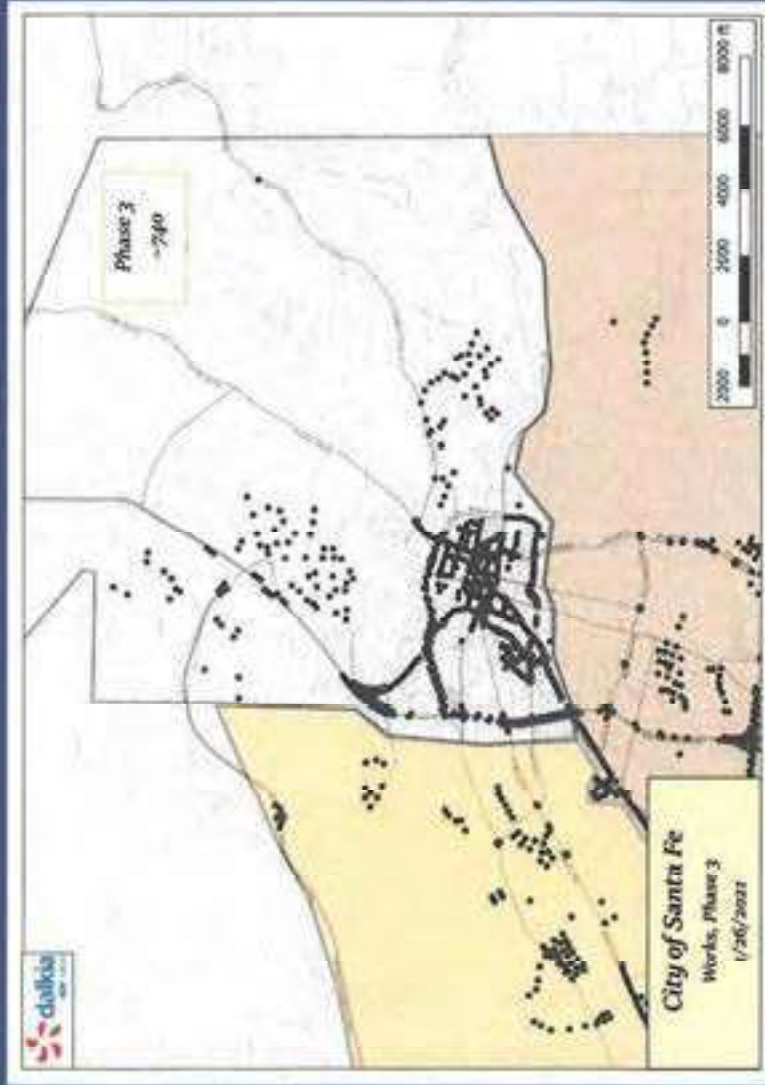
DESCRIPTION

North of I-25, South of 16 and 466, West of 200

NUMBER OF HOLES
890

DURATION
1 month

Phase 3



Details

ON-SITE VIEW
Downtown

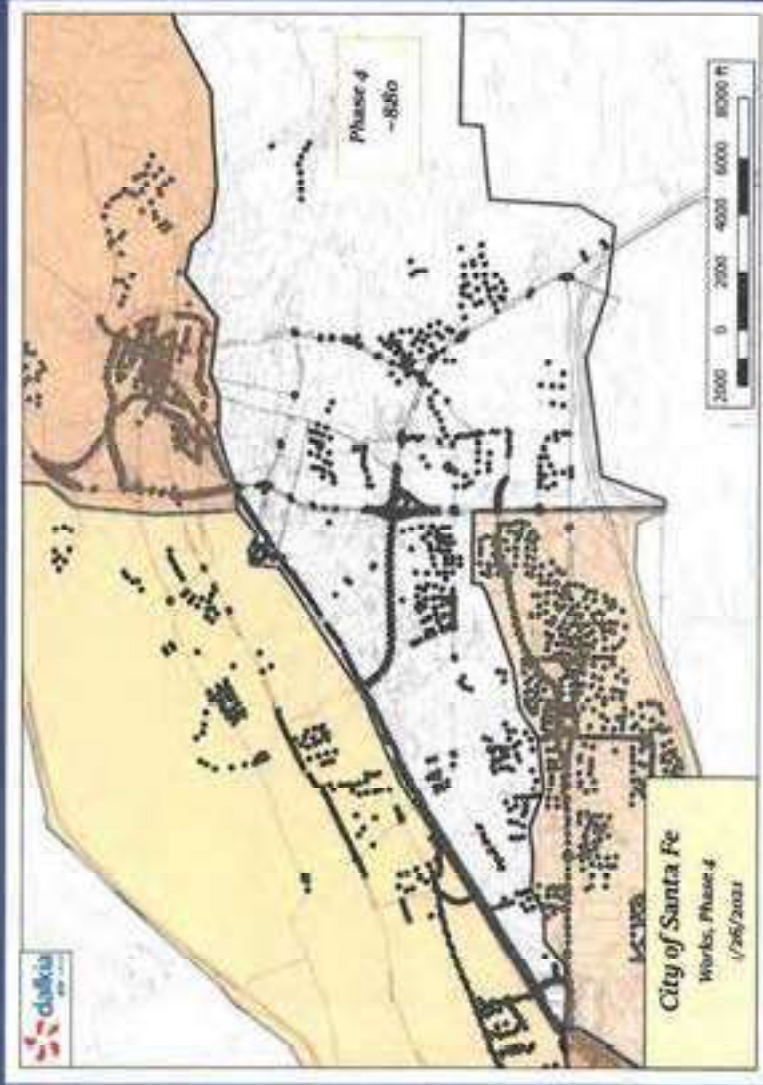
NUMBER OF TEAMS/TIME OF DAY
All Teams/Day

MESSAGE FROM
Downtown and North of Downtown

NUMBER OF POLES
(740)

DURATION
1 month

Phase 4



Details

OVERVIEW
East

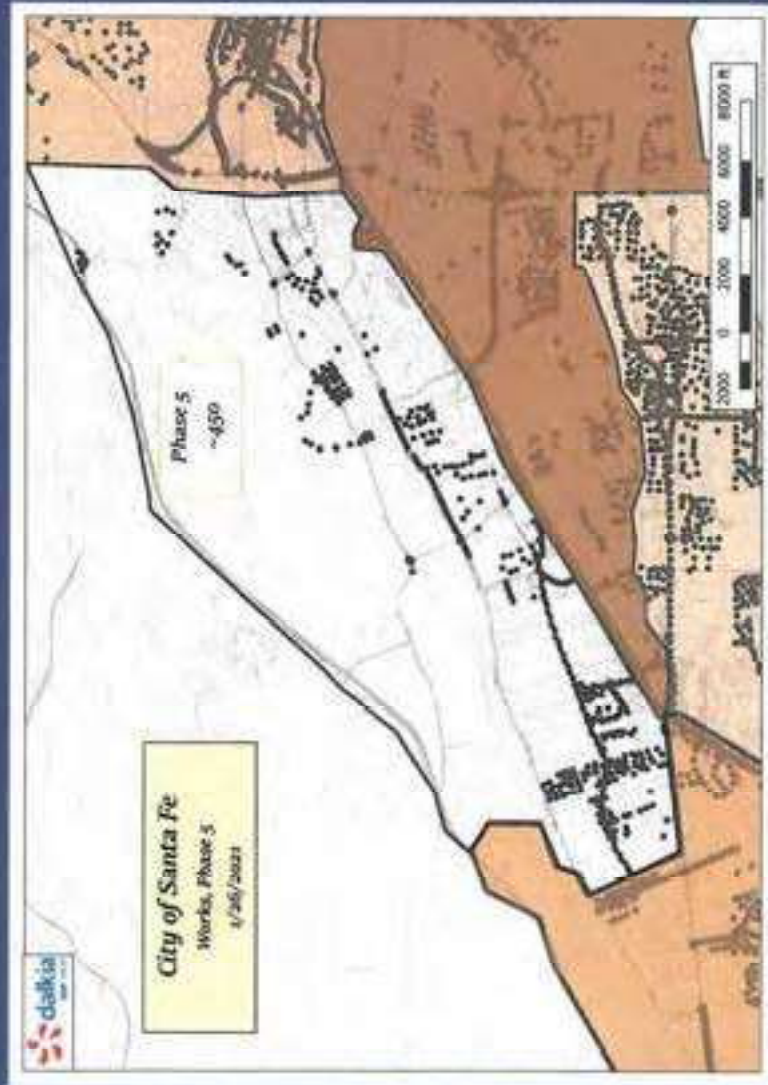
NUMBER OF TEAMS/TIME OF DAY
All Teams/Day

DESCRIPTION
South of 14 and 475, North of I-25

NUMBER OF POLES
3500

DURATION
1 month

Phase 5



Details:

OVERVIEW:
South/Southwest

NUMBER OF TEAMS/TIME OF DAY:
All teams/Day

DESCRIPTION:
North of 14, South of 599, West of 29E

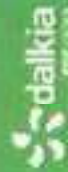
NUMBER OF HOLES:
450

DURATION:
2 weeks

Maintenance of Traffic (MoT)

Dalkia and its subcontractors will implement Maintenance of Traffic (MoT) procedures based on roadway type according to the following tiers: (All MoT guidelines will follow OSHA standard protocols)

- Tier 1: Local/Residential; low traffic. Assumed that Curb Side Parking is allowed.
- Tier 2: Collector Roads; congested residential areas where street parking is limited and there is medium to occasionally high traffic
- Tier 3: Major/Arterial; medium to high traffic volumes and will require personnel with a Traffic Control Supervisor (TCS) Certification and a Mobile Utility Traffic Vehicle following the bucket truck.
- Tier 4: High traffic; congested areas, freeways, high traffic arterial, state highways. Will require personnel with TCS Certification and a Mobile Uniform Traffic Vehicle following the bucket truck.



ASSETS REQUIRING MOT DURING UPGRADE

ROADWAY TYPE	MOT REQUIRED
Local	NO
Collector	YES
Major	YES
Ramp	YES
Highway	YES

55% (Based on ABQ)

45% (Based on ABQ)

LED streetlights and Dark Sky

The industry accepted method for measuring uplight and light trespass that a fixture produces is IES (Illuminating Engineering Society) Standard TM 15-11 and the BUG (Backlight, Uplight, Glare) Ratings. BUG is an acronym coined by the Illuminating Engineering Society (IES) and the International Dark Sky Association (IDA) to better explain how light trespass can be measured.

NO uplight

All Acuity American Electric Lighting (AEL) Autobahn Roadway Series Fixtures, specified for this project by the City of Santa Fe, PNM and Dalkia, have "U-0" Listings, which means **NO uplight goes above an angle of 90° degrees above nadir**. This is verified by independent testing using the LM-79 Report and the IES TM63 Photometric Files tested in the spherical photometer.

NMDOT-New Mexico Department of Transportation Special Provisions for Section 716-B: LED LUMINAIRE is the specification that American Electric Lighting LED Roadway products are required to meet in order to be approved for 5 years on the NMDOT Approved Products List (APL). To meet 716-B specifications, one of the requirements can be found on page 1: "All outdoor lighting shall be installed in accordance with the New Mexico Night Sky Protection Act (NMSA 1978, 74-12-1-et seq.)."

Additionally, AEL has been the product of choice for Albuquerque (13,000 units); Phoenix, AZ (90,000 units) and Tucson, AZ (home of the Dark Sky Association (32,000 units), all with stringent uplight restrictions.

Additional options for shielding if needed

There are roadside and **house side shields available** for all Acuity AEL Roadway Series fixtures. Shields can be field installed.

Color temperature: a balance between 3000K for residential and wildlife health and comfort and 4000K for driver and pedestrian safety

CCT (Correlated Color Temperature) have to do with the way human and various animal species react to the SPD (Spectral Power Distribution) of LED sources, and the amount of shorter wavelengths of radiant energy in what is considered the "blue" range of the spectrum, from approximately 405 to 530 nanometers.

For this project, The City of Santa Fe, PNM and Dalkia follow a thoughtful approach that takes both public safety and human and environmental factors into consideration. This project follows IDA recommendations by utilizing LED fixtures with CCT of up-to **3,000K in residential neighborhoods**. It also takes into account additional studies that show that **4,000K sources are optimal for driver reaction times when use on higher speed roadways**.



Consistent with LEED® goals
A Green Spaces® system
for light pollution reduction

Autobahn Series ATBM Roadway

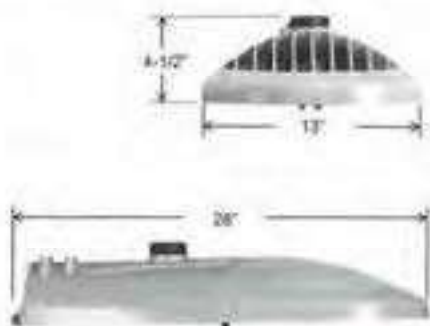
PRODUCT OVERVIEW



Applications:

Residential streets
Parking lots
High speed roadways

DIMENSIONS



Effective Projected Area (EPA)
The EPA for the ATBM is 0.3 sq. ft.
Approx. Wt. = 21 lbs. (9.5 kg)

STANDARDS

Color temperatures of $\leq 3000\text{K}$ must be specified for International Dark-Sky Association certification.

Rated for -40°C to 40°C ambient

CSA Certified to U.S. and Canadian standards

Complies with ANSI: C136.2, C136.10, C136.14, C136.31, C136.15, C136.37

Features:

OPTICAL

Same Light: Performance is comparable to 150W – 250W HPS

White Light: Correlated color temperature - 4000K, 70 CRI minimum, 3000K, 70 CRI minimum or optional 5000K, 70 CRI minimum.

IP66 rated borosilicate glass optics ensure longevity and minimize dirt depreciation. Unique IP66 rated LED light engines provide 0% uplight and restrict backlight to within sidewalk depth, providing optimal application coverage and optimal pole spacing.

Available distributions are Type II, III, IV, & V roadway distributions.

ELECTRICAL

Expected Life: LED light engines are rated $> 100,000$ hours at 25°C , L70.

Electronic driver has an expected life of 100,000 hours at a 25°C ambient.

Lower Energy: Saves an expected 40-60% over comparable HID luminaires.

Robust Surge Protection: Standard surge protection is 20kV/10kA "Extreme Level" per ANSI C136.2. An optional MOV pack provides 10kV/5kA "Enhanced Level."

MECHANICAL

Includes standard AEL lineman-friendly features such as tool-less entry, 3 station terminal block and quick disconnects. Bubble level located inside the electrical compartment for easy leveling at installation.

Rugged die-cast aluminum housing and door are polyester powder-coated for durability and corrosion resistance. Rigorous five-stage pre-treating and painting process yields a finish that achieves a scribe creepage rating of 8 (per ASTM D1654) after over 5000 hours exposure to salt fog chamber (operated per ASTM B117).

Mount arm mount is adjustable for arms from 1-1/4" to 2" (1-5/8" to 2-3/8" O.D.) diameter.

The 2-bolt and optional 4-bolt clamping mechanism provide 3G vibration rating per ANSI C136.31.

The Wildlife shield is cast into the housing (not a separate piece).

CONTROLS

NEMA 3 pin photocontrol receptacle is standard, with the Acuity designed ANSI standard 7 pin receptacle optionally available.

Premium solid state locking-style photocontrol – PCSS (10 year rated life) Extreme long life solid state locking-style photocontrol – PCL1 (20 year rated life).

Extreme long life solid state locking-style photocontrol with on-demand remote on/off control - PCCC (15 year rated life).

Optional onboard Adjustable Output module allows the light output and input wattage to be modified to meet site specific requirements, and also can allow a single fixture to be flexibly applied in many different applications.

