City of Santa Fe

AGENDA

REGULAR MEETING OF THE GOVERNING BODY
AUGUST 02, 2021
7:00 PM
ATTEND VIRTUALLY

SPECIAL PROCEDURES FOR GOVERNING BODY 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 Special Governing Body meeting will be conducted virtually.

Viewing: Members of the public may view the meeting through the Government Channel on Comcast Channel 28 and Comcast HD928 or may stream the meeting live on the City of Santa Fe's YouTube channel at https://www.youtube.com/user/cityofsantafe. The YouTube live stream can be accessed at this address from most smartphones, tablets, or computers.

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

Radio Broadcast: The meeting can be heard on radio station KSFR 101.1.

Agenda: The agenda for the meeting will be posted at https://www.santafenm.gov.

Written Comments: The public may submit written comments on any of the legislative items to be considered on the *Discussion Agenda* through 1:00 p.m. the day of the meeting, via the virtual comment "button" at https://santafe.primegov.com/public/portal.

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/93695537786?pwd=MTFUTHp3WExuaEI0WldjOUhBa3IvZz09 **Passcode: 196679**
Attendees should use the "Raise Hand" function to be recognized by the Mayor 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: 936 9553 7786 – Passcode: 196679**

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

RECONVENING OF JULY 28, 2021 MEETING - 7 PM

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **CONSENT CALENDAR**

   k. 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, Project Administrator, clgrosse@santafenm.gov, 955-5938)

   Committee Review:
   Public Works and Utilities Committee: 07/12/21
   Finance Committee: 07/19/21
   Governing Body: 07/28/21

4. **DISCUSSION/ACTION ITEMS**

   b. 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 forGeneral Contracting Services 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
   Governing Body: 08/02/2021

   d. 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

e. Decision to Accept or Reject the City Attorney Office's Recommendation Concerning Case Number #2021-3812; Concurring with the Land Use Director's Determination that an Appeal Filed by Julia Hosford Barnes of a Short-Term Rental Permit Denial for 322 Otero Street Does Not Conform with the Requirements of the Santa Fe City Code and Should be Denied Without a Board of Adjustment Hearing. (Michael Prinz, Assistant City Attorney, mnprinz@santafenm.gov, 955-6554)

Committee Review:
Governing Body: 07/28/21

f. Request for Approval of Contract Amendment to the Housing Trust Mortgage Reduction Assistance Contract (19/24/P) to Extend the Term of Performance Through June 30, 2022 and Increase the Amount of Compensation by $200,000 for a Total Contract Amount of $357,500. (Alexandra Ladd, Director of Office of Affordable Housing; agladd@santafenm.gov, 505-303-9868).

Committee Review:
Governing Body: 07/28/21

g. Request for Approval of Contract Amendment to the Homewise Homeownership Services Contract (RFP 18/54/P) to Extend the Term of Performance through June 30, 2022 and Increase the Amount of Compensation by $190,000 for a Total Contract Amount of $380,000. (Alexandra Ladd, Director of Office of Affordable Housing; agladd@santafenm.gov, 505-303-9868).

Committee Review:
Governing Body: 07/28/2021

h. Request for Approval of Contract Amendment to the Housing Trust Homeownership Services Contract (RFP 18/54/P) to Extend the Term of Performance through June 30, 2022 and Increase the Amount of Compensation by $110,000 for a Total Contract Amount of $220,000. (Alexandra Ladd, Director of Office of Affordable Housing; agladd@santafenm.gov, 505-303-9868)

Committee Review:
Governing Body: 07/28/2021

5. **MATTERS FROM THE CITY MANAGER**

6. **MATTERS FROM THE CITY ATTORNEY**

7. **EXECUTIVE SESSION ACTION ITEMS**
   a. Request for Approval of County Partnership in the San Juan Chama Return Flow Project. (Jesse Roach, Water Division Director, jdroach@santafenm.gov, 955-4309 and Marcos Martinez, Assistant City Attorney, mdmartinez@santafenm.gov, 955-6502)

   Committee Review:
   Public Works and Utilities Committee: 06/07/2021
   Finance Committee: 06/21/2021
   Governing Body: 06/30/2021
   Governing Body: 07/28/2021

8. **MATTERS FROM THE CITY CLERK**

9. **COMMUNICATIONS FROM THE GOVERNING BODY**

   a. Introduction of Legislation – July 28, 2021

EVENING SESSION - 7:00 P.M.

10. **ROLL CALL**

11. **PETITIONS FROM THE FLOOR**

    a. Petitions From the Floor Regarding Reasonable Limitations on the Operations of Cannabis Establishments, such as Density and Operating Hours; the Permitting of Recreational Cannabis Consumption Areas; the Use of Cannabis Tax Revenues; and Any other Matters Relevant to the City's Ability to Regulate or Benefit from Recreational Cannabis.

    b. All Other Petitions from the Floor.

12. **APPOINTMENTS**

a. City Historian (Pauline Kamiyama, Arts Commission Division Director, pkkamiyama@santafenm.gov, 955-6653)
- Valerie Rangel – Appointment – Term Ending 6/2022

b. City's Poet Laureate (Pauline Kamiyama, Arts Commission Division Director, pkkamiyama@santafenm.gov, 955-6653)
- Daryl Wellington – Appointment – Term Ending 6/2022

c. Airport Advisory Board (Mark Baca, Airport Manager, mdbaca@santafenm.gov, 955-2901)
- Kevin Egan – Reappointment – Term Ending 02/2024
- Randal Limbacher – Appointment – Term Ending 02/2024

13. **PUBLIC HEARINGS**

a. CONSIDERATION OF BILL NO. 2021-14. (Councilor Lindell and Mayor Webber)
An Ordinance Amending Section 23-6.2 SFCC 1987 to Remove the Six-Month Minimum Lease Duration for the Sale and Consumption of Alcohol on City Property. (Randy Randall, TOURISM Santa Fe Executive Director: rrandall@santafenm.gov, 955-6209; Rich Brown, Community and Economic Development Department Director: rdbrown@santafenm.gov, 955-6625; Jesse Guillen, Legislative Liaison: jbguillen@santafenm.gov, 955-6518)

Committee Review:
Introduced: 5/12/21
Quality of Life Committee: 6/16/21
Public Works and Utilities Committee: 06/28/21
Governing Body (Request to Publish): 06/30/21
Economic Development Advisory Committee: 7/14/21
Governing Body (Public Hearing): 07/28/21

14. **ADJOURN**

15. UPCOMING PUBLIC HEARINGS

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: bjfleutsch@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

Pursuant to the Governing Body Procedural Rules, in the event any agenda items have not been considered prior to 11:30 p.m. and the Governing Body does not vote to extend the meeting, such items shall be postponed to a subsequent meeting, provided that the date, time and place of such meeting is specified at the time of postponement.

NOTE: New Mexico law requires the following administrative procedures be followed when conducting "quasi-judicial" hearings. In a "quasi-judicial" hearing all witnesses must be sworn in, under oath, prior to testimony and will be subject to reasonable cross-examination. Witnesses have the right to have an attorney present at the hearing.

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

City of Santa Fe, New Mexico
Memorandum

DATE: **June 24, 2021**

TO: **Public Works and Utilities Committee/Finance Committee/Governing Body**

VIA: **Regina Wheeler, Public Works Department Director** RW

Sam Burnett, Interim Facilities Division Director SB

FROM: **Caryn Grosse, Facilities Project Administrator** CG

ITEM AND ISSUE:
Request for the 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, 955-5938

BACKGROUND AND SUMMARY:
The roof at Ft Marcy Recreation Center, particularly around the skylights above the natatorium, has leaked for years despite numerous repairs. The roof and skylights need to be replaced, and higher curbs installed for the skylights above the natatorium. In addition, a new roof hatch and ladder will be installed to provide access for the main roof, as the current roof access is unsafe and does not meet code.

Lead-times for construction materials are volatile due to increased demand and limited supply but based on current information, the roof replacement is projected to start in mid-October and be completed by late January (see attached schedule for details.) While most of the roof replacement activities can be done without shutting down the recreation center, the natatorium will need to be closed for demolition and installation of the skylights. The skylight portion of the project is projected to start in early December and run through mid-January.

Facilities staff are coordinating with Ft Marcy staff to schedule other natatorium maintenance projects concurrently with this project in order to have only a single closure for this very important facility.

The contract amount is $1,444,526.87, including 10% contingency and NMGRT.

PROCUREMENT METHOD:
The procurement method is the NM Statewide Price Agreement (SWPA) # 00-00000-20-00110 General Construction Services Statewide which expires June 30, 2022.

SCHEDULE:
Public Works and Utilities Committee: July 12, 2021 (deadline June 30, 2021)
Finance Committee: July 19, 2021
Governing Body: July 28, 2021

CONTRACT NUMBER:
The Munis contract number is 3202776.

FUNDING SOURCE:
Fund Name/Number: CIP Bond Acquisition/335
Munis Org Name/Number: GRT18FMD/3359980
Munis Object Name/Number: Repair & Maintain Building Structure/520100

ATTACHMENTS:

- Contract and Proposal
- Plans and Schedule
- Statewide Price Agreement
- Business License
- Certificate of Insurance
- Procurement Checklist
- Summary of Contract

Signature: J Samuel Burnett
J Samuel Burnett (Jun 28, 2021 16:04 MDT)

Email: jsburnett@santafenm.gov

Signature: Regina Wheeler
Regina Wheeler (Jun 28, 2021 16:11 MDT)

Email: rawheeler@santafenm.gov

Item#_____
Munis Contract# 3202776

City of Santa Fe Contract
Services

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and **First Mesa Construction, 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 First Mesa Construction, 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 at Ft Marcy Recreation Complex, located at 490 Bishops Lodge Road, Santa Fe NM 87501:
   1) Installation of roof, skylights and other work as described in the proposal dated June 15, 2021 attached.

3. **Compensation**

The City shall pay to the Contractor $1,211,025.93 plus NMGRT $102,180.31 for a total of $ 1,313,206.24. Based upon fixed prices for each deliverable item as listed here.

Deliverable Item:		Price
01	General Construction	$ 253,992.17
02	Roof Replacement	$ 795,139.00
03	Skylights and System	$ 114,389.00
04	Materials and Contingency	$ 47,505.76
	Total	$ 1,211,025.93

Unanticipated Cost Overruns:		Price
01	10% Unanticipated Cost Overrun*	$ 121,102.59

*In the event the project exceeds the deliverable amount, the City, at its discretion, may agree to pay additional compensation to the contractor in an amount less than or equal to 10% of the project cost, $121,102.59 plus NMGRT of $10,218.04, for a total of $131,320.63.

The total compensation under this Agreement shall not exceed $1,444,526.87 including New Mexico gross receipts tax.

4. **Payment Provisions**

All payments under this Agreement are subject to the following provisions.

A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the City shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the City, the City shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the City shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

B. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The City agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

5. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on date approved by the City, and end on June 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 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.

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

34. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

35. **Invalid Term or Condition**

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

36. **Enforcement of Agreement**

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

37. **Patent, Copyright and Trade Secret Indemnification**

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

1) give the Contractor prompt written notice within 48 hours of any claim;
2) allow the Contractor to control the defense of settlement of the claim; and
3) cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

1) provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;

2) replace or modify the product or service so that it becomes non-infringing; or,

3) accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

38. **Survival**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

39. **Disclosure Regarding Responsibility**

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars ($60,000.00) with any City for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. The Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of

the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City may terminate the involved contract for cause. Still further the City may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City.