Autobahn Series ATBM

Roadway

ORDERING INFORMATION

ATBM	P30	MVOLT	R2	
Series	Performance Packages	Voltage	Optics	Mounting
ATBM Autobahn LED Roadway	P05 9,700 lumens P10 11,000 lumens P20 12,800 lumens P30 15,500 lumens P40 17,400 lumens P50 18,700 lumens P60 20,000 lumens P70 21,500 lumens	MVOLT Multi-volt, 120-277V 347 347V 480 480V	R2 Roadway Type II R3 Roadway Type III R4 Roadway Type IV R5 Roadway Type V	(Blank) 2 Bolt Mounting 4B 4 Bolt Mounting

3K MP P7

Options

Color Temperature (CCT) (Blank) 4000K CCT, 70 CRI Min. 3K 3000K CCT, 70 CRI Min. 5K 5000K CCT, 70 CRI Min.	Control Options (Blank) 3 Pin NEMA Photocontrol Receptacle P7 7 Pin Photocontrol Receptacle (dimmable driver included) ¹ NR No Photocontrol Receptacle AO Field Adjustable Output ² DM 0-10V Dimmable Driver ² PCSS Solid-State Lighting Photocontrol ⁴ PCLL Solid-State Long Life Photocontrol PCCC Solid-State Long Life Photocontrol with remote control on/off ⁴ SH Shorting Cap	Accessories ATBMHSS House Side Shield ATBMLTS Light Trespass Shield RKATBMMVOLTSPD ATBM Acuity SPD, MVOLT RKATBMHVSPD ATBM Acuity SPD, 347/480V RKATBMMVOLTMP ATBM MOV Pack, MVOLT RKATBMHVMP ATBM MOV Pack, 347/480V
Paint (Blank) Gray BK Black BZ Bronze DDB Dark Bronze GI Graphite WH White	Surge Protection (Blank) Standard 20kV/10kA SPD MP MOV Pack	Package (Blank) Standard Pack JP Job Pack (36/pallet)
Miscellaneous Options HSS House Side Shield NL NEMA Label Indicating Wattage XL Not CSA Certified - No Terminal Block Cover UMR-XX 8" Horizontal Arm for Round Pole, Painted to match Fixture UMS-XX 8" Horizontal Arm for Square Pole, Painted to match Fixture UMR-GALV 8" Horizontal Arm for Round Pole, Galvanized UMS-GALV 8" Horizontal Arm for Square Pole, Galvanized		

Notes:

- 1 Dimmable Driver included. Not available with DM or NR.
- 2 Controls by others. Not available with P7 or AO.
- 3 Not available with DM.
- 4 MVOLT only.

AEI American Electric Lighting

AEI Headquarters, 3825 Columbus Road, Greenville, OH 43023
www.americanelectriclighting.com

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Warranty Five-year limited warranty. Complete warranty terms located at: www.acuitybrands.com/support/new/led/leds_and_fixtures. Actual performance may differ as a result of end-user environment and application. Specifications subject to change without notice.

Please contact your sales representative for the latest product information. 18

ATBM

Autobahn Series ATBM

Roadway

PERFORMANCE PACKAGE															
Performance Package	Distribution	Input Watts	3K (3000K CCT, 70 CRI)					4K/5K (4000K/5000K CCT, 70 CRI)					LLD @ 25°C		
			Lumens	LPW	B	U	G	Lumens	LPW	B	U	G	25k Hours	75k Hours	100k Hours
P05	R2	66	8,396	138	1	0	2	9,718	143	1	0	2	0.93	0.86	0.83
	R3		9,366	138	1	0	3	9,688	142	1	0	3			
	R4		9,030	133	1	0	3	9,340	137	1	0	3			
	R5		10,304	152	3	0	2	10,989	157	3	0	2			
P10	R2	81	18,635	131	3	0	3	11,299	139	2	0	3	0.93	0.86	0.83
	R3		18,875	132	2	0	3	11,302	140	2	0	3			
	R4		19,291	128	2	0	4	19,994	136	2	0	4			
	R5		11,504	142	3	0	2	12,086	149	3	0	2			
P20	R2	94	12,072	128	2	0	3	12,874	137	2	0	3	0.93	0.86	0.83
	R3		12,065	128	2	0	3	12,818	136	2	0	3			
	R4		11,948	127	2	0	4	12,525	133	2	0	4			
	R5		13,085	139	4	0	2	13,776	147	4	0	2			
P30	R2	118	14,622	124	2	0	3	15,514	131	2	0	3	0.93	0.86	0.83
	R3		14,831	124	2	0	3	15,452	131	2	0	3			
	R4		14,317	121	2	0	4	15,151	128	2	0	5			
	R5		16,775	134	4	0	2	18,685	141	4	0	2			
P40	R2	125	18,233	120	2	0	3	17,493	130	2	0	3	0.93	0.86	0.83
	R3		18,402	121	2	0	3	17,367	129	2	0	3			
	R4		18,811	118	2	0	5	17,028	126	2	0	5			
	R5		17,507	130	4	0	2	18,595	136	4	0	2			
P50	R2	152	17,541	115	2	0	3	18,748	123	2	0	3	0.93	0.86	0.83
	R3		17,577	116	2	0	4	18,712	123	2	0	4			
	R4		17,154	113	2	0	5	18,246	120	2	0	5			
	R5		19,008	125	4	0	2	20,088	132	4	0	2			
P60	R2	188	18,770	112	2	0	3	20,095	120	3	0	3	0.93	0.86	0.83
	R3		18,830	112	2	0	4	20,094	120	3	0	4			
	R4		18,383	109	2	0	5	19,648	117	2	0	5			
	R5		20,350	121	4	0	2	21,505	126	4	0	2			
P70	R2	190	20,190	106	3	0	3	21,565	114	3	0	3	0.93	0.86	0.83
	R3		20,142	106	3	0	4	21,504	113	3	0	4			
	R4		19,880	103	3	0	5	21,034	111	3	0	5			
	R5		21,988	116	4	0	2	23,076	121	4	0	2			

Note: Individual fixture performance may vary. Specifications subject to change without notice.



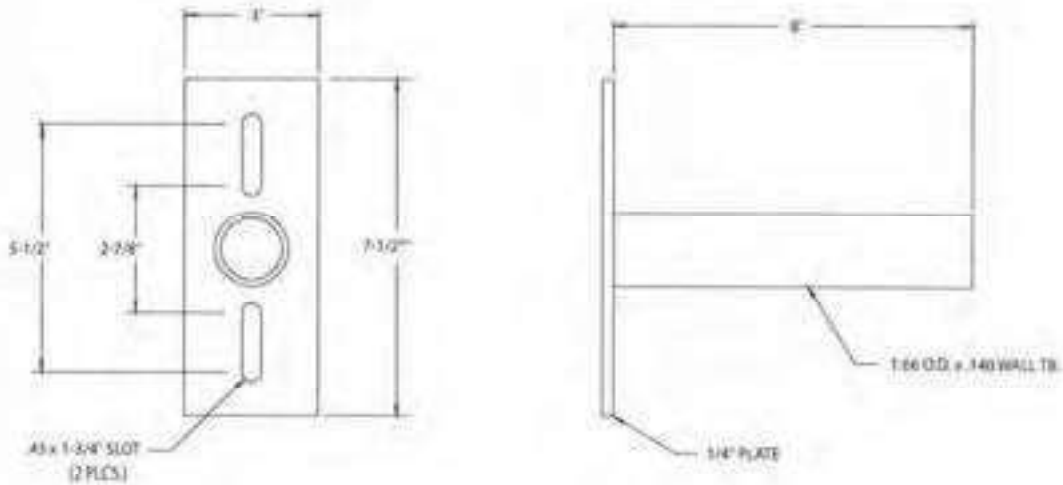
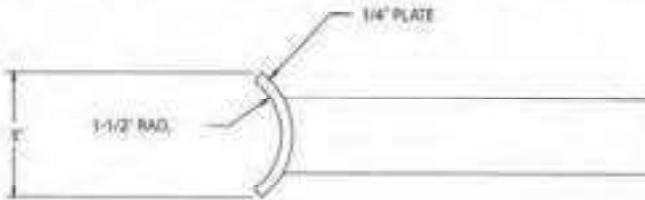
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Warranty Five-year limited warranty. Complete warranty terms located at:
www.acuitybrands.com/us/en/lighting/2021-warranty-terms
 Actual performance may differ as a result of end-user environment and application.
 Specifications subject to change without notice.

Please contact your sales representative for the latest product specifications.

Autobahn Series ATBM Roadway

UMR POLE ADAPTOR RECOMMENDED FOR USE WITH POLES OF 4" DIAMETER OR SMALLER



UMS POLE ADAPTOR



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Consistent with LEED® goals
& Green Glides® ratings
for light pollution reduction

Autobahn Series ATBM Roadway

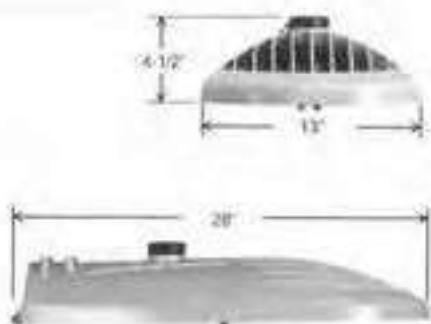
PRODUCT OVERVIEW



Applications:

- Residential streets
- Parking lots
- High speed roadways

DIMENSIONS



Effective Projected Area (EPA)
The EPA for the ATBM is 0.3 sq. ft.
Approx. Wt. = 21 lbs. (9.5 kg)

STANDARDS

Color temperatures of $\leq 3000\text{K}$ must be specified for International Dark-Sky Association certification.

Rated for -40°C to 40°C ambient

CSA Certified to U.S. and Canadian standards

Complies with ANSI: C136.2, C136.10, C136.14, C136.31, C136.15, C136.37

Features:

OPTICAL

Same Light: Performance is comparable to 150W – 250W HPS

White Light: Correlated color temperature - 4000K, 70 CRI minimum, 3000K, 70 CRI minimum or optional 5000K, 70 CRI minimum.

IP66-rated borosilicate glass optics ensure longevity and minimize dirt depreciation. Unique IP66-rated LED light engines provide 0% uplight and restrict backlight to within sidewalk depth, providing optimal application coverage and optimal pole spacing.

Available distributions are Type II, III, IV, & V roadway distributions.

ELECTRICAL

Expected Life: LED light engines are rated $>100,000$ hours at 25°C , L70.

Electronic driver has an expected life of 100,000 hours at a 25°C ambient.

Lower Energy: Saves an expected 40-60% over comparable HID luminaires.

Robust Surge Protection: Standard surge protection is 20kV/10kA "Extreme Level" per ANSI C136.2. An optional MOV pack provides 10kV/5kA "Enhanced Level."

MECHANICAL

Includes standard ACL, lineman-friendly features such as tool-less entry, 3 station terminal block and quick disconnects. Bubble level located inside the electrical compartment for easy leveling at installation.

Rugged die-cast aluminum housing and door are polyester powder-coated for durability and corrosion resistance. Rigorous five-stage pre-treating and painting process yields a finish that achieves a scribe creepage rating of 8 (per ASTM D1654) after over 5000 hours exposure to salt fog chamber (operated per ASTM B117).

Mount arm mount is adjustable for arms from 1-1/4" to 2" (1-5/8" to 2-3/8" O.D.) diameter. The 2-bolt and optional 4-bolt clamping mechanism provide 3G vibration rating per ANSI C136.31.

The Wildlife shield is cast into the housing (not a separate piece).

CONTROLS

NEMA 3 pin photocontrol receptacle is standard, with the Acuity designed ANSI standard 7 pin receptacle optionally available.

Premium solid state locking-style photocontrol – PCSS (10 year rated life) Extreme long life solid state locking-style photocontrol – PCLT (20 year rated life).

Extreme long life solid state locking-style photocontrol with on demand remote on/off control - PCCC (15 year rated life).

Optional onboard Adjustable Output module allows the light output and input wattage to be modified to meet site specific requirements, and also can allow a single fixture to be flexibly applied in many different applications.

Autobahn Series ATBM

Roadway

ORDERING INFORMATION

ATBM	P30	MVOLT	R2	
Series	Performance Packages	Voltage	Options	Mounting
ATBM Autobahn LED Roadway	P05 9,700 lumens P10 11,000 lumens P20 12,800 lumens P30 15,500 lumens P40 17,400 lumens P50 18,700 lumens P60 20,000 lumens P70 21,500 lumens	MVOLT Multi-volt, 120-277V 347 347V 488 480V	R2 Roadway Type II R3 Roadway Type III R4 Roadway Type IV R5 Roadway Type V	(Blank) 2 Bolt Mounting 4B 4 Bolt Mounting

3K MP P7

Options

Color Temperature (CCT)

(Blank) 4000K CCT, 70 CRI Min.
3K 3000K CCT, 70 CRI Min.
5K 5000K CCT, 70 CRI Min.

Paint

(Blank) Gray
BK Black
BZ Bronze
DOB Dark Bronze
GI Graphite
WH White

Surge Protection

(Blank) Standard 20kV/10kA SPD
MP MOV Pack

Miscellaneous Options

HSS House Side Shield
NL NEMA Label Indicating Wattage
XL Not CSA Certified - No Terminal Block Cover
UMR-XX 8" Horizontal Arm for Round Pole, Painted to match Fixture
UMS-XX 8" Horizontal Arm for Square Pole, Painted to match Fixture
UMR-GALV 8" Horizontal Arm for Round Pole, Galvanized
UMS-GALV 8" Horizontal Arm for Square Pole, Galvanized

Control Options

(Blank) 3 Pin NEMA Photocontrol Receptacle
P7 7 Pin Photocontrol Receptacle (dimnable driver included)¹
NR No Photocontrol Receptacle
AO Field Adjustable Output²
DM 0-10V Dimmable Driver³
PCSS Solid-State Lighting Photocontrol⁴
PCLL Solid-State Long Life Photocontrol
PCCC Solid-State Long Life Photocontrol with remote control on/off⁴
SH Shorting Cap

Packages

(Blank) Standard Pack
JP Job Pack (36/pallet)

Accessories

ATBMHSS House Side Shield
ATBMLTS Light Trespass Shield
RKATBMMVOLTSPD ATBM Acuity SPD, MVOLT
RKATBMHVSPD ATBM Acuity SPD, 347/480V
RKATBMMVOLTMP ATBM MOV Pack, MVOLT
RKATBMHVMP ATBM MOV Pack, 347/480V

Notes:

- 1 Dimmable Driver included. Not available with DM or NR.
- 2 Controls by others. Not available with P7 or AO.
- 3 Not available with DM.
- 4 MVOLT only.



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Warranty Five-year limited warranty. Complete warranty terms located at: www.americanelectrictlighting.com/warranty/terms-and-conditions
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Please contact your sales representative for the latest product information. **Page 22**

ATBM

Autobahn Series ATBM

Roadway

PERFORMANCE PACKAGE																
Performance Package	Distribution	Input Watts	3K (3000K CCT, 70 CRI)					4K/5K (4000K/5000K CCT, 70 CRI)					LLD @ 25°C			
			Lumens	LPW	B	U	G	Lumens	LPW	B	U	G	25k Hours	75k Hours	100k Hours	
P05	R2	88	9,396	136	1	0	2	9,718	143	1	0	2	0.93	0.86	0.83	
	R3		9,396	136	1	0	3	9,688	142	1	0	3				
	R4		9,030	133	1	0	3	9,340	137	1	0	3				
	R5		10,204	152	3	0	2	10,626	157	3	0	2				
P10	R2	91	10,626	151	2	0	3	11,269	158	2	0	3	0.93	0.86	0.83	
	R3		10,675	152	2	0	3	11,202	145	2	0	3				
	R4		10,391	146	2	0	4	10,994	150	2	0	4				
	R5		11,504	162	3	0	2	12,086	169	3	0	2				
P20	R2	94	12,072	128	2	0	3	12,674	137	2	0	3	0.93	0.86	0.83	
	R3		12,065	128	2	0	3	12,818	136	2	0	3				
	R4		11,948	127	2	0	4	12,525	133	2	0	4				
	R5		13,085	139	4	0	2	13,776	147	4	0	2				
P30	R2	118	14,637	124	2	0	3	15,514	131	2	0	3	0.93	0.86	0.83	
	R3		14,631	124	2	0	3	15,452	131	2	0	3				
	R4		14,317	121	2	0	4	15,151	128	2	0	5				
	R5		16,775	134	4	0	2	16,685	141	4	0	2				
P40	R2	125	16,233	120	2	0	3	17,493	130	2	0	3	0.93	0.86	0.83	
	R3		16,402	121	2	0	3	17,361	129	2	0	3				
	R4		15,911	118	2	0	5	17,006	126	2	0	5				
	R5		17,507	130	4	0	2	18,596	138	4	0	2				
P50	R2	152	17,541	115	2	0	3	18,748	123	2	0	3	0.93	0.86	0.83	
	R3		17,677	116	2	0	4	18,712	123	2	0	4				
	R4		17,134	113	2	0	5	18,346	120	2	0	5				
	R5		19,008	125	4	0	2	20,088	132	4	0	2				
P60	R2	168	18,770	112	2	0	3	20,095	120	2	0	3	0.93	0.86	0.83	
	R3		18,830	112	2	0	4	20,094	120	2	0	4				
	R4		18,369	109	2	0	5	19,648	117	2	0	5				
	R5		20,350	121	4	0	2	21,505	128	4	0	2				
P70	R2	190	20,190	106	3	0	3	21,365	114	3	0	3	0.93	0.86	0.83	
	R3		20,142	106	3	0	4	21,504	113	3	0	4				
	R4		19,660	103	2	0	5	21,024	111	3	0	5				
	R5		21,368	118	4	0	2	22,676	121	4	0	2				

Note: Individual fixture performance may vary. Specifications subject to change without notice.



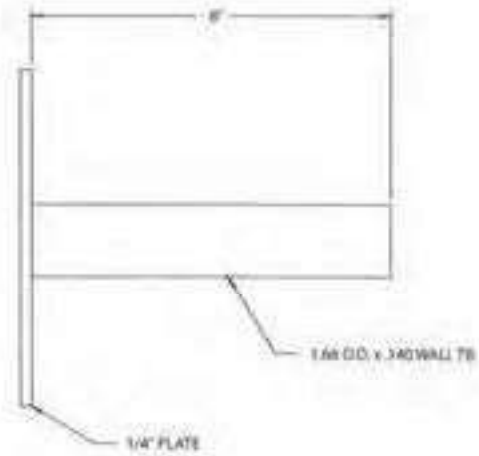
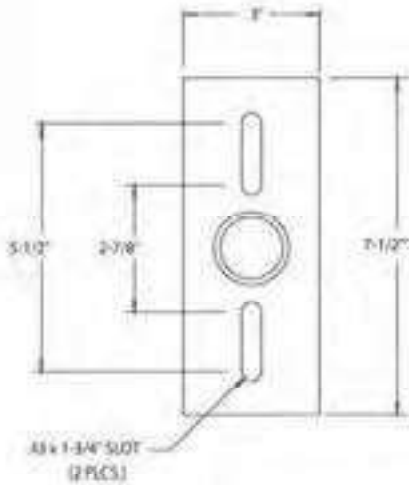
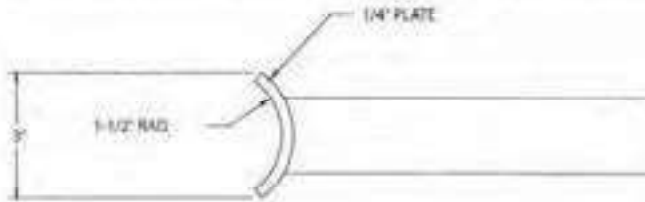
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Warranty Five-year limited warranty. Complete warranty terms located at:
www.aelamericanelectriclighting.com/support/learn-more-about-us/faq-and-warranty
 Actual performance may differ as a result of end-user environment and application.
 Specifications subject to change without notice.

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Autobahn Series ATBM Roadway

UMR POLE ADAPTOR RECOMMENDED FOR USE WITH POLES OF 4" DIAMETER OR SMALLER



UMS POLE ADAPTOR



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Warranty Five-year limited warranty. Complete warranty terms located at: www.acuitybrands.com/support/warranty. Actual performance may differ as a result of end-user environment and application. Specifications subject to change without notice.

Please contact your sales representative for the latest product information.

ATBM

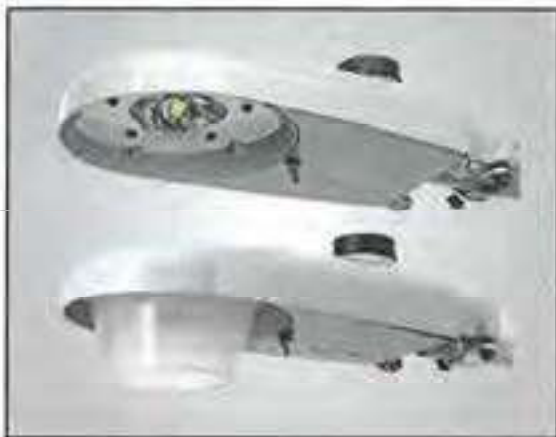


Consistent with LEED® goals & Green Globes™ criteria for light pollution reduction

Autobahn Series ATBX

Roadway & Security Lighting

PRODUCT OVERVIEW



Applications:

Residential streets
Parking lots
General security lighting

DIMENSIONS



Effective Projected Area (EPA) The EPA for the ATBX is .26 sq. ft. Approx. Wt. = 8lbs.

STANDARDS

DesignLights Consortium® (DLC) qualified product. Not all versions of this product may be DLC qualified. Please check the DLC Qualified Products List at www.designlights.org/QPL to confirm which versions are qualified.

Color temperatures of $\leq 3000\text{K}$ must be specified for International Dark-Sky Association certification.

Rated for -40°C to 40°C ambient

CSA Certified to U.S. and Canadian standards

Complies with ANSI: C136.2, C136.10, C136.14, C136.31, C136.15, C136.37

Note: Actual performance may differ as a result of end-user environment and application. Specifications subject to change without notice.

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Features:

OPTICAL

Same Light: Performance is comparable to 50W – 150W HPS and up to 175W Mercury Vapor roadway and security lighting luminaires.

White Light: Correlated color temperature – 4000K, 70 CRI minimum, 3000K, 70 CRI minimum or optional 5000K, 70 CRI minimum.

IP66 rated borosilicate glass optics ensure longevity and minimize dirt deprecation. Unique IP66 rated LED light engines provide 0% uplight and restrict backlight to within sidewalk depth, providing optimal application coverage and optimal pole spacing.

Available distributions are Type II, III, IV, and V roadway distributions. When used with the optional acrylic refractor the unit provides approximately 10% uplight and increased vertical foot-candles.

ELECTRICAL

Expected Life: LED light engines are rated $> 100,000$ hours at 25°C , L70. Electronic driver has an expected life of 100,000 hours at a 25°C ambient.

Lower Energy: Saves an expected 40-60% over comparable HID luminaires.

Standard surge protection is 20kV/10kA "Extreme Level" per ANSI C136.2. An optional MOV pack provides 10kV/5kA "Enhanced Level."

MECHANICAL

Includes standard AEL lineman-friendly features such as tool-less entry, 3 station terminal block and quick disconnects. Bubble level located inside the electrical compartment for easy leveling at installation.

Rugged die-cast aluminum housing and door are polyester powder-coated for durability and corrosion resistance. Rigorous five-stage pre-treating and painting process yields a finish that achieves a scribe creepage rating of 8 (per ASTM D1654) after over 5000 hours exposure to salt fog chamber (operated per ASTM B117).

Mount arm mount is adjustable for arms from 1-1/4" to 2" (1-5/8" to 2-3/8" O.D.) diameter. The 2-bolt clamping mechanism provides 3G vibration rating per ANSI C136.31.

CONTROLS

NEMA 3 pin photocontrol receptacle is standard, with the Acuity designed ANSI standard 7 pin receptacle optionally available.

Premium solid state locking-style photocontrol – PCSS (10 year rated life) Extreme long life solid state locking-style photocontrol – PCL1 (20 year rated life)

Optional onboard Adjustable Output module allows the light output and input wattage to be modified to meet site specific requirements, and also can allow a single fixture to be flexibly applied in many different applications.



Autobahn Series ATBX

Roadway & Security Lighting

PERFORMANCE PACKAGE

Performance Package	Distribution	Input Watts	3000K CCT, 70 CRI					4000K & 5000K CCT, 70 CRI					LLD @ 25C		
			Lumens	LPW	B	U	G	Lumens	LPW	B	U	G	50K Hours	75K Hours	100K Hours
P10	R2	14	1,956	140	1	0	1	2,030	145	1	0	1	0.92	0.89	0.85
	R3		1,955	140	0	0	1	2,011	144	0	0	1			
	R4		1,962	142	1	0	1	1,974	141	1	0	1			
	R5		2,145	153	1	0	0	2,160	154	1	0	0			
	D3		1,908	135	1	2	1	1,983	140	1	2	1			
	D5		2,071	148	1	2	1	2,092	149	1	2	1			
P20	R2	18	2,455	136	1	0	1	2,575	143	1	0	1	0.92	0.89	0.85
	R3		2,473	137	1	0	1	2,547	142	1	0	1			
	R4		2,505	138	1	0	1	2,497	139	1	0	1			
	R5		2,735	151	2	0	0	2,735	152	2	0	0			
	D3		2,414	134	1	2	1	2,486	138	1	2	1			
	D5		2,629	146	1	2	1	2,646	147	1	2	1			
P30	R2	23	3,192	135	1	0	1	3,243	141	1	0	1	0.92	0.89	0.85
	R3		3,125	136	1	0	1	3,232	141	1	0	1			
	R4		3,153	137	1	0	1	3,150	137	1	0	1			
	R5		3,422	149	2	0	1	3,431	149	2	0	1			
	D3		3,050	131	1	2	1	3,155	137	1	2	1			
	D5		3,314	144	1	2	1	3,322	144	1	2	1			
P40	R2	28	3,601	129	1	0	1	3,790	135	1	0	1	0.92	0.89	0.85
	R3		3,705	132	1	0	1	3,800	139	1	0	1			
	R4		3,640	130	1	0	2	3,817	138	1	0	2			
	R5		3,971	142	2	0	1	4,167	149	2	0	1			
	D3		3,617	129	1	2	2	3,797	136	1	2	2			
	D5		3,845	137	2	2	1	4,035	144	2	2	1			
P50	R2	41	5,426	131	2	0	2	5,425	132	2	0	2	0.92	0.89	0.85
	R3		5,246	128	1	0	2	5,615	137	1	0	2			
	R4		5,300	129	1	0	2	5,462	133	1	0	2			
	R5		5,647	138	2	0	1	6,033	147	2	0	1			
	D3		5,123	125	1	2	2	5,481	134	1	2	2			
	D5		5,458	133	2	2	2	5,842	142	2	2	2			
P60	R2	51	6,392	125	2	0	2	6,416	126	2	0	2	0.92	0.88	0.84
	R3		6,208	122	1	0	2	6,635	130	1	0	2			
	R4		6,207	122	1	0	2	6,432	126	1	0	2			
	R5		6,690	131	2	0	1	7,127	140	2	0	1			
	D3		6,059	119	1	2	2	6,477	127	1	2	2			
	D5		6,478	127	2	2	2	6,901	135	2	2	2			
P70	R2	60	7,133	140	2	0	2	7,246	142	2	0	2	0.92	0.88	0.84
	R3		6,967	137	1	0	2	7,469	146	1	0	2			
	R4		6,957	138	1	0	2	7,285	142	1	0	2			
	R5		7,492	147	2	0	1	7,929	156	2	0	1			
	D3		6,900	133	2	2	2	7,271	143	2	2	2			
	D5		7,255	142	2	2	2	7,608	151	2	2	2			



AEL Headquarters, 3825 Columbus Road, Grassville, OH 43023
www.american-electric-lighting.com

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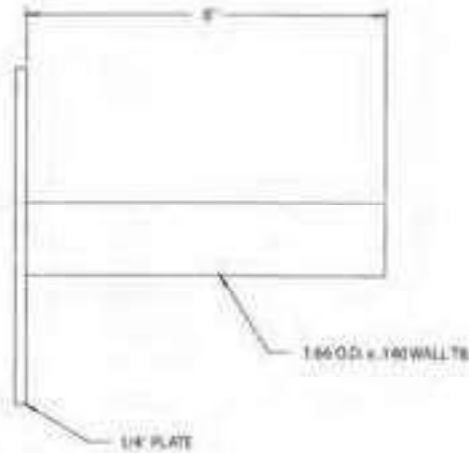
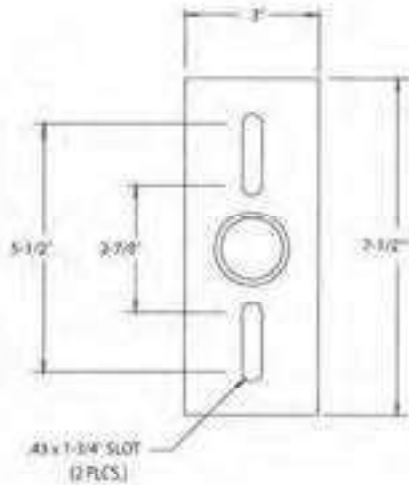
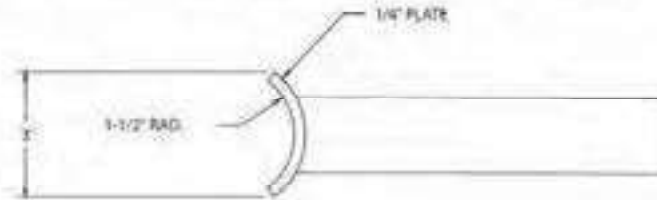
Warranty Five-year limited warranty. Complete warranty terms located at: www.acuitybrands.com/warranty
Actual performance may differ as a result of end-user environment and application. All values are design or typical values, measured under laboratory conditions at 25 °C. Specifications subject to change without notice.

Please contact your sales representative for the latest product information.

Autobahn Series ATBX

Roadway & Security Lighting

UMR POLE ADAPTOR RECOMMENDED FOR USE WITH POLES OF 4" DIAMETER OR SMALLER



UMS POLE ADAPTOR



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www.americanelectriclighting.com

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Warranty Five-year limited warranty. Complete warranty terms located at: www.acuitybrands.com/support/customer-support/terms-and-conditions
Actual performance may differ as a result of end-user environment and application. All values are design or typical values, measured under laboratory conditions at 25 °C. Specifications subject to change without notice.

Please contact your sales representative for the latest product information. Page 29

Community Engagement and Public Outreach

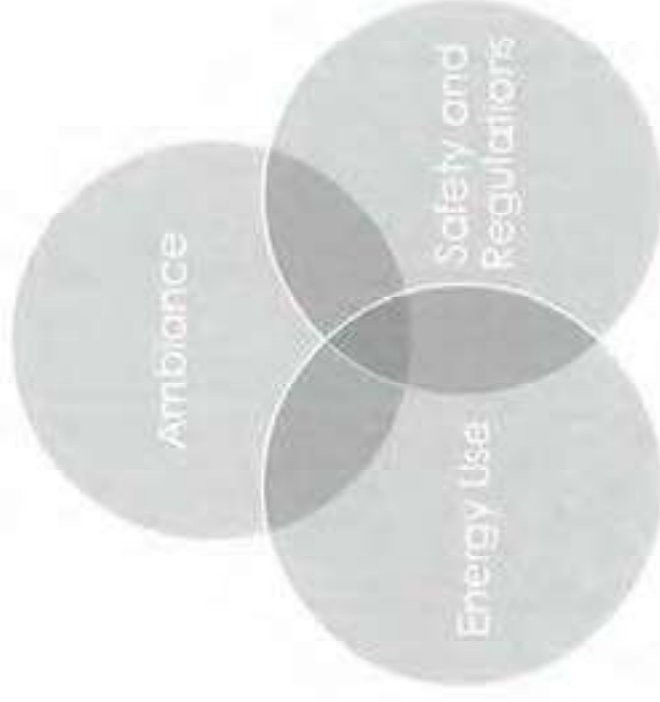
Dalkia will begin a its community engagement during the lighting design finalization phase:

- Create demonstrations and engage neighbors
- Analyze options and tradeoffs
- Ensure regulatory compliance

The lighting design will be submitted to the governing body for its approval before the work phase begins.