40. **Suspension, Delay or Interruption of Work**

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

41. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the City:
Caryn Grosse, Project Administrator
City of Santa Fe
2651 Siringo Road, Building E
PO Box 909
Santa Fe, NM 87504-0909
505-955-5938 (o), 505-795-2471 (m)
clgrosse@santafenm.gov

To the Contractor:
Scott Butterbaugh, Project Manager
PO Box 92258
Albuquerque, NM 87199-2258
505-843-8990 (o), 505-250-1468 (m)
scott@firstmesa.net

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

42. **Construction Contract Performance and Payment Bond.**

A. When a construction contract is awarded in excess of twenty-five thousand dollars ($25,000), the following bonds or security shall be delivered to the City and shall become

binding on the parties upon the execution of the contract. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's bid shall be rejected, its bid security shall be enforced to the extent of actual damages. Award of the contract shall be made pursuant to the Procurement Code in the following manner:

(1) a performance bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract; and

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

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

43. **Succession**

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

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

CITY OF SANTA FE:

_____
ALAN WEBBER, MAYOR

DATE:_____

FIRST MESA CONSTRUCTION, INC.:

_____
CHERYL A. DIX, PRESIDENT

DATE: 6-17-21
CRS# 02-331855-00-4
Registration # 226466

ATTEST:

_____
KRISTINE BUSTOS MIHELCIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jun 15, 2021 15:46 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

MARY MCCOY, FINANCE DIRECTOR

GRT18FMD 3359980.520100 AJH
Org Name and #/Object # AJH

FIRST MESA CONSTRUCTION, INC.

PROPOSAL

Date: June 15, 2021 No. One Sheet No. One of One

Proposal Submitted to: David Armstrong				Work to be Performed at: FT Marcy Recreation Complex			
Company	Armstrong Group INC			Address	490 Bishops Lodge Road		
Address	2415 Princeton DR NE			City	Santa Fe	State	NM
City	Albuquerque	State	NM	Date of Plans	5-25-2021		
Phone	505-899-0089			Architect	Armstrong Group INC		

We hereby propose to furnish the materials and perform the labor necessary for the completion of:

FT Marcy Recreation Complex
Reroof and skylight installation

GENERAL

- First Mesa Construction will conduct weekly, onsite progress meetings, and distribute meeting notes, progress photos and schedule updates to the construction team.
- The North parking lot will be used as laydown and storage, FMCI will maintain a temporary security fence around the laydown space.
- Dumpsters, temporary restrooms, construction vehicles and materials will be maintained inside the temp fence area. All construction debris will be policed daily.
- Any damage done to the existing facility parking lot due to construction activity will be repaired as part of this contract.
- Construction signage and pedestrian barricades will be maintained by FMCI.
- First Mesa Construction will coordinate interior finishes protection during roofing operations with the facility management.
- FMCI includes the cost of permitting, and CID inspection fees.
- Existing Mechanical curbs are NOT to be raised.

ROOFING

- Roofing to include tear off and replacement per the approved construction documents.
- Modifications to existing mechanical and electrical components as needed for the re-roof operation, are included.
- No new mechanical / electrical equipment is included.
- Roof hatches, ladders, curbs and all specified components shown in the construction documents are included.
- Structural reinforcement components necessary for the roof hatch re-location will need engineer approval.

SKYLIGHTS

- The skylight replacement over the gymnasium per plan is included.
- The new skylight sandwich panels over the pool are included

P. O. Box 92258 • Albuquerque, New Mexico • 87199-2258
(505) 843-8990 • Fax (505) 843-8992 • everett@firstmesa.net

FIRST MESA
CONSTRUCTION, INC.

PROPOSAL

First Mesa Construction • Permit and Bonding fees included for the entire project scope. Including plan review, inspections and final closeout. • General requirements, supervision, and scheduling throughout the project duration. • General interior finishes protection against potential damage caused by roofing activity. Including specific protective measures to be taken at the pool location, GYM equipment and GYM wood flooring. • Existing sandwich panel demolition. • Demolition debris management and transportation. • New structural installation requirements for new sandwich panel installation. • Temporary weather tight enclosures at new sandwich panel installation location. (necessary due to sandwich panel delivery schedules) • Supply and delivery of wood sheathing to the roofing contractor. • Carpentry and wood blocking supply and installation requirements at new and existing curbs, roof hatches, and 2' x 6' skylights, etc • New canale openings and repairs to existing as necessary. • Structural modifications as required for new roof hatch relocation.	12 week 60 day estimated schedule	$ 253,992.17
DKG and Associates • Roofing complete per proposal		$ 795,139.00
Southwest Glass and Glazing • Sandwich panel (Major) system		$ 110,669.00
Insulite Skylights 12 ea fixed		$ 3,720.00
Contingency		$ 8,000.00
Materials		$ 39,505.76
	SUB-TOTAL	**$ 1,211,025.93**
	NMGRT % 8.4375	**$ 102,180.31**
	GRAND TOTAL	**$ 1,313,206.24**

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(505) 843-8990 • Fax (505) 843-8992 • everett@firstmesa.net

FIRST MESA
CONSTRUCTION, INC.

PROPOSAL

Respectfully Submitted _____

Per Scott Butterbaugh

Note: This Proposal may be withdrawn by us if not accepted within ____ days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature _____

Date _____ Signature _____

P. O. Box 92258 • Albuquerque, New Mexico • 87199-2258
(505) 843-8990 • Fax (505) 843-8992 • everett@firstmesa.net

FORT MARCY RECREATION COMPLEX REROOF

490 BISHOPS LODGE RD, SANTA FE 87501

DATE: May 25, 2021

INDEX OF SHEETS:

C-001	COVER SHEET
A-101	ROOF PLAN
A-102	SKYLIGHT SECTION & ELEVATIONS
A-501	ROOF DETAILS
A-502	ROOF DETAILS

CODE DATA:

REQUIRED CODES:	2015 NEW MEXICO COMMERCIAL BUILDING CODE 2015 NEW MEXICO EXISTING BUILDING CODE 2015 INTERNATIONAL BUILDING CODE 2015 INTERNATIONAL EXISTING BUILDING CODE 2018 NEW MEXICO ENERGY CONSERVATION CODE 2015 NEW MEXICO PLUMBING CODE 2015 NEW MEXICO MECHANICAL CODE 2017 NEW MEXICO ELECTRICAL CODE 2017 NEW MEXICO ELECTRICAL SAFETY CODE ICC/ANSI A117.1-2003
CLASSIFICATION OF WORK:	REPAIR - EXISTING FACILITY
OCCUPANT TYPE:	A-3
AREA TABULATIONS:	NEW ROOF AREA: 6,639 SF (AREAS A1-A5) + 5,836 SF (AREA B) = 10,723 SF (AREA C) + 3,201 SF (AREAS D1-D5)= 26,399 SF
NEW ROOF CLASS:	CLASS A-3

THE PROJECT CONSISTS OF REMOVAL AND REPLACEMENT OF EXISTING ROOFING SYSTEM AND INSTALLATION OF NEW ROOFING SYSTEM, AND THE REMOVAL AND REPLACEMENT OF EXISTING SKYLIGHT WINDOWS ABOVE POOL AREA.

THESE RENOVATIONS DO NOT CHANGE THE OCCUPANCY GROUP OR CONSTRUCTION TYPE WITHIN THE EXISTING BUILDING, NOR DO THEY CHANGE THE CONDITIONED OR OCCUPIED SPACES.

SCOPE OF WORK:

THE BASE BID SCOPE INCLUDES ALL WORK ASSOCIATED WITH THE REMOVAL AND REPLACEMENT OF THE EXISTING ROOFING AND THE INSTALLATION OF A NEW PVC ROOFING SYSTEM AT ROOF AREAS A, B, C & D. SCOPE ALSO INCLUDES THE REMOVAL AND REPLACEMENT OF THE EXISTING SKYLIGHT WINDOWS ABOVE THE POOL AT ROOF AREA A.

SITE VICINITY MAP:



FORT MARCY RECREATION COMPLEX
490 BISHOPS LODGE RD.
SANTA FE, NM 87501

Armstrong Group, Inc.
PO Box 92977
Albuquerque, NM 87199
505.899.0089
www.agiconsultants.com
Building Investigation
Design & Consulting

FORT MARCY RECREATION COMPLEX REROOF
490 Bishops Lodge Rd.,
Santa Fe, NM 87501

Date 5/25/2021

CD Set

Drawn by AMB
Checked by TPG/DRA

Sheet title
COVER SHEET

Sheet No.
C-001
Of TOT

DEMO KEYNOTES

A. AREA A1 ROOF - REMOVE EXISTING BUR ROOFING DOWN TO DECKING:
- BUR
- CONCRETE TEES (SLOPE IN DECK)

B. ROOF AREAS A2 & A3 - REMOVE EXISTING ROOFING DOWN TO DECKING:
- 1/2" BUR
- 3 1/2" PERLITE
- CONCRETE TEES (SLOPE IN DECK)

C. ROOF AREA A4 - REMOVE EXISTING ROOFING DOWN TO DECKING:
- 1/2" BUR
- 2" PERLITE
- CONCRETE TEES (SLOPE IN DECK)

D. ROOF AREA A5 - REMOVE EXISTING ROOFING DOWN TO DECKING:
- COATING
- 12" ISO
- CONCRETE TEES (SLOPE IN DECK)

E. ROOF AREA B - REMOVE EXISTING ROOFING DOWN TO DECKING:
- PLY BUR
- 1/2" FIBER BOARD
- 2 1/2" PERLITE
- 1/2" FIBER BOARD
- STEEL DECK (SLOPE IN DECK)

F. ROOF AREA C - REMOVE EXISTING ROOFING DOWN TO DECKING:
- BUR
- 1" RIGID INSULATION
- CONCRETE TEES (SLOPE IN DECK)

G. ROOF AREA D1 & D2 - REMOVE EXISTING ROOFING DOWN TO DECKING:
- 1/2" BUR
- 1" PERLITE
- 3/4" PLYWOOD DECKING (SLOPE IN DECK)

H. ROOF AREA D3 - REMOVE EXISTING ROOFING DOWN TO DECKING:
- BUR
- 1" ISO RIGID INSULATION
- 3/4" X 5 1/2" T & G (SLOPE IN DECK)

I. ROOF AREA D4 - REMOVE EXISTING ROOFING DOWN TO DECKING:
- 1/2" BUR
- 1" RIGID INSULATION
- 2" X 6" T & G WOOD DECK (SLOPE IN DECK)

J. ROOF AREA D5 - REMOVE EXISTING ROOFING DOWN TO DECKING:
- 1/2" BUR
- 3" ISO
- METAL DECKING (SLOPE IN DECK)

K. REMOVE ALL BASEFLASHING, COPINGS, PITCH PANS AND PIPE PENETRATION FLASHINGS.

L. REMOVE EXISTING SKYLIGHTS AND CURB.

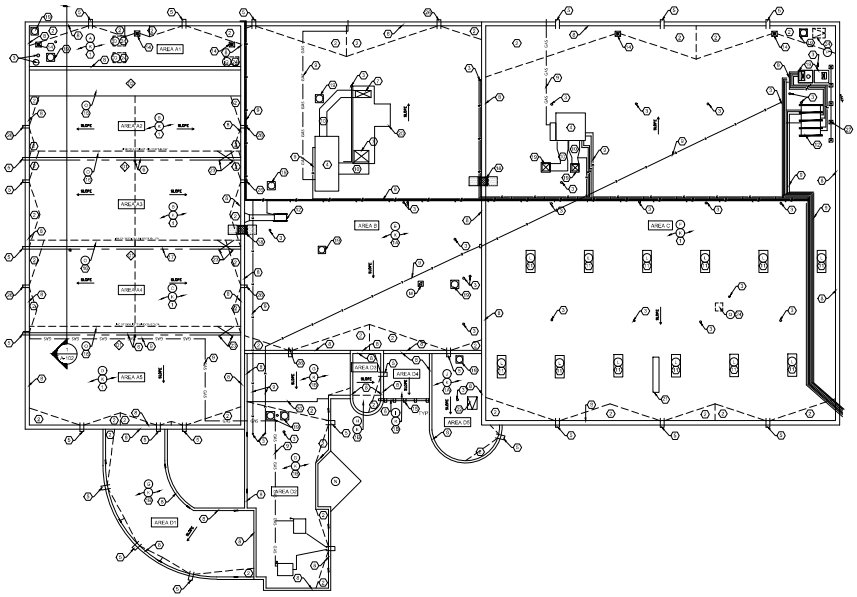
M. EXISTING SATELLITE DISH TO BE DISCONNECTED AND RECONNECTED. COORDINATE WITH OWNER.