During the work phase, Dalkia will coordinate its public outreach effort with the City and PNM. The goals of this coordinated public outreach will be to:

- 1) Educate the Citizens of Santa Fe about the benefits of upgrading existing lamps to LED technology
- 2) Provide regular updates to the upgrade phasing schedule
 - a. Including neighborhoods and anticipated road closures
 - b. Significant road closures will be announced with additional press releases beyond publication on the website
- 3) Provide a means for public feedback and FAQs
- 4) Establish means for public communication post install



Commissioning/Acceptance of Work

Within forty-five (45) days of the Commencement Date, Dalkia will provide a written Commissioning and Quality Assurance Plan to include testing, inspection, and operational validation procedures. The Commissioning and Quality Assurance Plan will establish procedures for commissioning each Segment. Upon completion of a Segment of the Works Phase, Dalkia will commission the completed work in partnership with the City in accordance with the agreed upon plan. Key elements of this plan may include:

- Detailed micro-schedules to inform the City of Santa Fe and PNM of weekly activity and forecast of upcoming conversions.
- Coordinated inspections for Traffic Safety and Quality of Work.
- Formal transmittal of completed assets to the City of Santa Fe and PNM.
- Real-time data entry into Dalkia's CMMS system for tracking inventory and maintenance.
- Electronic transmission of asset conversion completion to PNM for billing rate changes.

Dalkia will run two concurrent processes of acceptance and commissioning. One with the City to validate completion of the works and hand off ownership, and one with PNM in order to commence billing under the LED tariff.

- The City will participate with Dalkia in the commissioning plan on a bi-weekly basis

January 27, 2021

Re: Bonding Capacity for - Dalkia Energy Solutions, LLC
200 Cummings Center, Suite 177-C
Beverly, MA 01915

To whom it may concern:

It has been the privilege of Liberty Mutual Insurance Company to provide surety bonds for Dalkia Energy Solutions, LLC for many years. During that time they have completed and we have bonded various projects in size and scope. At present time, Liberty Mutual Insurance Company provides a \$5,000,000 single/\$20,000,000 aggregate surety program for Dalkia Energy Solutions, LLC.

This letter is not to be construed as an agreement to provide surety bonds for any particular project but is offered as an indication of Liberty Mutual Insurance Company's past experience and confidence in the firm. We reserve the right to review terms and conditions of any proposals, contract documents, bond forms, financial arrangements and other underwriting considerations at the time the contract is awarded. We assume no liability to third parties or to you if for any reason we do not execute the said bond.

Liberty Mutual Insurance Company is listed on the U.S. Treasury Departments list of acceptable sureties and is rated "A" by A.M. Best.

If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Liberty Mutual Insurance Company

Melissa L. Fortier

Melissa L. Fortier
Attorney In Fact

PUBLIC SERVICE COMPANY OF NEW MEXICO
ELECTRIC SERVICES

16TH REVISED RATE NO. 20
CANCELING 15TH REVISED RATE NO. 20

INTEGRATED SYSTEM STREETLIGHTING
AND FLOODLIGHTING SERVICE

Page 1 of 9

APPLICABILITY: Applicable to any municipal corporation or other political subdivision within the State of New Mexico (for purposes of this Rate Schedule, "Customer") that receives service for streetlighting and floodlighting systems within all areas served by the company in New Mexico.

x
x
x

AVAILABILITY: Available within all areas served by the company in New Mexico.

A. Appendix A: Appendix A shall be a list of Company-owned LED streetlights that are operational substitutes for standard Mercury Vapor ("MV"), Low Pressure Sodium ("LPS") and High Pressure Sodium ("HPS") fixtures. Appendix A shall be publicly available on the Company's website and shall be updated periodically by the Company to reflect updates for operational substitutes currently available from suppliers.

x
x
x
x
x

B. Operational Substitute No. 1: Operational Substitute No. 1 shall be a Company-owned LED light identified in Appendix A to this tariff that is an operational substitute for the existing 175W MV, 55W LPS, 70W HPS and 100W HPS streetlight fixtures.

x
x

C. Operational Substitute No. 2: Operational Substitute No. 2 shall be a Company-owned LED light identified in Appendix A to this tariff that is an operational substitute for the existing 400W MV, 135W LPS, 200W HPS and 250W HPS streetlight fixtures.

x
x
x

D. Operational Substitute No. 3: Operational Substitute No. 3 shall be a Company-owned LED light identified in Appendix A to this tariff that is an operational substitute for a 400W HPS streetlight fixture.

x
x
x

MINIMUM CHARGE: Payment for lamps, standards, and lighting fixtures installed in accordance with the rates specified below.

TERMS OF PAYMENT: All bills are net and payable within twenty (20) days from the date of bill. If payment for any or all electric service rendered is not made within thirty (30) days from the date the bill is rendered, the Company shall apply an additional late payment charge as defined in Rate 16 Special Charges.

NET RATE PER MONTH OR PART THEREOF: The charge per month will be the sum of the applicable components of A, B, C, D, E, F and G. All monthly kWh listed for unmetered lighting assumes dusk-to-dawn operation at an average of 355.5 hours per month.

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REPLACED BY NMPRC

BY Commission Order Case #16-00276-UT

Advice Notice No. 545

Gérard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development

CCG#624210

PUBLIC SERVICE COMPANY OF NEW MEXICO
ELECTRIC SERVICES

16TH REVISED RATE NO. 20
CANCELING 15TH REVISED RATE NO. 20

INTEGRATED SYSTEM STREETLIGHTING
AND FLOODLIGHTING SERVICE

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A. LIGHT CHARGE (for unmetered lights where maintenance is provided by the Company and included in the Monthly Charge):

Standard Light Type	Monthly kWh Usage	Monthly Charge (Company Owned)	Monthly Charge (Customer Owned)
<u>Mercury Vapor Lights (1)</u>			
175W MV	73	\$14.14	\$ 5.54
400W MV	162	\$21.47	\$12.30
<u>Low Pressure Sodium Lights (1)</u>			
55W LPS	28	\$12.70	\$ 2.13
135W LPS	63	\$17.13	\$ 4.78
<u>High Pressure Sodium Lights</u>			
70W HPS	31	\$10.95	\$ 2.35
100W HPS	45	\$12.02	\$ 3.42
200W HPS	89	\$14.99	\$6.76
250W HPS	107	\$17.29	\$8.12
400W HPS	165	\$21.70	\$12.53

(1) Service under this rate is restricted to those installations and customers receiving service as of August 21, 2011.

B. METERED SERIES STREET LIGHTING: For PNM owned and maintained metered lights, and customer owned metered lights where maintenance is provided by the Company and is included in the monthly charge.

Description	Monthly Rate (Company Owned (1))	Monthly Rate (Customer Owned)
Metered Lighting	\$0.1940070	\$0.0561839

(1) Service under this rate is restricted to those installations receiving service as of August 21, 2011.

C. COMPANY OWNED AND MAINTAINED LED LIGHTING, AND CUSTOMER OWNED AND MAINTAINED LIGHTING (for unmetered lights where maintenance is not provided by the Company and is not included in the Monthly Charge):

Advice Notice No. 545



Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development
GCG#524210

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PUBLIC SERVICE COMPANY OF NEW MEXICO
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Fixture Wattage Range	Monthly kWh Usage (1), (2)	Company Owned And Maintained Option for LED Lighting-Monthly Charge Per Unit	Customer Owned and Maintained Lighting-Monthly Charge Per Unit
(Wattage includes all ballast or driver losses (if applicable))		Monthly kWh Usage * (\$0.0561839 per kWh + \$0.1441851 per kWh)	Monthly kWh Usage * \$0.0561839 per kWh
0.0 to 10.0 Watts	3.6	\$ 0.71	\$ 0.20
10.1 to 20.0 Watts	7.1	\$ 1.42	\$ 0.40
20.1 to 30.0 Watts	10.7	\$ 2.14	\$ 0.60
30.1 to 40.0 Watts	14.2	\$ 2.85	\$ 0.80
40.1 to 50.0 Watts	17.8	\$ 3.56	\$ 1.00
50.1 to 60.0 Watts	21.3	\$ 4.27	\$ 1.20
60.1 to 70.0 Watts	24.9	\$ 4.99	\$ 1.40
70.1 to 80.0 Watts	28.4	\$ 5.70	\$ 1.60
80.1 to 90.0 Watts	32.0	\$ 6.41	\$ 1.80
90.1 to 100.0 Watts	35.6	\$ 7.12	\$ 2.00
100.1 to 110.0 Watts	39.1	\$ 7.84	\$ 2.20
110.1 to 120.0 Watts	42.7	\$ 8.55	\$ 2.40
120.1 to 130.0 Watts	46.2	\$ 9.26	\$ 2.60
130.1 to 140.0 Watts	49.8	\$ 9.97	\$ 2.80
140.1 to 150.0 Watts	53.3	\$ 10.68	\$ 3.00
150.1 to 160.0 Watts	56.9	\$ 11.40	\$ 3.20
160.1 to 170.0 Watts	60.4	\$ 12.11	\$ 3.40
170.1 to 180.0 Watts	64.0	\$ 12.82	\$ 3.60
180.1 to 190.0 Watts	67.5	\$ 13.53	\$ 3.79
190.1 to 200.0 Watts	71.1	\$ 14.25	\$ 3.99
200.1 to 210.0 Watts	74.7	\$ 14.96	\$ 4.19
210.1 to 220.0 Watts	78.2	\$ 15.67	\$ 4.38
220.1 to 230.0 Watts	81.8	\$ 16.38	\$ 4.58
230.1 to 240.0 Watts	85.3	\$ 17.10	\$ 4.78
240.1 to 250.0 Watts	88.9	\$ 17.81	\$ 4.99

Advice Notice No. 545

Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development

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PUBLIC SERVICE COMPANY OF NEW MEXICO
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250.1	to	260.0	Watts	92.4	\$ 18.52	(5)	\$ 5.19
260.1	to	270.0	Watts	96.0	\$ 19.23		\$ 5.39
270.1	to	280.0	Watts	99.5	\$ 19.94		\$ 5.59
280.1	to	290.0	Watts	103.1	\$ 20.66		\$ 5.79
290.1	to	300.0	Watts	106.7	\$ 21.37		\$ 5.99
300.1	to	310.0	Watts	110.2	\$ 22.08		\$ 6.19
310.1	to	320.0	Watts	113.8	\$ 22.79		\$ 6.39
320.1	to	330.0	Watts	117.3	\$ 23.51		\$ 6.59
330.1	to	340.0	Watts	120.9	\$ 24.22		\$ 6.79
340.1	to	350.0	Watts	124.4	\$ 24.93		\$ 6.99
350.1	to	360.0	Watts	128.0	\$ 25.64		\$ 7.19
360.1	to	370.0	Watts	131.5	\$ 26.36		\$ 7.39
370.1	to	380.0	Watts	135.1	\$ 27.07		\$ 7.59
380.1	to	390.0	Watts	138.6	\$ 27.78		\$ 7.79
390.1	to	400.0	Watts	142.2	\$ 28.49		\$ 7.99

(1) Monthly kWh usage = Maximum Wattage in range x 355.5 hours per month / 1,000 Watts per kW.

For lights larger than 400W, the applicable usage and rate shall be the sum of the 390.1 - 400.0 Watts row in the table above plus a wattage range such that the resulting range encompasses the actual wattage of the light (Example: for a 600 Watt light, the applicable usage and charge is determined by adding the 390.1 - 400.0 Watts row and the 190.1 - 200.0 Watts row together, resulting in a 590.1 - 600.0 Watt Range with a monthly usage of 213.300 kWh.).

C.1 CUSTOMER OWNED AND MAINTAINED METERED LIGHTING: For Customer-owned metered lights (excluding B above) where maintenance is not provided by the Company and is not included in the monthly charge.

Description	Monthly Rates (Customer Owned)
Metered Lighting	\$ 0.0561839

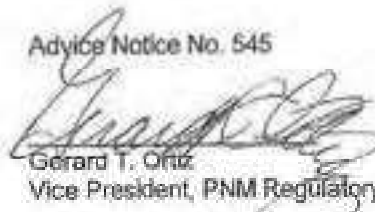
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Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development

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PUBLIC SERVICE COMPANY OF NEW MEXICO
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D. POLE CHARGE: For company owned lighting attached to a dedicated street lighting pole.

Description	Monthly Charge (Company Owned)
Wood Pole	\$ 4.06
Non-Wood Pole	\$ 9.45

E. FUEL AND PURCHASED POWER COST ADJUSTMENT: All kWh usage under this tariff will be subject to the Fuel and Purchase Power Cost Adjustment Clause ("FPPCAC") factors calculated according to the provisions in PNM's Rider 23.

The appropriate FPPCAC factors will be applied to all kWh appearing on bills rendered under this tariff.

F. OTHER APPLICABLE RIDERS: Any other PNM riders that may apply to this tariff shall be billed in accordance with the terms of those riders.

G. SPECIAL TAX AND ASSESSMENT ADJUSTMENT: Billings under this Schedule may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and of all other taxes, fees, or charges (exclusive of ad valorem, state and federal income taxes) payable by the utility and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

SPECIAL CONDITIONS:

I. Installation and Ownership of Lighting Facilities:

a) Company Owned Lighting Facilities-

Upon request from the Customer, the Company shall convert or install Company owned streetlighting fixtures at its own expense up to the limits provided by the Installation Allowance Table below, with any remaining expenses being the responsibility of the Customer. All lighting facilities shall be and remain the property of the Company.

Advice Notice No. 545



Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development

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PUBLIC SERVICE COMPANY OF NEW MEXICO
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Company Owned Light & Pole Installation Allowances

High Pressure Sodium Lighting Facilities

70W High Pressure Sodium Street Light	\$ 920.00
100W High Pressure Sodium Street Light	\$ 920.00
200W High Pressure Sodium Street Light	\$ 880.00
250W High Pressure Sodium Street Light	\$ 980.00
400W High Pressure Sodium Flood Light	\$ 980.00
400W High Pressure Sodium Street Light	\$ 980.00

Light Emitting Diode ("LED") Lighting Facilities

Operational Substitute No. 1	\$ 160.00
Operational Substitute No. 2	\$ 480.00
Operational Substitute No. 3	\$ 1,040.00

Dedicated Streetlight Poles

Wood Pole	\$ 520.00
Non-Wood Pole	\$ 1,010.00

b) Customer Owned Lighting Facilities-

- i. The Customer shall be obligated to install its own streetlighting fixtures and poles at its own expense. The Company shall inspect and approve all Customer installed streetlighting prior to it being placed under this Rate.
- ii. If requested by the Customer, poles or fixtures may be installed by the Company or an agent approved by the Company. Customer shall pay the Company for all installation costs of the facilities where such installation is done by the Company or the Company's agent.
- iii. All facilities installed to provide electric service to customer owned streetlights under this tariff shall be and remain the property of the Company.
- iv. The Customer is required to provide specific performance data on the total energy consumption of each non-standard fixture installed.

II. Highway Signs:

No service to or maintenance of highway signs connected to the lighting system is included under this schedule.

Advice Notice No. 545



Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development

GG#524210

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PUBLIC SERVICE COMPANY OF NEW MEXICO
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B. Customer-owned:

1. If requested by the Customer, Company agrees to make all repairs, alterations, fixture replacements or knock-downs replacements of Customer-owned Lights and Poles necessitated by accidents, vandalism, projectiles, thefts, acts of nature or existing or future laws or ordinances. The Customer shall pay all costs associated with such replacements.

2. Customer agrees to coordinate recovery efforts with Company in instances where Company has potential legal liability from claims of the parties responsible for Customer-owned Light and Pole damage.

The Company will, upon receipt of any information pertaining to the identity and circumstances of a knock-down or a copper theft associated with a Customer-owned Light or Pole, furnish to the customer a copy of that information.

X
X
X
X
X
X
X
X
X
X

IV. Operation and Maintenance:

A. Total Company-Owned System:

The Company will perform normal operation and maintenance of the lighting system which includes routine maintenance, repairs and fixture servicing including all spot lamp replacement required by faulty lamps.

Mandatory replacement of or alterations to working luminaire to bring them into compliance with existing or future laws or ordinances that are not otherwise specifically addressed by other provisions of this tariff will be performed by the Company at the expense of the customer.

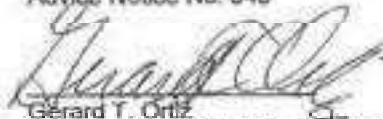
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It shall be the duty of the customer to report to the Company the failure of any lamp covered by the Rate to burn, or to burn adequately, and it shall thereafter be the obligation of the Company to at once restore such lamp to service subject, however, to the provisions of Special Conditions I, above and to subsequent provisions of this item as to replacements. Any lamp so reported as failing to burn, or to burn adequately, shall be replaced or repaired and returned to regular operation within seventy-two (72) hours from the time of notice of such failure to the Company. Pole hits and failures due to the loss of underground conductors or control equipment are excluded from the 72 hour requirement and shall be repaired as material availability and scheduling permits.

B. Total Customer-Owned System:

Page 1; Section A - "Light Charge (for unmetered lights where maintenance is provided by the Company and included in the Monthly Charge". Maintenance under this section includes faulty photoelectric cell replacement, faulty lamp replacement, faulty fixture fuse replacement, and

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Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development

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PUBLIC SERVICE COMPANY OF NEW MEXICO
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incidental lens cleaning.

Page 2; Sections B - "Metered Series Street Lighting", and C - "Customer Owned and Maintained Lighting". Maintenance under these sections is the responsibility of the customer.

All other operation and maintenance, including traffic control costs and troubleshooting customer owned systems may be done by the Company at the request and expense of the customer. The Company will not stock maintenance items that are considered nonstandard by the Company for use in maintaining customer-owned lighting systems. Stocking of these nonstandard items is the sole responsibility of the customer.

V. Termination:

Service to any lamp installed hereunder shall be terminated by the Company upon receipt of thirty (30) days notice and coincident with such notice, payment of the Company's depreciated investment for any lamp and/or pole associated with the removal of any Company owned lighting facilities.

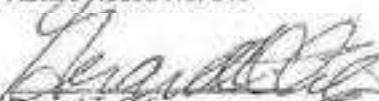
VI. In the event of a conflict between the terms of this rate schedule and any provision contained in the streetlighting contract in effect, the relevant terms of the rate schedule shall control.

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Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development

GDG#524210



January 22, 2021

Fran Dunaway, Chief Procurement Officer, City of Santa Fe, New Mexico.

We understand that the City of Santa Fe is using a "Procurement under Existing Contracts" methodology under Section XIV(B) of the City of Santa Fe Procurement Manual 2020. As a representative of Dalkia Energy Solutions, LLC, I confirm that we agree to extend the pricing, terms, and conditions of the "Global Management Performance Contract" (City of Albuquerque, Request for Proposals, Solicitation Number: P2016000023, Evaluation and Implementation of Energy Efficiency and Reduced Maintenance on City Owned and Maintained Street Lighting, October 09, 2015 between City of Albuquerque and Citelum and subsequently assigned to Dalkia) to the City of Santa Fe.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee Vardakas", written over a light blue horizontal line.

Lee Vardakas

CEO

BUSINESS REGISTRATION

City of Santa Fe

Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551



Business Name: DALKIA ENERGY SOLUTIONS, LLC
DBA: DALKIA ENERGY SOLUTIONS,
LLC

Business Location: 200 CUMMINGS CTR SUITE 177C
BEVERLY, MA 01915

Owner: DALKIA ENERGY SOLUTIONS

License Number: 229388

Issued Date: February 01, 2021

Expiration Date: February 01, 2022

CRS Number: 03-526533-00-7

License Type: Business License - Renewable

Classification: Out of Jurisdiction Contractor -
Specialty

Fees Paid: \$10.00

DALKIA ENERGY SOLUTIONS, LLC
200 CUMMINGS CTR
BEVERLY, MA 01915

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE



ADDITIONAL REMARKS SCHEDULE

AGENCY Willis Towers Watson Northeast, Inc.		NAMED INSURED Dalkia Energy Solutions, LLC 200 Cummings Center, Suite 177C Beverly, MA 01915	
POLICY NUMBER See Page 1		EFFECTIVE DATE: See Page 1	
CARRIER See Page 1	NAIC CODE See Page 1		

ADDITIONAL REMARKS

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

INSURER AFFORDING COVERAGE: Berkley Assurance Company NAIC#: 39462
 POLICY NUMBER: PCAB-5012196-0620 EFF DATE: 06/30/2020 EXP DATE: 06/30/2021

TYPE OF INSURANCE:	LIMIT DESCRIPTION:	LIMIT AMOUNT:
Professional Liability	Limit	3,000,000
	SIR	50,000
	Aggregate	3,000,000



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/22/21

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, Inc of Florida 1001 Brickell Bay Drive, Suite #1100 Miami, FL 33131-4937	CONTACT NAME: Aon Risk Services, Inc of Florida	
	PHONE (A/C, No, Ext): 800-743-8130	FAX (A/C, No): 800-522-7514
	EMAIL ADDRESS: ADP.COI.Center@Aon.com	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A : New Hampshire Ins Co	NAIC # 23841
INSURED ADP TotalSource DE IV, Inc. 10200 Sunset Drive Miami, FL 33173 ALTERNATE EMPLOYER Dalkia Energy Solutions, LLC 200 Cummings Center Suite 177C Beverly, MA 01915	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 3212779 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER						EACH OCCURRENCE	\$
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$
							GENERAL AGGREGATE	\$
							PRODUCTS - COMP/OP AGG	\$
								\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEC <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	WC 027115075 NM	07/12/20	07/01/21	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$ 2,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 2,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 All worksite employees working for DALKIA ENERGY SOLUTIONS, LLC, paid under ADP TOTALSOURCE, INC.'s payroll, are covered under the above stated policy. DALKIA ENERGY SOLUTIONS, LLC is an alternate employer under this policy.

CERTIFICATE HOLDER **CANCELLATION**

The City of Santa Fe 200 Lincoln Avenue Santa Fe, NM 87504-0909	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 <i>Aon Risk Services, Inc of Florida</i>
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ACTION SHEET
PUBLIC WORKS AND UTILITES COMMITTEE MEETING OF 01/25/2021

ISSUSE NO. 8C

Consideration of Bill No. 2021-____: An Ordinance Approving Global Management Performance Contract with Dalkia Energy Solutions, LLC, Subject to City Council Approval of a Separate Financing Transaction to Finance the Cost of the Global Management Performance Contract. (Mayor Alan Webber, Councilor Lindell and Councilor Rivera) (Brad Fluetsch, City of Santa Fe Cash and Investment Manager, bjfluetsch@santafenm.gov, 955-6885)

COMMITTEE REVIEW:

Public Works and Utilities Committee – 01/25/21
 Governing Body (Request to Publish) – 01/27/21
 Finance Committee – 02/15/21
 Governing Body (Public Hearing) – 02/24/21

PUBLIC WORKS AND UTILITES COMMITTEE ACTION: Approved on Consent Agenda to forward to 01/27/2021 Governing Body

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		

1 AN ABSTRACT OF PROCEEDINGS

2 STATE OF NEW MEXICO)

3 COUNTY OF SANTA FE) ss.

4 CITY OF SANTA FE)

5 The Governing Body (the “Governing Body”) of the City of Santa Fe (the “City”) in the County
6 of Santa Fe, State of New Mexico, met in regular session in full conformity with law and ordinances
7 and rules of the City, at City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico, being the regular
8 meeting place of the Governing Body, at the hour of 5:00 p.m., on Wednesday, the ____day of
9 February, 2021.

10 Upon roll call the following were found to be present, constituting a quorum of the Governing
11 Body:

- 12 PRESENT: Mayor: Alan Webber
- 13 Councilor: Roman Abeyta
- 14 Councilor: Jamie Cassutt-Sanchez
- 15 Councilor: Michael J. Garcia
- 16 Councilor: Signe I. Lindell
- 17 Councilor: Chris Rivera
- 18 Councilor: Carol Romero-Wirth
- 19 Councilor: JoAnne Vigil Coppler
- 20 Councilor: Renee Villarreal

21 ABSENT:
22 _____

23 Thereupon the following proceedings, among others, were had and taken:

24 PUBLIC HEARINGS

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CONSIDERATION OF BILL NO. 2021-2

ADOPTION OF ORDINANCE NO. 2021-3

Approval of Global Management Performance Contract with Dalkia Energy Solutions, LLC

1 **CITY OF SANTA FE, NEW MEXICO**

2 **ORDINANCE NO. 2021-3**

3 **INTRODUCED BY:**

4
5 **AN ORDINANCE**

6 **APPROVING A GLOBAL MANAGEMENT PERFORMANCE CONTRACT BY AND**
7 **BETWEEN THE CITY AND DALKIA ENERGY SOLUTIONS, LLC (THE**
8 **“AGREEMENT”) FOR THE INSTALLATION OF STREETLIGHT UPGRADES,**
9 **SUBJECT TO CITY COUNCIL APPROVAL OF A SEPARATE FINANCING**
10 **TRANSACTION TO FINANCE THE COSTS OF THE AGREEMENT;**
11 **AUTHORIZING THE PLEDGE OF UTILITY COST SAVINGS AS SECURITY FOR THE**
12 **TRANSACTION FOR THE FINANCING OF THE AGREEMENT, AND THE**
13 **EXECUTION AND DELIVERY OF CERTAIN OTHER AGREEMENTS AND**
14 **DOCUMENTS IN CONNECTION WITH THE EPC; RATIFYING ACTION**
15 **PREVIOUSLY TAKEN IN CONNECTION WITH THE AGREEMENT; REPEALING**
16 **ALL ORDINANCES AND PRIOR ACTION IN CONFLICT HEREWITH; AND RELATED**
17 **MATTERS.**

18 Capitalized terms used in the following preambles have the same meaning as set forth in
19 Section 1 of this Ordinance unless the context requires otherwise.

20 **WHEREAS**, the City of Santa Fe, New Mexico (the “City”) is a legally created,
21 established, organized and existing incorporated charter municipality with home-rule powers under
22 the constitution and laws of the State of New Mexico; and

23 **WHEREAS**, Dalkia Energy Solutions, LLC, a Massachusetts limited liability company
24 (“Contractor”) has agreed to perform Street Light LED Upgrade and Maintenance (the “Project”)
25 for the City per the pricing structure and the contractual terms of the Global Management

1 Performance Contract by and between Citelum US, Inc. and the City of Albuquerque, New Mexico
2 dated September 28, 2017, as agreed to by the letter submitted by the Contractor to the City dated
3 September 10, 2019; and

4 **WHEREAS**, the amount of savings to be realized through the implementation of the
5 Project appears to be sufficient to cover all costs associated with the Project; and

6 **WHEREAS**, the Contractor has proposed that the City and the Contractor enter into a
7 Global Management Agreement (the “Agreement”), a copy of which has been presented to the City
8 Council in connection with its consideration of this Ordinance, and pursuant to which the
9 Contractor will complete the Project at a total cost not to exceed \$3,187,337.78, including gross
10 receipts taxes; and

11 **WHEREAS**, the Project consists of the installation and maintenance of LED streetlight
12 conversion and routine and non-routing maintenance of the converted streetlights; and

13 **WHEREAS**, the City recognizes the need to regulate street lighting in order to preserve
14 our dark skies, reduce light pollution, reduce or prevent glare, reduce or prevent light trespass,
15 conserve energy, promote a sense of safety and security and ensure aesthetically appropriate street
16 lighting in keeping with the character of Santa Fe; and

17 **WHEREAS**, the City intends to finance the costs of the Project through a separate
18 financing arrangement with a third-party financial institution (the “Financing Transaction”) which
19 will be paid from pledged Utility Cost Savings as authorized pursuant to the Act, and pursuant to
20 which the Pledged Utility Cost Savings are net revenues of the Project (the “Pledged Revenues”)
21 which constitute a special fund; and

22 **WHEREAS**, the Governing Body intends to approve the Agreement and authorize its
23 execution, delivery, and assignment of the Pledged Revenues, subject to the terms and provisions
24 of this Ordinance.

25 **NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE**

1 **CITY OF SANTA FE, NEW MEXICO:**

2 **Section 1. Definitions.** The terms in this section are defined for all purposes of this
3 Ordinance and of any ordinance amendatory hereof or supplemental hereto, or relating hereto, and
4 of any instrument or document appertaining hereto, except where the context by clear implication
5 herein otherwise requires, shall have the following meanings:

6 “Act” means the general laws of the State, including the home-rule charter of the City,
7 Sections 3-31-1 through 3-31-12 NMSA 1978, as amended, and enactments of the Governing Body
8 relating to the Agreement and the Financing Transaction, including this Ordinance.

9 “Authorized Officer” means the following officers of the City: Mayor, City Manager, City
10 Finance Director, or other officer of the City when designated by a certificate signed by the Mayor
11 of the City from time to time, a certified copy of which shall be delivered to the Paying Agent.

12 “Bond Counsel” means an attorney or firm of attorneys nationally recognized for expertise
13 in the area of municipal bonds and the exemption of interest on municipal bonds from federal
14 income taxation.

15 “City,” “Municipal,” or “Municipality” means the municipal corporation and body
16 corporate and politic known as the City of Santa Fe, Santa Fe County, New Mexico.

17 “Conservation Measures” mean, collectively or individually, as the context may require,
18 the energy savings equipment and improvements of which the Project is comprised.

19 “Contract Price” means \$3,187,337.78, including gross receipts taxes, which is the
20 maximum amount payable pursuant to the Agreement.

21 “Contractor” means Dalkia Energy Solutions, LLC, a Massachusetts limited liability
22 company.

23 “Costs of Issuance” means all costs relating to the execution and delivery of the Agreement
24 and the Financing Transaction, including, without limitation, costs of advertising and publication,
25 costs of fees and expenses of the financial advisor, Bond Counsel, the Paying Agent, and other

1 reasonable and necessary fees and costs, including applicable gross receipts taxes, related to the
2 execution and delivery of the Agreement and the Financing Transaction.

3 “Financing Transaction” means the transaction to be entered into by and between the City
4 and the Lender, proceeds of which shall be applied to pay the Contract Price; the principal of,
5 interest on and other payments due in connection with the Financing Transaction shall be payable
6 solely from Pledged Revenues; provided, that the Financing Transaction may be in the form of a
7 lease-purchase agreement, a loan agreement or other form of debt obligation.

8 “Governing Body” means the members of the governing body designated as councilors
9 who, together with the mayor, are the governing body of the City.

10 “Lender” means the bank or other financial institution serving as the lender in connection
11 with the Financing Transaction; if applicable, the Lender may be the lessor if the Financing
12 Transaction is a lease-purchase transaction.

13 “Ordinance” means this City Ordinance as amended or supplemented from time to time.

14 “Placement Agent” means D.A. Davidson & Co., Kansas City, Missouri.