N. EXISTING METAL ROOF TO REMAIN.

O. REMOVE EXISTING SKYLIGHT WINDOWS IN THEIR ENTIRETY.

P. EXISTING ROOF HATCH & INTERIOR LADDER TO BE REMOVED. OPENING TO BE INFILLED.

Q. REMOVE CAPPED CURB. PREP FOR INFILL.



1 A-101 ROOF PLAN
1/16" = 1'-0"

PLAN NORTH / TRUE NORTH
0 8' 16' 32'
SCALE: 1/16" = 1'-0"

SHEET KEYNOTES

1. NEW ROOF ASSEMBLY: ROOF AREAS A & C
   a. 72 MIL PVC FIELD MEMBRANE AND BASEFLASHING FULLY ADHERED WITH MANUFACTURES' TESTED BONDING ADHESIVE
   b. 1/2" HIGH DENSITY COVERBOARD.
   c. R-30 POLYISOCYANURATE INSULATION (MIN. TWO LAYERS). (R-VALUE BASED ON THE NEW LONG TERM THERMAL RESISTANCE "LTTR").
   d. PEEL & STICK VAPOR BARRIER ON CONCRETE DECKING
   e. ATTACHMENT:
      1. MEMBRANE FULLY ADHERED TO COVERBOARD WITH BONDING ADHESIVE
      2. COVERBOARD FOAM ADHERED TO INSULATION.
      3. ALL LAYERS OF INSULATION TO BE FOAM ADHERED.
      4. ALL RIBBONS AND ATTACHMENT IS TO MEET FM 1-75 SYSTEM TESTED PATTERNS.

1A. NEW ROOF ASSEMBLY: ROOF AREAS B, D5
   a. 72 MIL PVC FIELD MEMBRANE
   b. 72 MIL BASEFLASHING BONDED TO THE WALL WITH MANUFACTURES' TESTED BONDING ADHESIVE.
   c. 1/2" HIGH DENSITY COVERBOARD.
   d. R-30 POLYISOCYANURATE INSULATION (MIN. TWO LAYERS). (R-VALUE BASED ON THE NEW LONG TERM THERMAL RESISTANCE "LTTR"). MECHANICALLY FASTEN FIRST LAYER POLYISOCYANURATE INSULATION TO THE DECK WITH MANUFACTURER APPROVED FASTENER.
   e. PEEL & STICK VAPOR BARRIER OVER 1/2" HD COVERBOARD ATTACHED TO EXISTING METAL DECK ON ROOF AREA B ONLY
   f. ATTACHMENT:
      1. MEMBRANE FOAM ADHERED TO COVERBOARD.
      2. COVERBOARD FOAM ADHERED TO INSULATION.
      3. FIRST LAYER OF INSULATION MECHANICALLY FASTENED, ALL OTHER LAYERS TO BE FOAM ADHERED.
      4. ALL RIBBONS AND ATTACHMENT IS TO MEET FM 1-75 SYSTEM TESTED PATTERNS.

1B. NEW ROOF ASSEMBLY: ROOF AREAS D1, D2, D3 & D4
   a. 72 MIL PVC FIELD MEMBRANE & BASEFLASHING.
   b. 1/2" HIGH DENSITY COVERBOARD.
   c. R-30 POLYISOCYANURATE INSULATION (MIN. TWO LAYERS). (R-VALUE BASED ON THE NEW LONG TERM THERMAL RESISTANCE "LTTR").
   d. 1/2" EXTERIOR GRADE CDX PLYWOOD FASTENED TO THE EXISTING DECKING
   e. ATTACHMENT:
      1. FULLY WELD MEMBRANE TO RHINO PLATES THAT HAVE BEEN FASTENED THROUGH ONE LAYER OF HD COVERBOARD OVER NEW POLYISOCYANURATE INSULATION THAT HAS BEEN FASTENED THROUGH THE NEW 1/2" PLYWOOD AND EXISTING DECK WITH MANUFACTURER APPROVED FASTENERS AND RHINO PLATES.

2. ALL NEW IDENTIFIED CRICKETS IN AREAS INDICATED ON DRAWINGS MUST PROVIDE POSITIVE SLOPE AND DRAINAGE, WATER TESTED TO INSURE POSITIVE DRAINAGE. CRICKETS NEED TO BE MINIMUM ¼" GREATER THEN THE SLOPE OF THE ROOF. (I.E. ¼" SLOPE = ½" CRICKET) WITH 3 TO 1 RATIO TO CREATE POSITIVE SLOPE. CRICKETS ARE SHOWN FOR INTENT AND ARE NOT TO SCALE. CONTRACTOR IS RESPONSIBLE FOR POSITIVE DRAINAGE.
3. VENT PIPE / ELECTRICAL / GAS PIPE PENETRATIONS THROUGH ROOF TO BE LEFT IN PLACE. INSTALL NEW MEMBRANE ROOF FLASHING AS REQUIRED TO TERMINATE NEW ROOFING. SEE DETAILS C1, C2/A-501.
4. DISCONNECT, RAISE CURBS, RECONNECT AND LIFT ALL HVAC MECHANICAL EQUIPMENT AS NEEDED TO INSTALL FLASHING. SEE DETAILS B1/A-501.
5. INSTALL NEW MEMBRANE COATED CANALE LINERS AT EXISTING CONCRETE CANALES. SEE DETAIL A2/A-501.
6. INSTALL NEW METAL GUTTER, DOWNSPOUT AND SPLASHBLOCK. SEE DETAILS A3, A4/A-501.
7. INSTALL NEW DUCT FLASHING PER DETAIL C4/A-501.
8. INSTALL NEW COUNTERFLASHING AT HIGH WALL CONDITIONS. SEE DETAIL B2/A-501.
9. INSTALL NEW PIPE SUPPORTS PER DETAIL A3/A-502.
10. INSTALL NEW DUCT SUPPORTS PER DETAIL A4/A-502.
11. INSTALL NEW SKYLIGHT, CURB AND SKYLIGHT FALL PROTECTION AT EXISTING SKYLIGHT OPENING. NEW FLASHING PER DETAIL B4/A-501.
12. EXISTING MECH UNIT TO REMAIN. INSTALL NEW KNEE CURBS PER DETAIL C3/A-501.
13. INSTALL NEW CANALE. SEE DETAIL A1/A-501.
14. INSTALL NEW PRIMARY ROOF DRAIN. SEE DETAIL B3/A-501.
15. INSTALL NEW MEMBRANE COATED METAL CAPS AT EXPOSED WOOD CORBELS.
16. INSTALL NEW 10" PONY WALL AND TRANSLUCENT PANEL SKYLIGHT WINDOWS. SEE DETAILS B1, B2, B3, B4, & C1/A-502.
17. INSTALL NEW GUTTER. SEE DETAIL A3/A-501.
18. EXISTING ACCESS LADDER TO BE REMOVED AND RE-INSTALED AS REQUIRED FOR NEW ROOFING INSTALLATION. CHECK FOR PROPER SECUREMENT. PROVIDE TWO WALKPADS AT EACH LANDING.
19. INSTALL NEW CURB FLASHING. SEE DETAIL B1/A-501.
20. WRAP MEMBRANE UP AND OVER STEP IN ELEVATION.
21. EXISTING BUILDING SIGN TO BE REMOVED AND REPLACED.
22. INSTALL NEW ROOF HATCH. ACCESS LADDER AND NEW SAFETY RAILING. SEE DETAILS A1, A2/A-502. EXACT LOCATION TO BE VERIFIED IN THE FIELD.
23. INSTALL NEW FLASHING AT STRUCTURAL SUPPORT TIES.
24. INSTALL 1/8" THICK STEEL PLATE OVER CONCRETE DECK OPENING, EXTENDING PAST OPENING EDGE BY 6" MIN. EPOXY ANCHOR BOLTS ARE TO BE AT EACH CORNER AND AT MID-SPAN 2" IN FROM THE OUTER EDGE. SET PLATE INTO A SOLID BED OF SEALANT PRIOR TO SETTING DOWN ONTO CONCRETE. PAINT THE STEEL PLATE WITH A RUST INHIBITING PAINT.
25. INSTALL NEW METAL GUTTER, DOWNSPOUT AND SPLASHBLOCK. SEE DETAILS A3, A4/A-501.
26. INSTALL NEW MEMBRANE COATED CANALE TO MATCH EXISTING. SEE A1/A-501.
27. INSTALL NEW FREE-STANDING, NON-PENETRATING OSHA COMPLIANT 42" H SAFETY RAILING AT EXISTING MECHANICAL EQUIPMENT. RAILING SHALL EXTEND MIN. 30" BEYOND EQUIPMENT END ON EITHER SIDE.

GENERAL NOTES, CONT'D

28. **ROOF MUST BE WATERTIGHT AT ALL TIMES.** CONTRACTOR MUST SUBMIT A NIGHT SEAL PLAN, AND COMPLETE THE SECTION OF ROOF BEFORE MOVING ONTO A NEW SECTION.
29. THE CONTRACTOR IS RESPONSIBLE FOR OBTAINING ALL PERMITS, POSTING PERMIT CARDS FOR SIGN OFF AND CALLING FOR ALL REQUIRED INSPECTIONS. PERMIT, SIGNED CARDS AND FINAL INSPECTIONS ARE TO BE INCLUDED IN THE CLOSE OUT DOCUMENTS.