15 “Placement Agent Agreement” means the professional services agreement by and between
16 the City and the Placement Agent for the placement of the Financing Transaction with the Lender.

17 “Pledged Revenues” means amounts generated by Utility Cost Savings pursuant to the
18 Agreement, which constitute net revenues of the Project, which shall be deposited monthly to the
19 Pledged Revenue Fund as provided in Section 6 of this Ordinance.

20 “Pledged Revenue Fund” means the fund created pursuant to Section 6 of this Ordinance.

21 “Project” means the implementation of LED streetlight upgrades and associated routine
22 and non-routine maintenance for the purpose of achieving Utility Cost Savings: the following
23 energy savings measures:

24 (1) LED Streetlight conversion:

25 The Contractor will upgrade all City owned lights that are not currently LED to LED. The

1 estimated type and amount of lights to be converted will be confirmed by the Contractor in
2 the field through the course of installation.

3 (2) Routine Street light Maintenance:

4 The Contractor will perform routine maintenance of City-owned streetlights, including
5 regular maintenance, including bulbs, photocells, minor wiring & fuses, and cleaning, night
6 patrols.

7 Management of Computerized Maintenance Management System (“MUSE”).

8 The Contractor will manage lights-out hotline including coordination with PNM regarding
9 PNM owned street lights.

10 Provide emergency response 24 hours a day 7 days a week.

11 The Contractor will maintain accurate inventory of changes to City owned lighting system.

12 (3) Non-Routine Street light Maintenance and Installation:

13 The Contractor will provide on-call street light maintenance and construction services for
14 non-routine maintenance and installation of City Street Lights that are not otherwise
15 covered under Routine Street Light Maintenance. The Contractor will perform this work
16 upon written authorization to proceed,

17 “Related Documents” means, as applicable, the lease-purchase agreement, loan agreement,
18 promissory note, escrow agreement, account control agreement and any other document or
19 agreement containing an obligation of the City as may be required by the Lender or otherwise in
20 connection with the Agreement pursuant to the Financing Transaction.

21 “Utility Cost Savings” means the amounts saved by the City in the purchase of electricity
22 or water that are a direct result of the Conservation Measures.

23 **Section 2. Ratification of Prior Action.** All action heretofore taken (not
24 inconsistent with the express provisions of this Ordinance) by the Governing Body and officers of
25 the City directed toward the Project, the Agreement and the Financing Transaction, including,

1 without limitation, the publication of a notice of public meeting and intent to adopt this Ordinance
2 authorizing the execution and delivery of the Agreement, and the engagement of D.A Davidson as
3 Placement Agent pursuant to the Placement Agent Agreement, and the same hereby is ratified,
4 approved and confirmed, notwithstanding any inconsistent prior action.

5 **Section 3. Findings.** The Governing Body hereby finds:

6 A. The amount that the City would spend on the Project is not likely to exceed the
7 cumulative amount of Utility Cost Savings over the ten year term of the Agreement from the date
8 of installation of streetlight upgrades, including the financing of those costs pursuant to the
9 Financing Transaction, and excluding the cost of normal repair and replacement of components of
10 the streetlight upgrades; and

11 B. The streetlight upgrades, and the routine and non-routine maintenance thereof
12 pursuant to the Agreement which constitute the Project will generate Utility Cost Savings equal to
13 or greater than the costs of the Project, including the financing of those costs pursuant to the
14 Financing Transaction.

15 C. The Project is a revenue-producing project, the Conservation Measures are
16 reasonably related to and constitute a substantial part of the Project, and the Utility Cost Savings
17 constitute net revenues of the Project, each within the meaning of Section 3-31-1(F) NMSA 1978.

18 **Section 4. Authorization of the Project; Financing Transaction Condition.** The
19 Project is hereby authorized at a total cost not to exceed the Contract Price, excluding any such cost
20 defrayed or to be defrayed by any source other than proceeds of the Financing Transaction allocable
21 to the Contract Price; provided, that the Project and execution and delivery of the Agreement shall
22 be subject to the authorization and closing of the Financing Transaction.

23 **Section 5. Execution and Delivery of Agreement.** The Mayor or, in the absence of
24 the Mayor, the Mayor pro tempore, is authorized to execute and delivery the Agreement, which
25 shall be attested by the City Clerk or an assistant City Clerk, in substantially the form presented to

1 the Governing Body in its consideration of this Ordinance, with such modifications or revisions as
2 the Mayor, in consultation with the City’s municipal advisor and bond counsel, determines are
3 necessary or convenient to implement the Project, and the execution and delivery of the Agreement
4 by the Mayor, or in the absence of the Mayor, the Mayor pro tempore, shall be conclusive evidence
5 of the City’s approval thereof, as may be modified or revised.

6 **Section 6. Establishment and Administration of Pledged Revenue Fund;**
7 **Assignment as Security for Financing Transaction.** A special revenue fund is hereby
8 established, to be identified as the “City of Santa Fe/Dalkia Project Revenue Fund (the “Pledged
9 Revenue Fund”). In the first month following substantial completion of the installation of streetlight
10 upgrades as described in Appendix 2A to Schedule 2 of the Agreement, the City shall deposit
11 Pledged Revenues to the Pledged Revenue Fund. The assignment of the Pledged Revenues as
12 security for the payment of debt service in connection with the Financing Transaction is hereby
13 authorized, with such details as shall be provided in the Financing Transaction documentation
14 authorized by the Governing Body.

15 **Section 7. Period of Project’s Usefulness.** It is hereby determined and recited that
16 the average useful life of the Project is not less than 15 years.

17 **Section 8. Authorization to Execute Related Documents and Delegated**
18 **Authority.**

19 A. Approval of Documents; Ratification. The form, terms, and provisions of the
20 Related Documents are in all respects approved, authorized, and confirmed, with such changes
21 therein not inconsistent with this Ordinance as the Authorized Officers of the City deem necessary
22 or desirable.

23 B. Delegated Authority and Execution of Documents. The officers, agents, and
24 employees of the City are authorized, empowered and directed to take all action required by this
25 Ordinance, and all such other action as may be necessary or appropriate to effectuate the provisions

1 of this Ordinance, the Related Documents, and any other documents as may be necessary or
2 appropriate to carry out and comply with the provisions of this Ordinance.

3 **Section 9. Severability.** If any Section, paragraph, clause or provision of this
4 Ordinance shall be held to be invalid or unenforceable, the invalidity or unenforceability of such
5 Section, paragraph, clause or provision shall not affect any of the remaining provisions of this
6 Ordinance.

7 **Section 10. Repealer Clause.** All ordinances or parts of ordinances inconsistent
8 herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be
9 construed to revive any ordinance or part of any ordinance heretofore repealed.

10 **Section 11. Effective Date, General Summary for Publication.** Upon due adoption
11 of this Ordinance, the ordinance shall be recorded and preserved by the City Clerk, authenticated
12 by the signature of the Mayor and City Clerk, and the seal of the City impressed hereon, and the
13 title and general summary of the subject matter contained in this Ordinance (set out below) shall
14 be published in a newspaper which maintains an office and is of general circulation in the City and
15 this Ordinance shall be in full force and effect after its publication in accordance with law.

16 Pursuant to Section 3-17-5 NMSA 1978, as amended, the title and a general summary of
17 the subject matter contained in this Ordinance shall be published in substantially the following
18 form:

19 (Form of Summary of Ordinance for Publication)

20 CITY OF SANTA FE, NEW MEXICO

21 NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter
22 contained in an ordinance duly adopted and approved by the Governing Body of the City of Santa
23 Fe on February 24, 2021. A complete copy of the ordinance is available for public inspection
24 during the normal and regular business hours of the City Clerk in the office of the City Clerk, City
25 Hall, 200 Lincoln Avenue, Santa Fe, New Mexico and is available online at santafe.primegov.com.

1 The title of the ordinance is:

2 **AN ORDINANCE**

3 **APPROVING A GLOBAL MANAGEMENT PERFORMANCE CONTRACT BY AND**
4 **BETWEEN THE CITY AND DALKIA ENERGY SOLUTIONS, LLC (THE**
5 **“AGREEMENT”) FOR THE INSTALLATION OF STREETLIGHT UPGRADES,**
6 **SUBJECT TO CITY COUNCIL APPROVAL OF A SEPARATE FINANCING**
7 **TRANSACTION TO FINANCE THE COSTS OF THE AGREEMENT;**
8 **AUTHORIZING THE PLEDGE OF UTILITY COST SAVINGS AS SECURITY FOR THE**
9 **TRANSACTION FOR THE FINANCING OF THE AGREEMENT, AND THE**
10 **EXECUTION AND DELIVERY OF CERTAIN OTHER AGREEMENTS AND**
11 **DOCUMENTS IN CONNECTION WITH THE EPC; RATIFYING ACTION**
12 **PREVIOUSLY TAKEN IN CONNECTION WITH THE AGREEMENT; REPEALING**
13 **ALL ORDINANCES AND PRIOR ACTION IN CONFLICT HERewith; AND RELATED**
14 **MATTERS.**

15 A general summary of the subject matter contained in such ordinance is set forth in the
16 title. COMPLETE COPIES OF THE ORDINANCE ARE ON FILE IN THE OFFICE OF THE
17 CITY CLERK AT THE CITY HALL, 200 LINCOLN AVENUE, SANTA FE, NEW MEXICO,
18 ARE AVAILABLE ONLINE AT SANTAFE.PRIMEGOV.COM, AND ARE AVAILABLE FOR
19 INSPECTION AND/OR PURCHASE DURING REGULAR OFFICE HOURS. THIS NOTICE
20 ALSO CONSTITUTES COMPLIANCE WITH SECTION 3-17-5 AND SECTIONS 6-14-4
21 THROUGH 6-14-7, NMSA 1978.

22 WITNESS my hand and the seal of the City on February 24, 2021.
23
24
25

1 CITY OF SANTA FE

2

3 (SEAL)



KRISTINE MIHELIC, CITY CLERK

4

5

(End of Form of Ordinance for Publication)

6

PASSED, APPROVED, and ADOPTED this 24th day of February, 2021.

7

GOVERNING BODY OF THE CITY OF SANTA FE

8

9 (SEAL)

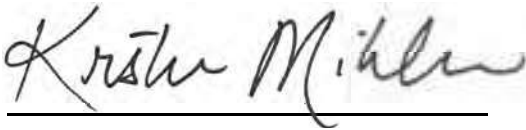


ALAN WEBBER, MAYOR

10

11 ATTEST:

12



13

KRISTINE MIHELIC, CITY CLERK

14

15 APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

16

Modrall, Sperling, Roehl, Harris & Sisk, P.A. as Bond Counsel

17



18

By: [Peter Franklin \(Feb 28, 2021 19:59 MST\)](#)

19

PETER FRANKLIN

20

After discussion, Councilor Lindell moved for approval, with Councilor Romero-Wirth seconding

21

the motion. Bill No. 2021-2 passed upon the following roll call vote:

22

Those voting AYE:

23

Mayor: Alan Webber

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Councilor: Roman Abeyta

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Councilor: Jamie Cassutt-Sanchez

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- Councilor: Michael J. Garcia
- Councilor: Signe I. Lindell
- Councilor: Chris Rivera
- Councilor: Carol Romero-Wirth
- Councilor: JoAnne Vigil Coppler
- Councilor: Renee Villarreal

Those voting NAY: _____

Those not present: _____

The presiding officer thereupon declared that at least three-fourths of all the members of the Governing Body having voted in favor of adoption of Bill No. 2021-2 the motion was carried and Ordinance No. 2021-3 was duly passed and adopted.

After consideration by the Governing Body of other business the meeting was duly adjourned.

GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO

(SEAL)



ALAN WEBBER, MAYOR

ATTEST:



KRISTINE MIHELIC, CITY CLERK

Bill No. 2021-2
Legislation/2021/Ordinances/2021-3 Dalkia Energy Solutions GPC

ACTION SHEET
PUBLIC WORKS AND UTILITES COMMITTEE MEETING OF 01/25/2021

ISSUE NO. 8E

Consideration of Bill No. 2021-____: An Ordinance Approving Lease-Purchase Agreement and Escrow Agreement with Sterling National Bank for the Purpose of Financing the Installation of Energy Efficiency Measures in City Facilities Pursuant to the Energy Savings Performance Contract with Yearout Energy Services, LLC and the Global Management Performance Contract with Dalkia Energy Solutions, LLC. (Mayor Alan Webber, Councilor Lindell and Councilor Rivera) (Brad Fluetsch, City of Santa Fe Cash and Investment Manager, bjfluetsch@santafenm.gov, 955-6885)

COMMITTEE REVIEW:
 Public Works and Utilities Committee – 01/25/21
 Governing Body (Request to Publish) – 01/27/21
 Finance Committee – 02/15/21
 Governing Body (Public Hearing) – 02/24/21

PUBLIC WORKS AND UTILITES COMMITTEE ACTION: Approved on Consent Agenda to forward to 01/27/2021 Governing Body

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		

1 AN ABSTRACT OF PROCEEDINGS

2 STATE OF NEW MEXICO)

3 COUNTY OF SANTA FE) ss.

4 CITY OF SANTA FE)

5 The Governing Body (the “Governing Body”) of the City of Santa Fe (the “City”) in the County
6 of Santa Fe, State of New Mexico, met in regular session in full conformity with law and ordinances
7 and rules of the City, at City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico, being the regular
8 meeting place of the Governing Body, at the hour of 5:00 p.m., on Wednesday, the 24th day of February,
9 2021.

10 Upon roll call the following were found to be present, constituting a quorum of the Governing
11 Body:

- | | | | |
|----|----------|------------|------------------------------|
| 12 | PRESENT: | Mayor: | <u>Alan Webber</u> |
| 13 | | Councilor: | <u>Roman Abeyta</u> |
| 14 | | Councilor: | <u>Jamie Cassutt-Sanchez</u> |
| 15 | | Councilor: | <u>Michael J. Garcia</u> |
| 16 | | Councilor: | <u>Signe I. Lindell</u> |
| 17 | | Councilor: | <u>Chris Rivera</u> |
| 18 | | Councilor: | <u>Carol Romero-Wirth</u> |
| 19 | | Councilor: | <u>JoAnne Vigil Coppler</u> |
| 20 | | Councilor: | <u>Renee Villarreal</u> |

21 ABSENT: _____

22 Thereupon the following proceedings, among others, were had and taken:

23 PUBLIC HEARINGS

24 ***

25 CONSIDERATION OF BILL NO. 2021-4

ADOPTION OF ORDINANCE NO. 2021-5

Approval of Lease Purchase Agreement with Sterling National Bank, as Lessor

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1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2021-5

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4
5 AN ORDINANCE

6 AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE
7 AGREEMENT BY AND BETWEEN THE CITY OF SANTA FE, NEW MEXICO (THE
8 “CITY”) AND STERLING NATIONAL BANK (THE “LESSOR”), EVIDENCING A
9 SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY AN AMOUNT OF UP TO
10 \$20,000,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF
11 ACQUIRING, INSTALLING, AND EQUIPPING ENERGY EFFICIENCY MEASURES
12 THROUGHOUT THE CITY; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE
13 AMOUNTS DUE UNDER THE LEASE-PURCHASE AGREEMENT SOLELY FROM
14 THE UTILITY COST AND WATER CONSERVATION SAVINGS AND PAYMENTS
15 RECEIVED BY THE CITY PURSUANT TO (1) THE ENERGY PERFORMANCE
16 CONTRACT BY AND BETWEEN THE CITY AND YEAROUT ENERGY SERVICES
17 COMPANY, LLC, AND (2) THE GLOBAL MANAGEMENT PERFORMANCE
18 CONTRACT BY AND BETWEEN THE CITY AND DALKIA ENERGY SOLUTIONS,
19 LLC; PROVIDING THAT CERTAIN TERMS OF THE LEASE-PURCHASE
20 AGREEMENT WILL BE ESTABLISHED IN A PRICING CERTIFICATE TO BE
21 EXECUTED AND DELIVERED AS AUTHORIZED PURSUANT TO SECTION 6-14-10.2
22 NMSA 1978; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL
23 ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE
24 TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND
25 DELIVERY OF THE LEASE-PURCHASE AGREEMENT.