GENERAL NOTES

1. THE CONTRACTOR SHALL NOT REMOVE ANY EXISTING ROOFING SYSTEM, DAMAGED DECKING, OR INSTALL NEW ROOFING SYSTEM WHEN WEATHER CONDITIONS THREATEN THE INTEGRITY OF THE BUILDING CONTENTS OR OCCUPANTS. THE CONTRACTOR SHALL COMPLETE EACH DAY'S ROOFING CYCLE AND PROVIDE A WELDED OR FOAMED TEMPORARY SEAL AT JUNCTION OF NEW ROOF AND EXISTING ROOF. THE CONTRACTOR SHALL MAINTAIN A WATERPROOF COMPLETED AREA WITH EACH ROOFING CYCLE. NO TOLERANCES WILL BE GIVEN.
2. ALL LOCATIONS OF ITEMS SHOWN ON ROOF PLANS ARE APPROXIMATE. CONTRACTOR SHALL VERIFY ALL DIMENSIONS PRIOR TO BID. NO ALLOWANCES WILL BE MADE FOR ADDITIONAL AMOUNTS OF ROOFING MATERIAL, FLASHING, LABOR, ETC. NOT VERIFIED AND NOTIFIED BY THE CONTRACTOR TO THE OWNER REPRESENTATIVE PRIOR TO BID.
3. PERFORM ALL DISCONNECTS, EXTENSIONS AND RECONNECTIONS AS REQUIRED TO ACCOMMODATE NEW ROOF HEIGHTS, FOR ITEMS BEING RAISED AND REMOUNTED FOR RE-ROOFING WORK. AND MUST BE PART OF CONTRACTORS SUBMITTED WORK SCHEDULE AND MUST BE SCHEDULED PRIOR TO ANY DISCONNECT OR RECONNECT. RETURN ALL ITEMS TO OPERATIONAL CONDITION PRIOR TO END OF DAY'S WORK. NOTIFY THE ARCHITECT OF ANY DEFECTIVE ITEMS DISCOVERED DURING WORK.
4. PIPES 1-1/2" AND SMALLER SHALL BE SUPPORTED AT 8'-0" O.C. MAXIMUM AND PIPES 2" AND LARGER SHALL BE SUPPORTED AT 10'-0" O.C. MAXIMUM.
5. THIS IS A POPULATED BUILDING SPECIAL CONSIDERATION, SCHEDULING, NOISE LEVELS AND STAGING WILL BE REQUIRED DURING ROOFING.
6. THE CONTRACTORS SHALL HAVE THE OPPORTUNITY TO ACQUAINT THEMSELVES WITH ALL EXISTING CONDITIONS AT THE PREBID AND BY APPOINTMENT IF SECONDARY INSPECTION IS NEEDED. NO ALLOWANCES SHALL BE MADE FOR CONDITIONS THAT ARE CLEARLY VISIBLE OR DETECTABLE WITH SOME RESEARCH EFFORT.
7. THE LOADING AREA AVAILABLE AT GROUND LEVEL IS A FIRE, EMERGENCY AND SECURITY ACCESS AREA, A STRICT SCHEDULE FOR STAGING OF DELIVERIES AND CRANING OF MATERIAL MUST BE SUBMITTED BY THE CONTRACTOR TO THE OWNER REPRESENTATIVE, SO THAT THE OWNER MAY COORDINATE ALL NECESSARY PERMITS. ALL MATERIALS WILL HAVE TO BE STORED ON THE ROOF AREAS AND IN STAGING AREA, AS WELL AS SANITARY FACILITIES.
8. NO EMPLOYEES WILL BE ALLOWED IN THE BUILDING. ESCORTED SECURITY WILL NEED TO BE SCHEDULED FOR THE FOLLOWING: ACCESS TO THE ROOF AND ACCESS TO AREAS WITHIN THE BUILDING NECESSARY TO COMPLETE THE SCOPE OF WORK.
9. BEFORE ANY UTILITY CUT OFFS OR DEMOLITION IS TO OCCUR, A SCHEDULE MUST BE SUBMITTED TO THE ARCHITECT. A MINIMUM OF ONE WEEK'S ADVANCE NOTICE OF WORK IS REQUIRED. WORK SCHEDULES WILL BE REQUIRED TO BE SUBMITTED TO THE OWNER REPRESENTATIVE TWICE WEEKLY, ANTICIPATING THE NEXT WEEK'S WORK.
10. THE CONTRACTOR SHALL PROVIDE LICENSED PLUMBING, MECHANICAL AND ELECTRICAL CONTRACTORS TO REMOVE AND REINSTALL ALL EXISTING EQUIPMENT ON THE ROOF. ALL EQUIPMENT SHALL BE FULLY OPERATIONAL WHEN REINSTALLED. CONTRACTOR'S WORK SHALL MEET CURRENT APPLICABLE BUILDING CODES.
11. THE ROOFING CONTRACTOR SHALL PROVIDE FASTENERS AS REQUIRED FOR CORROSIVE AGENTS ADDED TO TREATED WOOD NAILERS (IF PRESERVED WOODS ARE USED) AND AS RECOMMENDED BY THE ROOFING MANUFACTURER AND AS REQUIRED FOR THE WARRANTY.
12. ALL ROOFING SHALL BE ATTACHED TO THE BUILDING IN ACCORDANCE WITH FM 1-75 WIND UPLIFT FASTENING PATTERN AND ASCE 7 REQUIREMENTS.
13. THE DETAILS SHOWN IN DRAWINGS AND PLANS ARE FOR INTENT. THE MOST STRINGENT REQUIREMENTS BETWEEN CONSTRUCTION DOCUMENTS, MANUFACTURERS' DETAILS, SMACNA REQUIREMENTS AND NRCA RECOMMENDATIONS WILL BE REQUIRED.
14. ALL AREAS TO RECEIVE NEW ROOFING MEMBRANE SHALL BE INCORPORATED INTO ROOFING WARRANTY, INCLUDING NEW WALL AND PARAPET MEMBRANE WORK. WARRANTY SHALL INCLUDE ALL PENETRATIONS, FLASHING AND TERMINATIONS. CONTRACTOR SHALL PROVIDE AND INSTALL ALL FLASHINGS, TRIM, SEALANTS, NAILERS, MATERIALS, ETC. REQUIRED TO PROVIDE A COMPLETE WATERPROOF AND NO DOLLAR LIMIT WARRANTED SYSTEM.
15. CONTRACTOR TO FIELD VERIFY ALL CONDITIONS PRIOR TO BID. NO ALLOWANCES WILL BE MADE FOR ADDITIONAL AMOUNTS OF ROOFING MATERIAL, FLASHING, LABOR, ETC. NOT VERIFIED AND NOTIFIED BY THE CONTRACTOR TO THE OWNER REPRESENTATIVE PRIOR TO BID.
16. THE ROOFING SYSTEM SHALL BE INSTALLED PER PLANS, DETAILS, SPECIFICATIONS & MANUFACTURER'S REQUIREMENTS, AND PROVIDE A 20 YEAR NO DOLLAR LIMIT WARRANTY AS OUTLINED IN THE SPECIFICATIONS.
17. PREDRILL ALL METAL FLASHING/ COUNTER FLASHING MATERIAL PRIOR TO INSTALLING FASTENERS.
18. THESE DRAWINGS INDICATE, IN GENERAL, ITEMS OF MATERIAL AND EQUIPMENT WHICH MUST BE REMOVED, REUSED, REFINISHED OR MODIFIED. NO ATTEMPT HAS BEEN MADE TO INDICATE EACH AND EVERY PORTION OF DEMOLITION AND REMODELING WORK. THE INTENT OF THE DRAWINGS IS TO PROVIDE A GUIDELINE TO THE CONTRACTOR(S) TO BETTER ENABLE HIM TO ANTICIPATE THE ENTIRE SCOPE OF WORK. THE CONTRACTOR(S) ARE ADVISED TO VISIT THE JOB SITE TO GET FAMILIAR WITH THE WORK : SCOPE, EXTENT AND ROOF AREAS, PRIOR TO BIDDING. SEE GENERAL NOTE 6 IN REGARD TO SCHEDULING SITE VISITS.
19. ALL WALLS OVER 32" WILL REQUIRE INTERIM TERM BAR. FASTEN 12" O.C..
20. CONTRACTOR SHALL INCLUDE ALL MECHANICAL AND ELECTRICAL COSTS NECESSARY FOR DISCONNECTING OF EXISTING ROOFTOP EQUIPMENT AND ITS RE-INSTALLATION . CONDUCT NECESSARY TESTS TO VERIFY THAT UNITS ARE FUNCTIONAL. THIS INCLUDES RAISING OF CURBS TO MEET 12" ABOVE FINISHED ROOF. ALL CURBS GREATER THAN 24" WILL REQUIRE A CRICKET.
21. ON EXISTING ROOFING SYSTEMS AND WALLS THAT ARE NOT PART OF THIS ROOFING PROJECT, ANY DAMAGE OCCURRING DURING THE RENOVATION WORK SHALL BE REPAIRED AT NO EXPENSE TO THE OWNER. NOTIFY OWNER/ ARCHITECT IN WRITING PRIOR TO STARTING WORK IF ANY DAMAGES ARE PRESENT. DAMAGES NOT REPORTED WILL BE CONSIDERED NEW AND CONTRACTOR WILL BE RESPONSIBLE FOR REPAIRS. REPAIRS MUST NOT VOID ANY EXISTING WARRANTIES.
22. ALL SECURITY, SATELLITE, WEATHER STATIONS, PHONE AND BUILDING DCCORATIONS WILL BE HANDLED BY OWNER. COORDINATE WITH OWNER ON DISCONNECT AND RECONNECT.
23. ALL TOOLS AND WORK RELATED EQUIPMENT MUST BE WITHIN WORKERS' POSSESSION AND CONTROL AT ALL TIMES.
24. CONTRACTOR SHALL PROVIDE AN INVENTORY OF ALL NON WORKING AND ABANDONED MECHANICAL EQUIPMENT, SUPPLY LINES, DAMAGED CEILING TILES, SIDEWALKS AND OTHER BLDG COMPONENTS THAT COULD BE AFFECTED BY ROOFING PROCESS. ALL ABANDONED ITEMS SHALL BE REMOVED.
25. COORDINATE ALL MECHANICAL UNIT SHUTOFFS WITH THE PROJECT MANAGER. NO COORDINATION IS TO TAKE PLACE WITH THE USER GROUP.
26. THE DESIGNER AND CONSULTANT IS NOT RESPONSIBLE FOR THE ACT AND OMISSION OF ANY CONTRACTOR, SUBCONTRACTOR, MATERIAL SUPPLIER, INCLUDING BUT NOT LIMITED TO THE FOLLOWING: SAFETY PRECAUTIONS / PROGRAMS AND THEIR ENFORCEMENT, OR FOR THE CONSTRUCTION MEANS AND METHODS, TECHNIQUES, SEQUENCING AND PROCEDURES EMPLOYED BY THE CONTRACTORS AND THE INCLUSION OF THE REQUIREMENTS OF THE MANUFACTURE FROM THEIR PUBLISHED DOCUMENTS, PROCEDURES, AND THEIR STAFF ISSUED VERBAL AND WRITTEN INSTRUCTIONS AND REMEDIES.
27. ALL EQUIPMENT THAT CONTAINS FLAMMABLE FLUIDS MUST EITHER BE REMOVED ON A DAILY BASIS OR THE EQUIPMENT TANK MUST BE DRAINED AT END OF EACH DAY. ANY FLAMMABLE FLUID IN CONTAINERS MUST BE REMOVED FROM THE ROOF ON A DAILY BASIS.

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Santa Fe, NM 87501

Date 5/25/2021

CD Set

Drawn by AMB
Checked by TPG/DRA

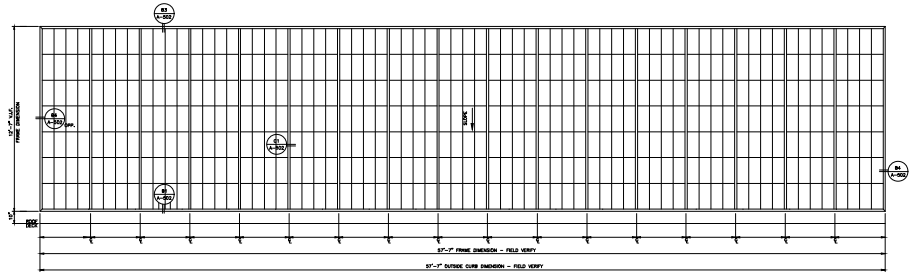
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ROOF PLAN

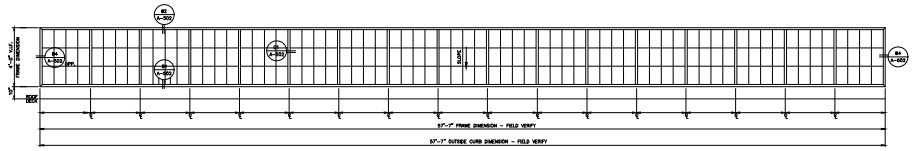
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A-101

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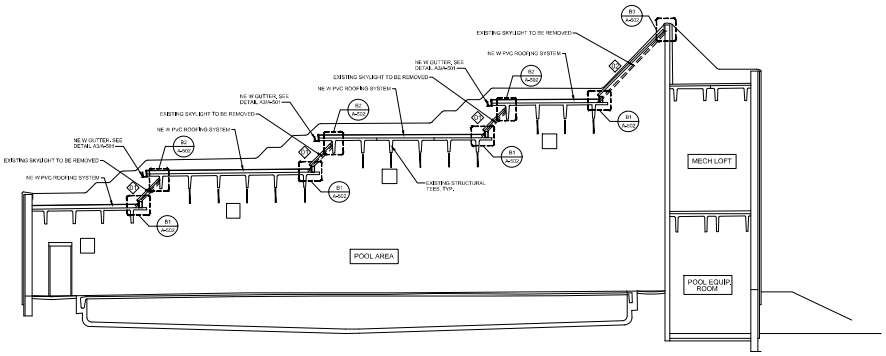
ELEVATION 02



ELEVATION 01

2 A-102 SKYLIGHT ELEVATIONS

N.T.S.