1 Capitalized terms used in the following preambles have the same meaning as set forth in
2 Section 1 of this Ordinance unless the context requires otherwise.

3 **WHEREAS**, the City of Santa Fe, New Mexico (the “City”) is a legally created,
4 established, organized and existing incorporated charter municipality with home-rule powers under
5 the constitution and laws of the State of New Mexico; and

6 **WHEREAS**, the City has authorized the execution and delivery of (1) an Energy Savings
7 Performance Contract with Yearout Energy Services Company, LLC, a New Mexico limited
8 liability company (the “Yearout Agreement”) for the installation, implementation, monitoring and
9 maintenance of energy savings measures and water conservation measures throughout City owned
10 facilities (the “Yearout Project Component”); and (2) a Global Management Performance Contract
11 by and between the City and Dalkia Energy Solutions, LLC, a Massachusetts limited liability
12 company (“the Dalkia Agreement”) for the installation, implementation and maintenance of street
13 light LED upgrades to street light improvements owned and operated by the City (the “Dalkia
14 Project Component”); and

15 **WHEREAS**, the execution and delivery of the Yearout Agreement and the Dalkia
16 Agreement (collectively, the “Energy Savings Agreements”) is subject to the condition that a
17 financing transaction be authorized and completed to finance the aggregate contract prices of the
18 Energy Savings Agreements and the Costs of Issuance; and

19 **WHEREAS**, the Governing Body has determined and hereby determines that the Yearout
20 Project Component and the Dalkia Project Component (each a “Project Component” and
21 collectively, the “Energy Savings Project”) may be financed by and completed by entering into the
22 Lease-Purchase Agreement, a copy of which has been presented to the City Council in connection
23 with its consideration of this Ordinance, and that it is in the best interest of the City and its residents
24 that the Lease-Purchase Agreement be executed and delivered, and that the financing occur by
25 executing and delivering the Lease-Purchase Agreement; and

1 **WHEREAS**, the energy cost savings and water conservation-related cost savings derived
2 from each Project Component exceed the cost of implementing that Project Component, and
3 collectively, the aggregate cost of the Energy Savings Project, and constitute the net revenues of
4 the Energy Savings Project; and

5 **WHEREAS**, the Energy Savings Project is a “revenue producing project” within the
6 meaning of the Act; and

7 **WHEREAS**, the City may pledge the energy cost savings and water conservation-related
8 cost savings derived from the Energy Savings Project (the “Pledged Revenues”), which constitute
9 a special fund; and

10 **WHEREAS**, the City may lawfully pledge the Pledged Revenues for the payment of
11 amounts due pursuant to the Lease-Purchase Agreement; and

12 **WHEREAS**, the Pledged Revenues have not heretofore been pledged to secure the
13 payment of any obligation which is currently outstanding; and

14 **WHEREAS**, the Lease-Purchase Agreement shall be a special, limited obligation of the
15 City, payable solely from the Pledged Revenues and shall not constitute a general obligation of the
16 City, or a debt or pledge of the full faith and credit of the City or the State; and

17 **WHEREAS**, the Lease-Purchase Agreement shall be executed and delivered pursuant to
18 the Act, with an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged
19 Revenues; and

20 **WHEREAS**, the Governing Body intends by this Ordinance to authorize the execution and
21 delivery of the Lease-Purchase Agreement for the purposes set forth therein; and

22 **WHEREAS**, the Governing Body expects to receive an offer from the Lessor to enter into
23 the Lease-Purchase Agreement, as approved pursuant to the terms of the Pricing Certificate; and

24 **WHEREAS**, the Governing Body hereby determines that the Energy Savings Project to
25 be financed with the Lease-Purchase Agreement is to be used for governmental purposes of the

1 City and will not be used for purposes which would cause the Lease-Purchase Agreement to be
2 deemed a “private activity bond” as defined by the Internal Revenue Code of 1986, as amended;
3 and

4 **WHEREAS**, all required authorizations, consents and approvals in connection with (i) the
5 use and pledge of the Pledged Revenues to the Lessor (or its assigns) for the payment of amounts
6 due under the Lease-Purchase Agreement, (ii) the financing of the Energy Savings Project pursuant
7 to the Lease-Purchase Agreement and the Energy Savings Agreements, and (iii) the authorization,
8 execution and delivery of the Lease-Purchase Agreement, the Energy Savings Agreements, and the
9 Escrow Agreement (if determined in the Pricing Certificate to be necessary), which are required
10 to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected
11 to be obtained.

12 **NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE**
13 **CITY OF SANTA FE, NEW MEXICO:**

14 **Section 1. Definitions.** The terms in this section are defined for all purposes of this
15 Ordinance and of any ordinance amendatory hereof or supplemental hereto, or relating hereto, and
16 of any instrument or document appertaining hereto, except where the context by clear implication
17 herein otherwise requires, shall have the following meanings:

18 “Act” means the general laws of the State, including the home-rule charter of the City,
19 Sections 3-1-2 and 3-31-1 through 3-31-12 NMSA 1978, as amended, and enactments of the
20 Governing Body relating to the Lease-Purchase Agreement, including this Ordinance.

21 “Authorized Officer” means the following officers of the City: Mayor, City Manager, City
22 Finance Director, or other officer of the City when designated by a certificate signed by the Mayor
23 of the City from time to time, a certified copy of which shall be delivered to the Paying Agent.

24 “Bond Counsel” means an attorney or firm of attorneys nationally recognized for expertise
25 in the area of municipal bonds and the exemption of interest on municipal bonds from federal

1 income taxation.

2 “City,” “Municipal,” or “Municipality” means the municipal corporation and body
3 corporate and politic known as the City of Santa Fe, Santa Fe County, New Mexico.

4 “Closing Date” means the date of execution, delivery and funding of the Lease-Purchase
5 Agreement.

6 “Code” means the Internal Revenue Code of 1986, as amended, and the applicable
7 regulations thereunder.

8 “Conservation Measures” mean, collectively or individually, as the context may require,
9 the energy savings equipment and improvements of which the Energy Savings Project is comprised.

10 “Costs of Issuance” means all costs relating to the execution and delivery of the of the
11 Lease-Purchase Agreement and the Energy Savings Agreements, including, without limitation,
12 costs of advertising and publication, costs of fees and expenses of the City’s municipal advisor,
13 Bond Counsel, the Paying Agent, and other reasonable and necessary fees and costs, including
14 applicable gross receipts taxes, related to the execution and delivery of the Lease-Purchase
15 Agreement and the Energy Savings Agreements.

16 “Dalkia Agreement” means the Global Management Performance Contract by and between
17 the City and Dalkia Energy Solutions, a Massachusetts limited liability company, for
18 implementation of the Dalkia Project Component.

19 “Dalkia Project Component” means the installation, implementation, monitoring, and
20 maintenance of upgrades to street light improvements leased to, and operated by, the City by Public
21 Service Company of New Mexico.

22 “Energy Savings Agreements” means, collectively, the Yearout Agreement and the Dalkia
23 Agreement.

24 “Energy Savings Project” means, collectively, the Yearout Project Component and the
25 Dalkia Project Component.

1 “Escrow Agreement” means, if required by the Lessor, the escrow agreement relating to
2 the Energy Savings Project among the City, the Lessor and the Escrow Agent, into which the
3 proceeds received by the City pursuant to the Lease-Purchase Agreement shall be deposited for
4 payment of Energy Savings Project costs.

5 “Escrow Fund” means, if required by the Lessor, the “City of Santa Fe, New Mexico
6 2021 Lease-Purchase Agreement Escrow Fund” created by Section 8 hereof.

7 “Governing Body” means the members of the governing body designated as councilors
8 who, together with the mayor, are the governing body of the City.

9 “Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to the
10 entire Ordinance and not solely to the particular section or paragraph of the Ordinance in which
11 such word is used.

12 “Lease-Purchase Agreement” means the Lease-Purchase Agreement dated the Closing
13 Date between the Lessor and the City which provides for the financing of the Energy Savings
14 Project and requires payments by or on behalf of the City to the Lessor, and any amendments or
15 supplements thereto, and including the exhibits attached to the Lease-Purchase Agreement.

16 “Lease-Purchase Transaction” means the financing of the Energy Savings Project through
17 the execution and delivery of the Lease-Purchase Agreement and the Related Documents.

18 “Lessor” means Sterling National Bank in connection with the Lease-Purchase Agreement.

19 “NMSA 1978” means the New Mexico Statutes Annotated, 1978 compilation, as amended
20 and supplemented.

21 “Ordinance” means this City Ordinance as amended or supplemented from time to time.

22 “Placement Agent” means D.A. Davidson & Co., Kansas City, Missouri.

23 “Placement Agent Agreement” means the professional services agreement by and between
24 the City and the Placement Agent for the placement of the Financing Transaction with the Lessor.

25 “Pledged Energy Cost Savings Revenues” or “Pledged Revenues” means amounts

1 generated by Utility Cost Savings pursuant to the Energy Savings Agreements, which constitute
2 net revenues of the Energy Savings Project, which shall be deposited monthly to the Pledged
3 Revenue Fund as provided in Section 8 of this Ordinance.

4 “Pledged Energy Cost Savings Revenue Fund” or “Pledged Revenue Fund” means the fund
5 created pursuant to Section 8 of this Ordinance.

6 “Pricing Certificate” means the certificate executed and delivered by the any of the Mayor,
7 City Manager or Finance Director of the City subsequent to the date of this Ordinance which shall
8 specify the exact principal amount of the Lease-Purchase Agreement, the rental payment dates, the
9 amounts payable on each rental payment date, the interest rate, and the prepayment features
10 applicable to the Lease-Purchase Agreement and which shall approve the final forms of the Lease-
11 Purchase Agreement, the Escrow Agreement (if applicable), Energy Savings Agreements, and
12 other documents and which may contain such other terms and provisions as set forth in the Pricing
13 Certificate; provided that in no event shall the Pricing Certificate specify a principal amount of the
14 Lease-Purchase Agreement in excess of \$20,000,000 or a net effective interest rate on the Lease-
15 Purchase Agreement in excess of the statutory maximum of twelve percent (12%) per annum.

16 “Project Component” or “Project Components” means, as the context requires, each or all
17 of the Yearout Project Component and the Dalkia Project Component.

18 “Related Documents” means, as applicable, the Escrow Agreement, account control
19 agreement, closing documents, including, without limitation, a tax compliance certificate, and any
20 other document or agreement containing a representation, certification or obligation of the City as
21 may be required by the Lessor or otherwise in connection with the Lease-Purchase Agreement
22 pursuant to the Lease-Purchase Financing.

23 “Rental Payment Fund” means the “City of Santa Fe, New Mexico 2021 Lease-Purchase
24 Agreement Rental Payment Fund” created by Section 8 hereof.

25 “State” means the State of New Mexico.

1 “Utility Cost Savings” means the amounts saved by the City in the purchase of electricity
2 or water that are a direct result of the Conservation Measures.

3 “Yearout Agreement” means the Energy Savings Performance Contract with Yearout
4 Energy Services Company, LLC for implementation of the Yearout Project Component.

5 “Yearout Project Component” means the installation, implementation, monitoring and
6 maintenance of energy savings measures and water conservation measures throughout City owned
7 facilities.

8 **Section 2. Ratification of Prior Action.** All action heretofore taken (not
9 inconsistent with the express provisions of this Ordinance) by the Governing Body and officers of
10 the City directed toward the Energy Savings Agreements, the Energy Savings Project, the Lease-
11 Purchase Agreement, including, without limitation, the publication of a notice of public meeting
12 and intent to adopt this Ordinance authorizing the execution and delivery of the Lease-Purchase
13 Agreement, and the engagement of D.A Davidson as Placement Agent pursuant to the Placement
14 Agent Agreement, and the same hereby is ratified, approved and confirmed, notwithstanding any
15 inconsistent prior action.

16 **Section 3. Authorization of the Lease-Purchase Transaction.** The Energy Savings
17 Project and the financing of the Energy Savings Project through the Lease-Purchase Transaction
18 are hereby approved, the final terms of which shall be as provided in the Pricing Certificate. The
19 Lease-Purchase Agreement, in substantially the form presented to the Governing Body in
20 connection with this Ordinance, is hereby approved. The Mayor, or in the Mayor’s absence, the
21 Mayor *Pro Tem*, is hereby authorized to execute and deliver the Lease-Purchase Agreement, as
22 modified by the Pricing Certificate. The Lease-Purchase Agreement shall be attested by the City
23 Clerk or Deputy Clerk.

24 **Section 4. Findings; Parameters for Lease-Purchase Transaction.** The Governing
25 Body hereby declares that it has considered all relevant information and data and hereby makes the

1 following findings:

2 A. The Energy Savings Project is needed to meet the needs of the City and its
3 residents and the execution and delivery of the Lease-Purchase Agreement and the Escrow
4 Agreement (if determined to be required for the Lease-Purchase Transaction as set forth in the
5 Pricing Certificate) is necessary and advisable.

6 B. Moneys available and on hand for the Energy Savings Project from all
7 sources other than the Lease-Purchase Agreement are not sufficient to defray the cost of the Energy
8 Savings Project.

9 C. The Pledged Revenues may lawfully be pledged to secure the payment of
10 amounts due under the Lease-Purchase Agreement.

11 D. It is economically feasible to defray, in whole or in part, the costs of the
12 Energy Savings Project by the execution and delivery of the Lease-Purchase Agreement.

13 E. The Energy Savings Project and the execution and delivery of the Lease-
14 Purchase Agreement pursuant to the Act to provide funds for the financing of the Energy Savings
15 Project are necessary and in the interest of the public health, safety, and welfare of the residents of
16 the City and will result in energy and water conservation savings and other economies for the City.

17 F. The Energy Savings Project is a revenue-producing project within the
18 meaning of the Act. Implementation of the Energy Savings Project pursuant to the Energy Savings
19 Agreements will generate utility cost savings equal to or greater than the costs of the Energy
20 Savings Project, including the financing of those costs pursuant to the Lease-Purchase Transaction,
21 and constitute net revenues of the Energy Savings Project within the meaning of the Act. The
22 Conservation Measures are reasonably related to and constitute a substantial part of the Energy
23 Savings Project.

24 G. The average economic life of the Project Components comprising the
25 Energy Savings Project will be at least 20 years.

1 H. The Lease-Purchase Agreement shall be within the following parameters:

2 (i) the net effective interest rate on the Lease-Purchase Agreement
3 shall not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State
4 law.

5 (ii) The maximum term of the Lease-Purchase Agreement shall not
6 exceed 25 years.

7 (iii) The maximum principal amount of the Lease-Purchase
8 Agreement shall not exceed \$20,000,000.

9 **Section 5. Authorization of the Lease-Purchase Transaction.**

10 A. Authorization. This Ordinance has been adopted by the affirmative vote
11 of a three-fourths (3/4) majority of all of the members of the Governing Body. For the purpose of
12 protecting the public health, conserving the property, protecting the general welfare and prosperity
13 of the residents of the City and completing the Energy Savings Project, it is hereby declared
14 necessary that the City, pursuant to the Act, execute and deliver the Lease-Purchase Agreement,
15 evidencing a special, limited obligation of the City to pay an amount of up to \$20,000,000, plus
16 interest, and the execution and delivery of the Lease-Purchase Agreement is hereby authorized.
17 The City shall use the proceeds of the Lease-Purchase Agreement to finance the Energy Savings
18 Project and pay Costs of Issuance.