1 A-102 PARTIAL BUILDING SECTION

1/8" = 1'-0"

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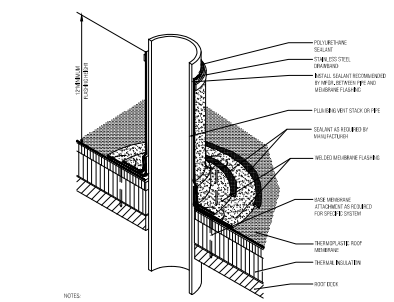
SKYLIGHT

SECTIONS & ELEVATIONS

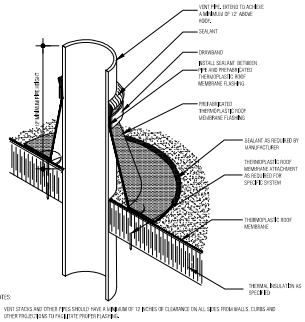
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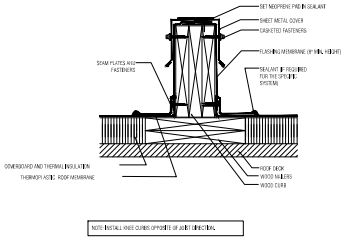
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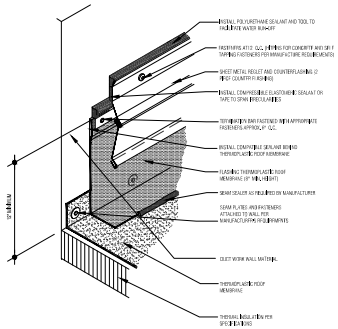
C1 FIELD FABRICATED PIPE FLASHING
N/A



C2 PRE-MOLDED PIPE FLASHING
N/A

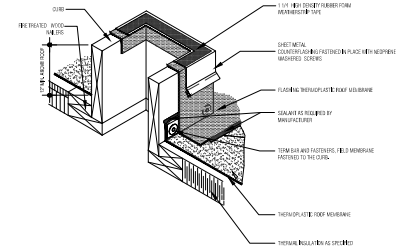


C3 KNEE CURB
N/A

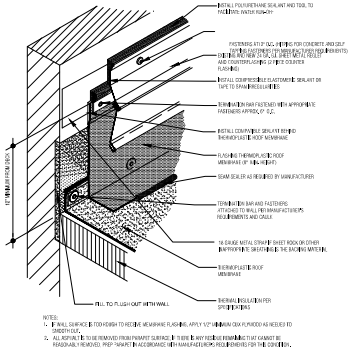


C4 DUCT FLASHING
N/A

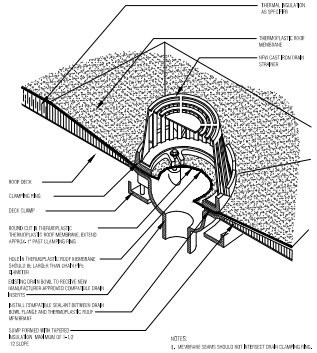
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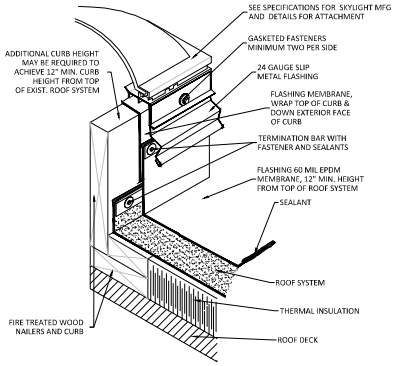
B1 MECHANICAL CURB
N/A



B2 HIGHWALL FLASHING
N/A

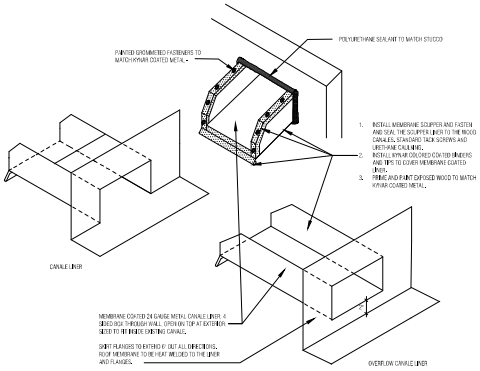


B3 PRIMARY ROOF DRAIN
N/A

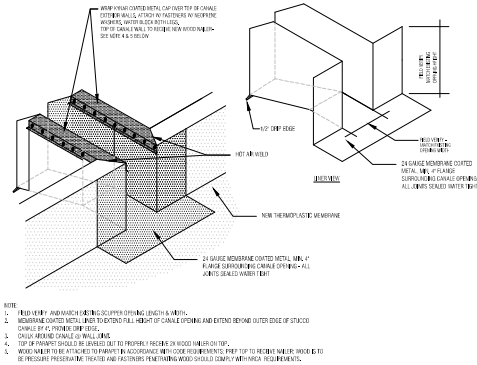


B1 SKYLIGHT FLASHING
N/A

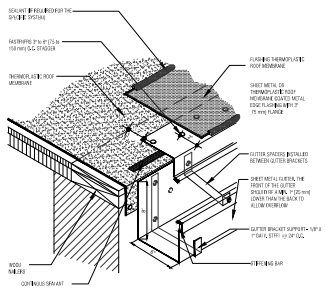
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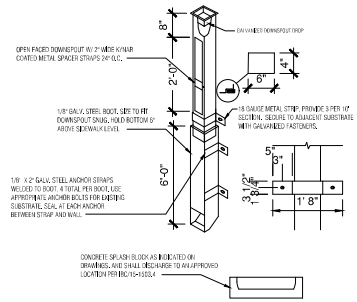
A1 CANALE AND LINER
N/A



A2 MEMBRANE COATED CANALE LINER
N/A



A3 GUTTER DETAIL
N/A



A4 DOWNSPOUT W/ BOOT @ GUTTER OUTLET
N/A

1 2 3 4

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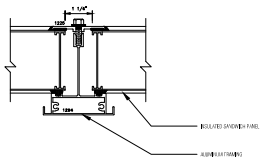
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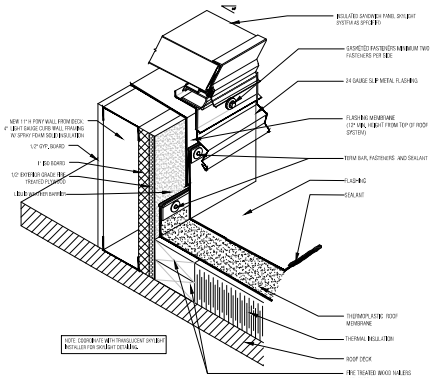
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ROOF DETAILS

Sheet No.
A-501

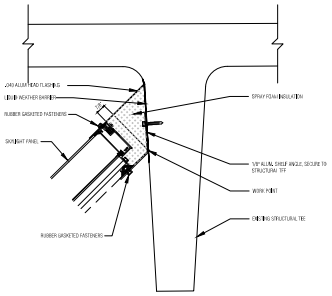
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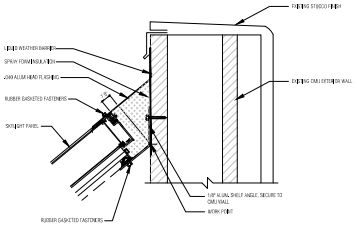
C1 SKYLIGHT RAFTER DETAIL



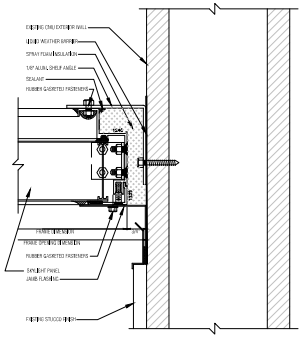
B1 SKYLIGHT CURB FLASHING



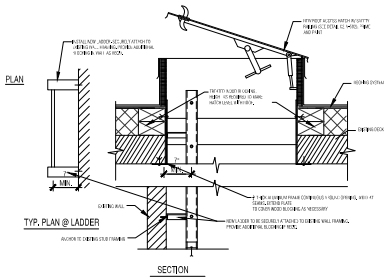
B2 SKYLIGHT HEAD DETAIL



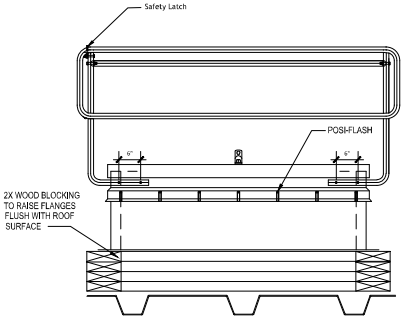
B3 SKYLIGHT HEAD DETAIL



B3 SKYLIGHT JAMB DETAIL

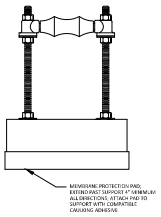


A1 ROOF HATCH WITH LADDER

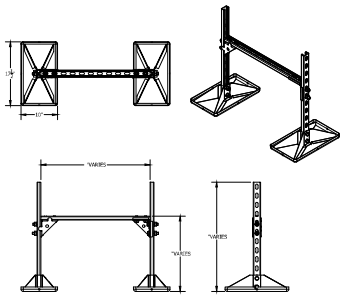


BASIS OF DESIGN: ROOF HATCH FALL PROTECTION SAFETY RAIL BY SAFEPRO L.P. OR APPROVED EQUAL.

A2 ROOF HATCH SAFETY RAILING



A3 PIPE SUPPORT



FRAME CONSTRUCTED OF STRUT AND BASES TO SUPPORT DUCT ON FLAT ROOFS, BASE DESIGN ALLOWS A SLIGHT SLOPE TO WATER POSITION BELOW ON CURB, CURB TO THE TRUE MEMBRANE, DUCTS REST ON A 1 5/8" X 1 5/8" STRUT AND ARE ADJUSTABLE IN HEIGHT, THE DUCT SUPPORT BASE IS MADE OF HDG 14 GAUGE STEEL AND ALL OTHER METAL PARTS ARE MADE OF HDG 16 GAUGE STEEL.
MAXIMUM SPACING NOT EXCEED 8'-0" OR MANUFACTURERS RECOMMENDATION.

A4 DUCT SUPPORT

1 2 3 4

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ROOF DETAILS

Sheet No.

A-502

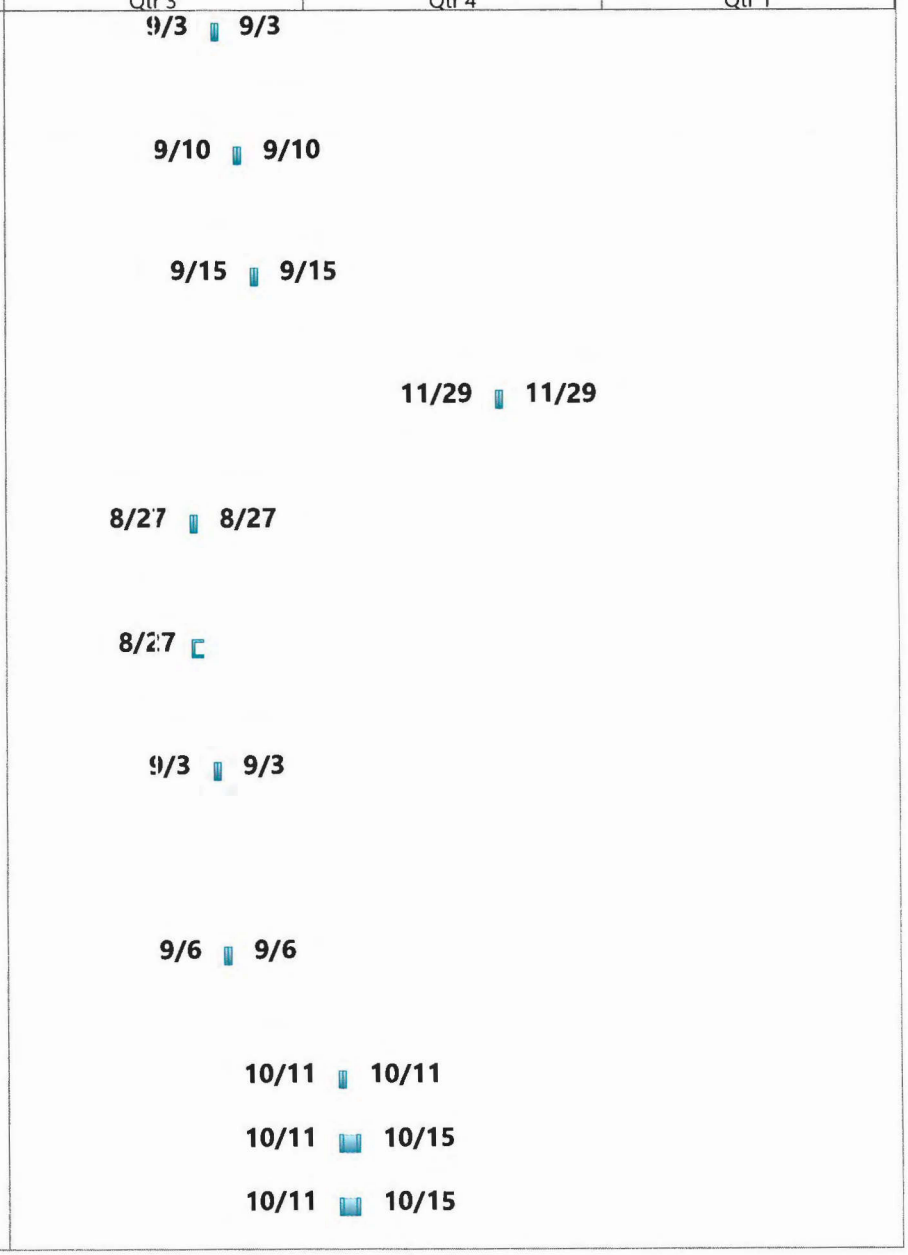
Of TOT

Fort Marcy Re-Roof and Skylight Replacement

ID	Task Name	Start	Finish	2022 Qtr 3	2022 Qtr 4	2022 Qtr 1
1	**This schedule will be verified for accuracy once the Notice to Proceed is received**					
2	**Material delivery dates are subject to change from product manufactures with little to no notice, the delivery dates included in this schedule are considered estimated "best case"**					
3	**A detailed bi-weekly "look ahead" schedule will be maintained and discussed at the weekly progress meeting**					
4	**This schedule does not include weather delay contingency. Any weather delays will be documented on a day to day basis with the owner and AGI**					
5	Notice to Proceed	Mon 8/16/21	Mon 8/16/21	8/16 8/16		
6	Notice to Proceed all Subcontractors	Mon 8/16/21	Mon 8/16/21	8/16 8/16		
7	Subcontractor AIA contracts	Mon 8/16/21	Fri 8/20/21	8/16 8/20		
8	Roofing Submittal Package Turned into FMCI	Mon 8/16/21	Wed 8/25/21	8/16 8/25		
9	Major Industries Natatorium Skylight Material Package Turned in to FMCI	Fri 9/3/21	Fri 9/3/21	9/3 9/3		

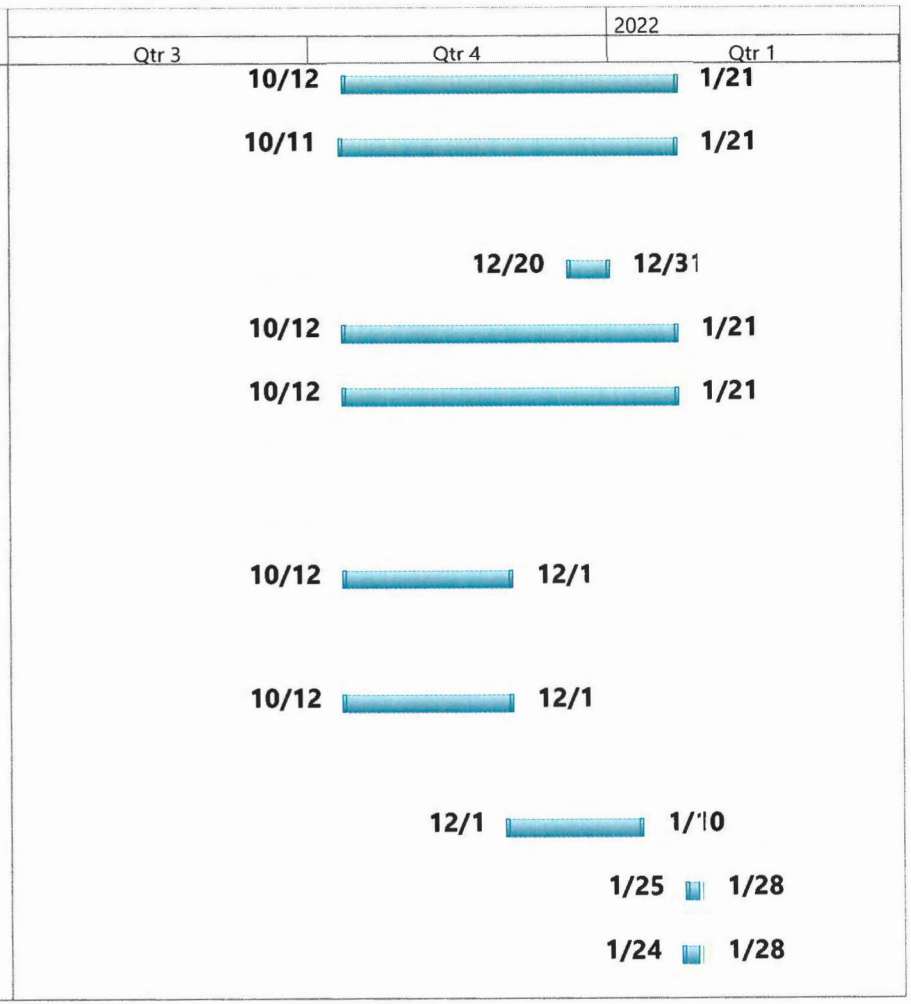
FIRST MESA CONSTRUCTION, INC.

ID	Task Name	Start	Finish
10	Major Industries Natatorium Skylight Material Package Turned in to AGI on or before	Fri 9/3/21	Fri 9/3/21
11	Major Industries Natatorium Skylight Material Submittal Package approved for ordering	Fri 9/10/21	Fri 9/10/21
12	Major Industries Natatorium Skylight Materials Ordered on or before Sept 15 , est 10 week delivery	Wed 9/15/21	Wed 9/15/21
13	PROJECTED DELIVERY date of Major Industries Natatorium Skylight Installation	Mon 11/29/21	Mon 11/29/21
14	Roofing Material Submittal package turned in to AGI for Approval	Fri 8/27/21	Fri 8/27/21
15	FMCI materials and insulite, Gymnasium fixed skylight submittals turned in to AGI for approval	Fri 8/27/21	
16	Roofing materials, insulite fixed Gymnasium skylight and FMCI material submittal approved and returned to FMCI for ordering	Fri 9/3/21	Fri 9/3/21
17	Roofing materials and insulite Gymnasium skylight material order on	Mon 9/6/21	Mon 9/6/21
18	ESTIMATED Roofing materials delivery	Mon 10/11/21	Mon 10/11/21
19	Mobilization and material stock	Mon 10/11/21	Fri 10/15/21
20	Temp fence and portable restroom placement	Mon 10/11/21	Fri 10/15/21



FIRST MESA CONSTRUCTION, INC.

ID	Task Name	Start	Finish
21	Roofing tear off and replacement	Tue 10/12/21	Fri 1/21/22
22	Interior finish protection in general, but specifically at Natatorium, Gym and Gym floor as required	Mon 10/11/21	Fri 1/21/22
23	Unidentified work progress	Mon 12/20/21	Fri 12/31/21
24	Roofing - associated carpentry/wall and curb mods	Tue 10/12/21	Fri 1/21/22
25	Roof ladder and hatch installations to be scheduled along with roof area of influence under construction	Tue 10/12/21	Fri 1/21/22
26	Existing sandwich panel system demo at Natatorium	Tue 10/12/21	Wed 12/1/21
27	Structural mods for new sandwich panel installation at Natatorium	Tue 10/12/21	Wed 12/1/21
28	New sandwich panel installation at Natatorium	Wed 12/1/21	Mon 1/10/22
29	Final inspection and clean up	Tue 1/25/22	Fri 1/28/22
30	De-mobilize	Mon 1/24/22	Fri 1/28/22



FIRST MESA CONSTRUCTION, INC.

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State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor: **45 Vendors**

Number: **00-00000-20-00110**

Amendment No.: **Two**

Term: **July 1, 2020 – June 30, 2022**

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

Procurement Specialist: **Michael Saavedra**

Telephone No.: **505-372-8489**

Email: **Michael.Saavedra@state.nm.us**

Title: **General Construction Services - Statewide**

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

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from July 1, 2021 to June 30, 2022 at the same price, terms and conditions.