19 B. Detail. The Lease-Purchase Agreement shall be in form consistent with
20 this Ordinance, as supplemented by the Pricing Certificate. The Lease-Purchase Agreement shall
21 be in an aggregate principal amount of up to \$20,000,000, shall be payable in installments or rent
22 and interest due on the dates set forth in the Pricing Certificate.

23 **Section 6. Approval of the Lease-Purchase Agreement; Execution and Delivery.**

24 The Mayor or, in the absence of the Mayor, the Mayor *pro tem*, is authorized to execute and delivery
25 the Lease-Purchase Agreement, which shall be attested by the City Clerk or a deputy City Clerk,

1 in substantially the form presented to the Governing Body in its consideration of this Ordinance,
2 with such modifications or revisions as the Mayor, in consultation with the City’s municipal advisor
3 and Bond Counsel, determines are necessary or convenient to implement the Energy Savings
4 Project, and the execution and delivery of the Lease-Purchase Agreement by the Mayor, or in the
5 absence of the Mayor, the Mayor *pro tem*, shall be conclusive evidence of the City’s approval
6 thereof, as may be modified or revised.

7 **Section 7. Special Limited Obligations.** The Lease-Purchase Agreement and the
8 Energy Savings Agreements shall be secured by the pledge of the Pledged Energy Cost Savings
9 Revenues as set forth in the Lease-Purchase Agreement and the Energy Savings Agreements,
10 respectively, and shall be payable solely from the Pledged Energy Cost Savings Revenues. The
11 Lease-Purchase Agreement, together with interest thereon and other obligations of the City
12 thereunder, and the Energy Savings Agreements, shall be special, limited obligations of the City,
13 payable solely from the Pledged Energy Cost Savings Revenues as provided in this Ordinance, the
14 Lease-Purchase Agreement and the Energy Savings Agreements and shall not constitute a general
15 obligation of the City or the State, and the holders of the Lease-Purchase Agreement or the Energy
16 Savings Agreements may not look to any general or other fund of the City for payment of the
17 obligations thereunder. Nothing contained in this Ordinance or in the Lease-Purchase Agreement,
18 the Energy Savings Agreements, or any other instruments, shall be construed as obligating the City
19 (except with respect to the application of the Pledged Energy Cost Savings Revenues), as incurring
20 a pecuniary liability or a charge upon the general credit of the City or against its taxing power, nor
21 shall a breach of any agreement contained in this Ordinance, the Lease-Purchase Agreement, the
22 Energy Savings Agreements or any other instrument impose any pecuniary liability upon the City
23 or any charge upon its general credit or against its taxing power. The Lease-Purchase Agreement
24 and the Energy Savings Agreements shall never constitute an indebtedness of the City within the
25 meaning of any State constitutional provision or statutory limitation and shall never constitute or

1 give rise to a pecuniary liability of the City or a charge against its general credit or taxing power.
2 Nothing herein shall prevent the City from applying other funds of the City legally available
3 therefor to payments required by the Lease-Purchase Agreement or the Energy Savings
4 Agreements, in its sole and absolute discretion.

5 **Section 8. Creation of Funds and Accounts; Disposition of Proceeds:**
6 **Completion of the Energy Savings Project.**

7 A. Rental Payment Fund, Escrow Fund and Pledged Revenue Fund. The City
8 hereby consents to creation of: (i) the special fund known as the Rental Payment Fund to be held
9 and maintained by the City, (ii) if applicable, the Escrow Fund to be held and maintained by the
10 Escrow Agent pursuant to the Escrow Agreement and (iii) the Pledged Revenue Fund to be held
11 and maintained by the City, each in connection with the Lease-Purchase Agreement.

12 B. Disposition of Proceeds of Lease-Purchase Agreement. The proceeds
13 derived from the execution and delivery of the Lease-Purchase Agreement shall be deposited
14 promptly upon the receipt thereof in the Escrow Fund, as provided in the Escrow Agreement.

15 C. Completion of Energy Savings Project. The City will cause the
16 installation of the Project Components with all due diligence, and in any event within three years
17 after the date of execution and delivery of the Lease-Purchase Agreement.

18 **Section 9. Deposit of Pledged Energy Cost Savings Revenues and Flow of Funds.**

19 A. Pledged Revenue Fund. So long as payments are due under the Lease-
20 Purchase Agreement, the City shall credit all Pledged Energy Cost Savings Revenues to the Pledged
21 Revenue Fund. As a first charge on the Revenue Fund, amounts due under the Lease-Purchase
22 Agreement shall be withdrawn from the Pledged Revenue Fund and shall be credited to the Rental
23 Payment Fund on the dates and in the amounts set forth in the Lease-Purchase Agreement.

24 B. Credit. In making the deposits required to be made into the Rental
25 Payment Fund, if there are any amounts then on deposit in the rental Payment Fund available for

1 the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to
2 paragraph (A) above shall be reduced by the amount available in such fund for such purpose.

3 C. Transfer of Money out of Rental Payment Fund. Each payment due on the
4 Lease-Purchase Agreement shall be transferred from the Rental Payment Fund to the Lessor on the
5 due date of such payment.

6 D. Termination Upon Deposits to Maturity. No payment shall be made into
7 the Rental Payment Fund if the moneys in such fund totals a sum at least equal to the entire
8 aggregate amount due on the Lease-Purchase Agreement, in which case moneys in said fund in an
9 amount at least equal to such payment requirements shall be used solely to pay such obligations as
10 the same become due, and any moneys in excess thereof in said funds and any other moneys derived
11 from the Pledged Energy Cost Savings Revenues may be used in any lawful manner determined by
12 the City.

13 E. Defraying Delinquencies in the Rental Payment Fund. If, on any payment
14 date, the amount on deposit in the Rental Payment Fund is insufficient to make the payments due
15 on the Lease-Purchase Agreement, then an amount shall be paid into the Rental Payment Fund
16 from the first Pledged Energy Cost Savings Revenues thereafter received that are not required to
17 be deposited in the Rental Payment Fund as set forth in Paragraph C of this Section.

18 F. Payment from Other Sources. Notwithstanding any other provisions of
19 this Ordinance, the City may, in its sole discretion, choose to apply other legally available funds to
20 the payment of the Lease-Purchase Agreement.

21 G. Surplus Revenues. After making all the payments hereinabove required
22 to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other
23 lawful purpose, as the City may from time to time determine.

24 **Section 10. Lien on Pledged Energy Cost Savings Revenues.** Pursuant to this
25 Ordinance and the Lease-Purchase Agreement, the Pledged Energy Cost Savings Revenues are

1 hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest
2 therein for, the payment of the rent, interest, and any other amounts due under the Lease-Purchase
3 Agreement subject to the uses thereof permitted by and the priorities set forth in this Ordinance.
4 The Lease-Purchase Agreement constitutes an irrevocable and first lien on the Pledged Energy Cost
5 Savings Revenues.

6 **Section 11. Authorized Officers.** Authorized Officers are hereby individually
7 authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits
8 and other documents and to do and cause to be done any and all acts and things necessary or proper
9 for carrying out this Ordinance, the Lease-Purchase Agreement and the Related Documents, and
10 all other transactions contemplated hereby and thereby. Authorized Officers are hereby
11 individually authorized to do all acts and things required of them by this Ordinance, the Lease-
12 Purchase Agreement and the Related Documents for the full, punctual and complete performance
13 of all the terms, covenants and agreements contained in this Ordinance, the Lease-Purchase
14 Agreement and the Related Documents, the execution and delivery of closing documents in
15 connection with the execution and delivery of the Lease-Purchase Agreement, the Escrow
16 Agreement (if applicable), and the publication of the summary of this Ordinance set out in Section
17 18 of this Ordinance (with such changes, additions and deletions as may be necessary).

18 **Section 12. Amendment of Ordinance.** Prior to the Closing Date, the provisions of
19 this Ordinance may be supplemented or amended by ordinance or resolution of the Governing Body
20 with respect to any changes which are not inconsistent with the substantive provisions of this
21 Ordinance. Following the Closing Date, this Ordinance may be amended by ordinance of
22 Governing Body without receipt by the City of any additional consideration, but only with the prior
23 written consent of the Lessor.

24 **Section 13. Ordinance Irrepealable.** After the Lease-Purchase Agreement has been
25 executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due

1 under the Lease-Purchase Agreement shall be fully paid, canceled and discharged, as provided
2 therein.

3 **Section 14. Severability Clause.** If any section, paragraph, clause or provision of this
4 Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or
5 unenforceability of such section, paragraph, clause or provision shall not affect any of the
6 remaining provisions of this Ordinance.

7 **Section 15. Repealer Clause.** All bylaws, orders, resolutions and ordinances, or parts
8 thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This
9 repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof,
10 heretofore repealed.

11 **Section 16. Effective Date, General Summary for Publication.** Upon due adoption
12 of this Ordinance, the ordinance shall be recorded and preserved by the City Clerk, authenticated
13 by the signature of the Mayor and City Clerk, and the seal of the City impressed hereon, and the
14 title and general summary of the subject matter contained in this Ordinance (set out below) shall
15 be published in a newspaper which maintains an office and is of general circulation in the City and
16 this Ordinance shall be in full force and effect after its publication in accordance with law.

17 Pursuant to Section 3-17-5 NMSA 1978, as amended, the title and a general summary of
18 the subject matter contained in this Ordinance shall be published in substantially the following
19 form:

20 (Form of Summary of Ordinance for Publication)

21 CITY OF SANTA FE, NEW MEXICO

22 NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter
23 contained in an ordinance duly adopted and approved by the Governing Body of the City of Santa
24 Fe on February 24, 2021. A complete copy of the ordinance is available for public inspection
25 during the normal and regular business hours of the City Clerk in the office of the City Clerk, City

1 Hall, 200 Lincoln Avenue, Santa Fe, New Mexico and is available online at santafe.primegov.com.

2 The title of the ordinance is:

3 **AN ORDINANCE**

4 **AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE**
5 **AGREEMENT BY AND BETWEEN THE CITY OF SANTA FE, NEW MEXICO**
6 **(THE “CITY”) AND STERLING NATIONAL BANK (THE “LESSOR”),**
7 **EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY AN**
8 **AMOUNT OF UP TO \$20,000,000, TOGETHER WITH INTEREST THEREON,**
9 **FOR THE PURPOSE OF ACQUIRING, INSTALLING, AND EQUIPPING**
10 **ENERGY EFFICIENCY MEASURES THROUGHOUT THE CITY; PROVIDING**
11 **FOR THE PLEDGE AND PAYMENT OF THE AMOUNTS DUE UNDER THE**
12 **LEASE-PURCHASE AGREEMENT SOLELY FROM THE UTILITY COST AND**
13 **WATER CONSERVATION SAVINGS AND PAYMENTS RECEIVED BY THE**
14 **CITY PURSUANT TO (1) THE ENERGY PERFORMANCE CONTRACT BY AND**
15 **BETWEEN THE CITY AND YEAROUT ENERGY SERVICES COMPANY, LLC,**
16 **AND (2) THE GLOBAL MANAGEMENT PERFORMANCE CONTRACT BY AND**
17 **BETWEEN THE CITY AND DALKIA ENERGY SOLUTIONS, LLC; PROVIDING**
18 **THAT CERTAIN TERMS OF THE LEASE-PURCHASE AGREEMENT WILL BE**
19 **ESTABLISHED IN A PRICING CERTIFICATE TO BE EXECUTED AND**
20 **DELIVERED AS AUTHORIZED PURSUANT TO SECTION 6-14-10.2 NMSA**
21 **1978; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL**
22 **ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING**
23 **THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE**
24 **EXECUTION AND DELIVERY OF THE LEASE-PURCHASE AGREEMENT.**

25 A general summary of the subject matter contained in such ordinance is set forth in the

1 title. COMPLETE COPIES OF THE ORDINANCE ARE ON FILE IN THE OFFICE OF THE
2 CITY CLERK AT THE CITY HALL, 200 LINCOLN AVENUE, SANTA FE, NEW MEXICO,
3 ARE AVAILABLE ONLINE AT SANTAFE.PRIMEGOV.COM, AND ARE AVAILABLE FOR
4 INSPECTION AND/OR PURCHASE DURING REGULAR OFFICE HOURS. THIS NOTICE
5 ALSO CONSTITUTES COMPLIANCE WITH SECTION 3-17-5 AND SECTIONS 6-14-4
6 THROUGH 6-14-7, NMSA 1978.

7 WITNESS my hand and the seal of the City on February 24, 2021.

8 CITY OF SANTA FE

9 

10 (SEAL)

Kristine Mihelcic (Mar 3, 2021 10:02 MST)

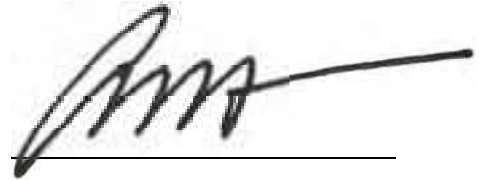
11 KRISTINE MIHELICIC, CITY CLERK

12 (End of Form of Ordinance for Publication)

13 PASSED, APPROVED, and ADOPTED this 24th day of February, 2021.

14 GOVERNING BODY OF THE CITY OF SANTA FE

15
16
17 (SEAL)



18 ALAN WEBBER, MAYOR

19 ATTEST:

20 

21 Kristine Mihelcic (Mar 3, 2021 10:02 MST)

22 KRISTINE MIHELICIC, CITY CLERK

1 APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

2 Modrall, Sperling, Roehl, Harris & Sisk, P.A. as Bond Counsel

3 Peter Franklin

4 By: Peter Franklin (Feb 26, 2021 18:00 MST)

5 PETER FRANKLIN

6 After discussion, Councilor Lindell moved for approval, with Councilor Romero-Wirth seconding
7 the motion. Bill No. 2021-4 passed upon the following roll call vote:

8 Those voting AYE:

9 Mayor: Alan Webber

10 Councilor: Roman Abeyta

11 Councilor: Jamie Cassutt-Sanchez

12 Councilor: Michael J. Garcia

13 Councilor: Signe I. Lindell

14 Councilor: Chris Rivera

15 Councilor: Carol Romero-Wirth

16 Councilor: Renee Villarreal

17 Those voting NAY: JoAnne Vigil Coppler

18 Those not present: _____

19 The presiding officer thereupon declared that at least three-fourths of all the members of
20 the Governing Body having voted in favor of adoption of Bill No. 2021-4 the motion was carried
21 and Ordinance No. 2021-5 was duly passed and adopted.

22 After consideration by the Governing Body of other business the meeting was duly
23 adjourned.

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GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO

(SEAL)



ALAN WEBBER, MAYOR

ATTEST:



Kristine Mihelcic (Mar 3, 2021 10:02 MST)

KRISTINE MIHELICIC, CITY CLERK

Bill No. 2021-4

Legislation/2021/Ordinances/2021-5 Energy Efficiency Lease Purchase Agreement

Signature: 
Geralyn Cardenas (Mar 22, 2021 15:18 MDT)

Email: gfcardenas@santafenm.gov

GB PWD - Dalkia Energy Solutions (Amendment #1)

Interim Agreement Report










2021-07-20

Created:	2021-07-16
By:	Amanda Archuleta (ajarchuleta@ci.santa-fe.nm.us)
Status:	Out for Signature
Transaction ID:	CBJCHBCAABAAj9gII7Jw_TIy8udZ0xEHAHDBtmcOEZ3D

Agreement History

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

"GB PWD - Dalkia Energy Solutions (Amendment #1)" History

-  Document created by Amanda Archuleta (ajarchuleta@ci.santa-fe.nm.us)
2021-07-16 - 2:07:37 PM GMT- IP address: 63.232.20.2
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2021-07-19 - 4:50:00 PM GMT
-  Email viewed by Fran Dunaway (fadunaway@santafenm.gov)
2021-07-19 - 9:46:54 PM GMT- IP address: 63.232.20.2



Signature: Andy Hopkins
Andy Hopkins (Jul 20, 2021 10:43 MDT)

Email: ajhopkins@santafenm.gov