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

Valerie Pawlk

Mark Hayden, New Mexico State Purchasing Agent

Date: 3/31/2021

x **This Agreement was signed on behalf of the State Purchasing Agent**

MS CF

Certificate Of Completion

Envelope Id: BCA8D71304BF4ED1B0932C3E0D419360
Status: Completed
Subject: Please DocuSign: SPD SPA
Source Envelope:
Document Pages: 1
Signatures: 1
Certificate Pages: 5
Initials: 2
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-07:00) Mountain Time (US & Canada)

Envelope Originator:
Clarke Fountain
13 Bataan Blvd
Santa Fe, NM 87508
ClarkeJ.Fountain@state.nm.us
IP Address: 174.237.135.68

Record Tracking

Status: Original
3/31/2021 9:53:13 AM
Holder: Clarke Fountain
ClarkeJ.Fountain@state.nm.us
Location: DocuSign

Security Appliance Status: Connected
Pool: StateLocal

Storage Appliance Status: Connected
Pool: GSD
Location: DocuSign

Signer Events	Signature	Timestamp
Clarke Fountain clarkej.fountain@state.nm.us Procurement Specialist New Mexico General Services Security Level: Email, Account Authentication (None)	CF Signature Adoption: Pre-selected Style Using IP Address: 174.237.135.68	Sent: 3/31/2021 9:54:22 AM Viewed: 3/31/2021 9:54:33 AM Signed: 3/31/2021 9:54:40 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Michael Saavedra michael.saavedra@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None)	MS Signature Adoption: Pre-selected Style Using IP Address: 174.237.128.217	Sent: 3/31/2021 9:54:41 AM Viewed: 3/31/2021 11:20:01 AM Signed: 3/31/2021 11:20:20 AM
Electronic Record and Signature Disclosure: Accepted: 6/4/2020 11:04:51 AM ID: 9cac1b3e-4279-4c8f-b2b4-c607ea9821d8		
Valerie Paulk valerie.paulk@state.nm.us State Purchasing Agent New Mexico General Services Security Level: Email, Account Authentication (None)	Valerie Paulk Signature Adoption: Pre-selected Style Using IP Address: 174.237.133.74 Signed using mobile	Sent: 3/31/2021 11:20:22 AM Viewed: 3/31/2021 11:26:21 AM Signed: 3/31/2021 11:27:14 AM
Electronic Record and Signature Disclosure: Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/31/2021 9:54:22 AM
Certified Delivered	Security Checked	3/31/2021 11:26:21 AM
Signing Complete	Security Checked	3/31/2021 11:27:14 AM
Completed	Security Checked	3/31/2021 11:27:14 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

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State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor **(45) Vendors** **Telephone:**

Price Agreement Number: **00-00000-20-00110**

Price Agreement Amendment No.: **One**

Term: **July 1, 2020 – June 30, 2021**

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

Procurement Specialist: **Michael Saavedra** MS

Telephone No.: **(505) 827-0610**

Email: **Michael.Saavedra@state.nm.us**

Title: **General Construction Services - Statewide**

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 two vendors to the Price Agreement.

See Attached pages for vendor information and pricing.

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

Valerie Paulk _____ Date: 07/20/20

Mark Hayden, New Mexico State Purchasing Agent

X **This Amendment was signed on behalf of the State Purchasing Agent**

JDL

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Vendor
(BR) 0000049445
ESA Construction, Inc.
3435 Girard Blvd. NE
Albuquerque, NM 87107
(505) 884-2171
spannell@esaconstruction.com

Payment Terms: Net 30

Delivery: As required by contracts or purchase orders

(BS) 0000138553
Nine Degrees Construction, LLC
101 Maguey Ct. Suite 2
Sunland Park, NM 88063
(915) 526-8739
cesarm@nine-degrees.com

Payment Terms: Net 30

Delivery:

Item	**Approx. Qty.**	**Unit**	**Article and Description**			
001	1	Hr.	Projects UNDER Sixty Thousand ($60,000.00) Superintendent, regular hours			
Vendor:	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
(BR)		$70.00	$70.00	$70.00	$70.00	
(BS)			$61.25	$51.75	$56.50	

Item	**Approx. Qty.**	**Unit**	**Article and Description**			
002	1	Hr.	Projects UNDER Sixty Thousand ($60,000.00) Superintendent, after hours			
Vendor:	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
(BR)		$70.00	$70.00	$70.00	$70.00	
(BS)			$72.25	$72.25	$72.25	

Item	**Approx. Qty.**	**Unit**	**Article and Description**			
003	1	Hr.	Projects UNDER Sixty Thousand ($60,000.00) Journeyman or Experienced Worker, regular hours worked.			
Vendor:	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
(BR)		$54.00	$54.00	$54.00	$54.00	
(BS)			$46.25	$46.25	$46.25	

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Item	**Approx. Qty.**	**Unit**	**Article and Description**			
004	1	Hr.	Projects UNDER Sixty Thousand ($60,000.00) Journeyman or Experienced Worker, after hours worked.			
Vendor:	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
(BR)		$72.00	$72.00	$72.00	$72.00	
(BS)			$50.30	$50.30	$50.30	

Item	**Approx. Qty.**	**Unit**	**Article and Description**			
005	1	Hr.	Projects UNDER Sixty Thousand ($60,000.00) Laborer, regular hours worked.			
Vendor:	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
(BR)		$38.00	$38.00	$38.00	$38.00	
(BS)			$32.20	$32.20	$32.20	

Item	**Approx. Qty.**	**Unit**	**Article and Description**			
006	1	Hr.	Projects UNDER Sixty Thousand ($60,000.00) Laborer, after hours worked.			
Vendor:	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
(BR)		$45.00	$45.00	$45.00	$45.00	
(BS)			$40.10	$40.10	$40.10	

Item	**Approx. Qty.**	**Unit**	**Article and Description**			
007	1	Hr.	Projects OVER Sixty Thousand ($60,000.00) Superintendent, regular hours.			
Vendor:	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
(BR)		$70.00	$70.00	$70.00	$70.00	
(BS)			$61.25	$51.75	$56.50	

Item	**Approx. Qty.**	**Unit**	**Article and Description**			
008	1	Hr.	Projects OVER Sixty Thousand ($60,000.00) Superintendent, after hours			
Vendor:	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
(BR)		$70.00	$70.00	$70.00	$70.00	
(BS)			$72.25	$72.25	$72.25	

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Item	**Approx. Qty.**	**Unit**	**Article and Description**			
009	1	Hr.	Projects OVER Sixty Thousand ($60,000.00) Journeyman or Experienced Worker, regular hours worked.			
Vendor:	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
(BR)		$54.00	$54.00	$54.00	$54.00	
(BS)			$46.25	$46.25	$46.25	

Item	**Approx. Qty.**	**Unit**	**Article and Description**			
010	1	Hr.	Project OVER Sixty Thousand ($60,000.00) Journey or Experienced Worker, after hours worked.			
Vendor:	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
(BR)		$72.00	$72.00	$72.00	$72.00	
(BS)			$50.30	$50.30	$50.30	

Item	**Approx. Qty.**	**Unit**	**Article and Description**			
011	1	Hr.	Project OVER Sixty Thousand ($60,000.00) Laborer, regular hours worked.			
Vendor:	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
(BR)		$38.00	$38.00	$38.00	$38.00	
(BS)						

Item	**Approx. Qty.**	**Unit**	**Article and Description**			
012	1	Hr.	Project OVER Sixty Thousand ($60,000.00) Laborer, after hours worked.			
Vendor:	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
(BR)		$45.00	$45.00	$45.00	$45.00	
(BS)			$40.10	$40.10	$40.10	

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Item	Approx. Qty.	Unit	Article and Description
013	1	Hr.	Diagnosis, project estimates, troubleshooting, other

Vendor:	Unit Price
(BR)	$0.00
(BS)	$0.00

Item	Approx. Qty.	Unit	Article and Description
014		%	Discount off all parts and materials. Invoice will include copies of all purchases for parts and materials, including vendor and date purchased. Enter zero if no discount is offered.

Vendor:	Unit Price
(BR)	0%
(BS)	2%

Item	Approx. Qty.	Unit	Article and Description
015		Day	Daily per diem rate for overnight stay as needed. Including dinner and breakfast per person. Bidders should provide a Per Diem Rate that does not exceed the Per Diem Rate defined above in this bid. If a Per Diem Rate is not submitted by the Bidder, the defined rate shall be the default.

Vendor:	Unit Price
(BR)	$130.00
(BS)	$100.00

Item	Unit	Article and Description			
016	Mileage	One way per mile cost, per service vehicle required, measured from the awarded Contractor's office/shop to the requested job site, for travel in excess of 50 miles one way, based on mapquest.com. Bidders should provide a Mileage Rage that does not exceed the IRS Mileage Rage linked above. If a Mileage Rate is not submitted by the Bidder, the defined rate shall be the default.			
Vendor:	Physical Address	Company Nam	Address	City/Zip	Unit Price
(BR)	Main: 3435 Girard Blvd. NE, ABQ, NM 87107; 645 El Molino Blvd. Las Cruces, NM 88005	ESA Construction, Inc.	3435 Girard Blvd. NE/645 El Molino Blvd.	Albuquerque/Las Cruces	$0.85
(BS)	101 Maguey Ct. Suite 2	Nine Degrees Construction, LLC.	101 Maguey Ct. 2	Sunland Park, NM 88063	$0.65

*** 16 Items Total ***

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State of New Mexico
General Services Department

Statewide Price Agreement

Awarded Vendors:
43 Vendors – Starting on page 6

Price Agreement Number**:** **00-00000-20-00110**

Payment Terms**:** **See page 6**

F.O.B.**:** **Destination**

Delivery**:** **See page 6**

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

Procurement Specialist**:** Michael Saavedra MS

Telephone No.**:** 505-827-0610

Email: Michael.Saavedra@state.nm.us

Invoice:
As Requested

Title: **General Construction Services - Statewide**

Term**: July 1, 2020 thru June 30, 2021**

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

Valerie Paulk
New Mexico State Purchasing Agent

Date: 6/26/2020

x **This Agreement was signed on behalf of the State Purchasing Agent**

JDL

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State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: **00-00000-20-00110**

Terms and Conditions

(Unless otherwise specified)

1. **General:** When the State Purchasing Agent or his/her designee issues a purchase document in response to the Vendor's bid, a binding contract is created.

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

3. **Assignment:**

a. Neither the order, nor any interest therein, nor any claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in Subparagraph 3b or as expressly authorized in writing by the State Purchasing Agent or his/her designee. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this order.

b. Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.

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

5. **Discounts:** Prompt payment discounts will not be considered in computing the low bid. Discounts for payment within twenty (20) days will be considered after the award of the contract. Discounted time will be computed from the date of receipt of the merchandise invoice, whichever is later.

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

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

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

9. **Taxes:** The unit price shall exclude all state taxes.

10. **Packing, Shipping and Invoicing:**

a. The State's purchasing document number and the Vendor's name, user's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing ticket.

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

c. Invoices must be submitted to the using agency and NOT the State Purchasing Agent.

11. **Default:** The State reserves the right to cancel all or any part of this order without cost to the State, if the Vendor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the State due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or

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negligence of the Vendor, such causes include but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.

12. **Non-Collusion:** In signing this bid the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or his/her designee.

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

14. **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.

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

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

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

18. **Submission of Bid:** Bids must be submitted in a sealed envelope with the bid number and opening date clearly indicated on the bottom left hand side of the front of the envelope. Failure to label bid envelope will necessitate the premature opening of the bid in order to identify the bid number.

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

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

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

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

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New Mexico Employees Health Coverage

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

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

C. Contractor agrees to advise all of its New Mexico Employees of the availability of State publicly financed health care coverage programs by providing each of its New Mexico Employees with, as a minimum, the following web site link to additional information: https://bewellnm.com.

D. For purposes of this Paragraph, the following terms have the following meanings:

(1) "New Mexico Employee" means any resident of the State of New Mexico employed by Contractor who performs the majority of the employee's work for Contractor within the State of New Mexico, regardless of the location of Contractor's office or offices; and

(2) "offer" means to make available, without unreasonable restriction, enrollment in one or more health coverage plans and to actively seek and encourage participation in order to achieve the goals of Executive Order 2007-049. This could include State publicly financed public health coverage programs such as *Insure New Mexico!*

Statewide Price Agreement

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

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

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

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

Article IV – Shipping and Billing Instructions
Contractor shall ship in accordance with the following instructions: Shipment shall be made only against specific orders which the user may place with the Contractor during the term; The Contractor shall enclose a packing list with each shipment listing the order number, price agreement number and the commercial parts number (if any) for each item; Delivery shall be made as indicated on page1. If vendor is unable to meet stated delivery the State Purchasing Agent or his/her designee must be notified.

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Article V – Termination
The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach. Termination of this Contract, however, shall not affect any outstanding orders. This provision is not exclusive and shall not waive other rights and remedies afforded either party in the event of breach of contract or default. In such instances the contract may be cancelled effective immediately.

Article VI – Amendment
This Price Agreement may be amended by mutual agreement of the New Mexico State Purchasing Agent or his/her designee and the Contractor upon written notice by either party to the other. An amendment to this Price Agreement shall not affect any outstanding orders issued prior to the effective date of the amendment as mutually agreed upon, and as published by the New Mexico State Purchasing Agent or his/her designee. Amendments affecting price adjustments and/or the extension of a price agreement expiration date are not allowed unless specifically provided in the bid and price agreement specifications.

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

It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the agreement to maintain a suit(s) for wrongful death(s), bodily and/ or personal injury(s) to person(s), damage(s) to property(ies) and/or any other claim(s) whatsoever pursuant to the provisions of this agreement.
Vendor shall provide all insurance necessary to employees on the work site, including but not limited to Worker's Compensation.

Article VIII – Issuance or Orders
Only written signed orders are valid under this Price Agreement.

Article IX – Packing (if applicable)
Packing shall be in conformance with standard commercial practices.

Article X – Price Schedule
Prices as listed in the price schedule hereto attached are firm.

DocuSign Envelope ID: CF0CAFC1-C847-48CD-B5CB-4BEFD91351D1

Awarded Vendors:

(AA) 0000139642
AGM Konstruction LLC
1570 Pacheco Street, Suite E-6
Santa Fe, NM 87505
505-429-6072 or 505-365-2922
ambrose@AGMKonstruction

Payment Terms: 30 days
Delivery: FOB - Job Site

(AB) 0000053415
Advanced Environmental Solutions, Inc.
2318 Roldan Drive
Belen, NM 87002
505-861-1700
asaiz@aesnm.com

Delivery: Per Contract Specs

(AC) 0000107401
All-Rite Construction, Inc.
dba RITECON
539 Oliver Ross Drive NW
Albuquerque, NM 87121
505-344-7663
meshach@ritecon.com

Payment Terms: Net 30

Delivery: As Requested

(AD) 0000009253
Allied Electric, Inc.
2859 Cerrillos Road
Santa Fe, NM 87507
mailing: PO Box 28430
Santa Fe, NM 87592-8430
505-438-8899
melissa@alliednm.com

Payment Terms: Net 30 days

Delivery: As Requested by Owner

(AE) 0000054601
Anchorbuilt, Inc.
PO Box 27688
Albuquerque, NM 87125
505-342-2452
ray.zamora@anchorbuilt.com or mfranco@anchorbuilt.com

Payment Terms: Net 30

Delivery: As Requested

(AF) 0000046277
B & D Industries, Inc.
9720 Bell Avenue SE
Albuquerque, NM 87123
505-299-4464
clinton@banddindustries.com

Payment Terms: Net 30 days

Delivery: FOB Destination

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(AG) 0000146366
Barnsley Construction, LLC
4900 Hawkins Street
Albuquerque, NM 87109
505-856-5576
rayc@barnsleyconstruction.com

Payment Terms: Net 30

Delivery: FOB Destination

(AH) 0000146367
Miguel Contreras
dba C R M Construction
413 Burma Drive NE
Albuquerque, NM 123
505-974-1869
miguel.crmconstruction@gmail.com

Payment Terms: Net 30

Delivery: As Requested

(AI) 0000051994
Classic Industries, Inc.
PO Box 434
Dona Ana, NM 88032
575-523-2053
classic.industries@comcast.net

Payment Terms: Net 30

Delivery: 5 days from Notice to Proceed

(AJ) 0000138100
Consolidated Builders of NM LLC
PO Box 26785
Albuquerque, NM 87125
505-873-6139
consolidatedbuilders@comcast.net

Payment Terms: Net 30

Delivery: As requested

(AK) 0000116075
Davenport Construction Management LLC
141 Camino de las Crucitas
Santa Fe, NM 87501
505-660-7105
mitch@dcmnm.com

Payment Terms: net 30

Delivery: As Requested

(AL) 0000012754
FacilityBUILD, Inc.
5904 Florence Ave, NE
Albuquerque, NM 87113
505-828-0060
camkilcup@facilitybuild.com

Payment Terms: Net 30

Delivery: As Required

DocuSign Envelope ID: CF0CAFC1-C847-48CD-B5CB-4BEFD91351D1

(AM) 0000079938
Facility Solutions Group
8340 Burnham Road, Suite 300
El Paso, TX 79907
915-307-3386
jerrod.kew@fsgi.com

Payment Terms: Net 30

Delivery: 7209 Jefferson Street SW

(AN) 0000043596
First Mesa Construction, Inc.
8819 Second Street NW
Albuquerque, NM 87114
505-843-8990
cheryl@firstmesa.net

Payment Terms: Net 30 days

Delivery: First Mesa Construction, Inc.

(AO) 0000049692
Franken Construction Co., Inc.
1025 Douglas Avenue
Las Vegas, NM 87701
505-554-1481 or 505-429-1962
brentfranken@frankenconstruction.com

Payment Terms: Net 30 days

Delivery: 1025 Douglas Avenue, Las Vegas, NM 87701

(AP) 0000090285
GM Emulsion, LLC
5935 Agua Fria
Santa Fe, NM 87507
505-471-9981
gabriel@gmemulsion.com

Payment Terms: Net 30

Delivery: As requested

(AQ) 0000141388
GME General Building LLC
5935 Agua Fria
Santa Fe, NM 87507
505-471-9981
erik@gmegeneralbuilding.com

Payment Terms: Net 30

Delivery: As requested

(AR) 0000052470
HEI, Inc.
PO Box 31310
Albuquerque, NM 87190
505-880-1819
whumbard@heinm.com

Payment Terms: Net 30

Delivery: FOB Destination

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(AS) 0000049140
Handiwork, Inc.
4425 Juan Tabo Blvd NE, #208
Albuquerque, NM 87111
505-239-5575
jshuster@swcp.com

Payment Terms: Net 30 Days

Delivery: As Requested, FOB Destination

(AT) 0000046321
Jack B. Henderson Construction Co., Inc.
501 Eubank Blvd. SE
Albuquerque, NM 87123
505-292-8955
jeichhorst@jbhenderson.com

Payment Terms: Net 21

Delivery: 501 Eubank Blvd. SE, Alb. NM 87123

(AU) 0000093684
JRM Construction Co, LLC
2620 Via Berrenda
Santa Fe, NM 87505
505-920-9768
bob87505@aol.com

Payment Terms: net 30

Delivery: N/A

(AV) 0000087051
La Mesilla Construction, LLC
98 County Road 119
Espanola, NM 87532
505-927-6513
lamesillaconstruction@gmail.com

Payment Terms: Net 21

Delivery: per owner's request

(AW) 0000055206
Lone Mountain Contracting, Inc.
125 Bosque Farms Blvd.
Bosque Farms, NM 87068
505-869-2996
tessie@lonemountain.com or nick@lonemountain.com

Payment Terms: Net 30

Delivery: 125 Bosque Farms Blvd. Bosque Farms NM 87068

(AX) 0000050594
Longhorn Construction Services, Inc.
9208 Lona Lane NE
Albuquerque, NM 87111
505-858-1360
lcsinc@comcast.net or samlcs@comcast.net

Payment Terms: 30 Days

Delivery: FOB job site

(AY) 0000046795
Lynco Electric Co. Inc.
1520 West Amador
Las Cruces, NM 88005
575-523-9066
lyncoelecnathan@comcast.net

Payment Terms: NET 30

Delivery: AS INDICATED ON BID FORM

DocuSign Envelope ID: CF0CAFC1-C847-48CD-B5CB-4BEFD91351D1

(AZ) 0000070502
Mans Construction, Inc.
1996 S Valley Drive
Las Cruces, NM 88005
575-644-5011
ftorres@mans-co.com

Payment Terms: (21 days from acceptance of undisputed invoice)

Delivery: As Requested per Contract Documents

(BA) 0000011272
Mechanical Controls Solutions
dba MCS
4020 Vassar Drive NE, Suite B
Albuquerque, NM 87107
505-888-1616
mmacready@icsicontrols.com

Payment Terms: Net 45

Delivery: As Requested

(BB) 0000086491
Mevacon LLC
1207 Scoggins
Las Cruces, NM 88005
575-524-0327
arivas@meva-con.com

Payment Terms: Per Terms and Conditions

Delivery: 1207 Scoggins, Las Cruces, NM 88005

(BC) 0000049376
Mick Rich Contractors, Inc.
8401 Firestone Lane, NE
Albuquerque, NM 87113
505-823-9782
jimrich@mickrichcontractors.com

Payment Terms: Net 30

Delivery: As Requested

(BD) 0000090378
Nieto Custom Builders
428 Candie Lane
Corrales, NM 87048
505-270-1346
pnieto@ncbnmpro.com

Payment Terms: 30 days

Delivery: Open

(BE) 0000140941
Northeastern Construction Company
925 Mills Ave
Las Vegas, NM 87701
505-454-8143 or 505-426-7585
sean@necbuilders.net or necontractors@yahoo.com

Payment Terms: Net 30 days

Delivery:

DocuSign Envelope ID: CF0CAFC1-C847-48CD-B5CB-4BEFD91351D1

(BF) 0000114869
Pluma, LLC
6301 4th Street NW, Suite 1
Albuquerque, NM 87107
505-345-0755
chris@plucys.com

Payment Terms: Net 30

Delivery: FOB Destination

(BG) 0000108577
QA Engineering
1409 Ortiz Drive SE
Albuquerque, NM 87108
505-338-7092 or 505-250-8663
robert@qaengineering.com

Delivery: FOB Job site

(BH) 0000132517
R and M Construction LLC
PO Box 1026
Alcalde, NM 87511
505-927-2027
robert@rmconstructionnm.com

Payment Terms: NET 30

Delivery: e-mail or US Mail

(BI) 0000135923
Road Runer Plaster & Drywall LLC
3272 Ojos De Jo
Santa, Fe, NM
505-670-3426
ivanroadrunner@live.com

Payment Terms:

Delivery: Upon Receipt

(BJ) 0000009789
SDV Construction, Inc.
8912 Adams St. NE
Albuquerque, NM 87113
505-883-3176
estimating@sdvconstruction.com or paul@sdvconstruction.com

Payment Terms: Net 30

Delivery: Destination

(BK) 0000076453
Sanchez Demolition, Inc.
PO Box 721
Bosque, NM 87006
505-864-7551
sanchezdemolition@gmail.com

Payment Terms: 30 days net

Delivery:

DocuSign Envelope ID: CF0CAFC1-C847-48CD-B5CB-4BEFD91351D1

(BL) 0000146352
Snyder Construction
5800 San Francisco Rd NE
Albuquerque, NM 87109
505-923-3181
zsnyder@snyder-const.com or tmcmains@snyder-const.com

Payment Terms: Net 30

Delivery: Destination

(BM) 0000051414
WWRC, Inc.
1716 W. 7th
Clovis, NM 88101
575-769-2618
wwrc@wwrcinc.com or ricky@wwrcinc.com

Payment Terms: net 30 days

Delivery: as requested

(BN) 0000009760
Weil Construction, Inc.
3344 Princeton Dr. NE
Albuquerque, NM 87107
505-899-3535
chris@weilconstruction.com

Payment Terms: Net 30

Delivery: Delivery

(BO) 0000048657
Welch's Boiler Service, Inc.
6060 Isleta Blvd S.W.
Albuquerque, NM 87105
505-877-0356
welchsboiler@comcast.net or keith.welch99@comcast.net

Payment Terms: Net 30

Delivery: TBD, Job site.

(BP) 0000052947
Western Mechanical Co.
DBA/Western Mechanical HVAC & Plumbing
3301 Girard Blvd NE
Albuquerque, NM 87107
505-341-4458 or 505-948-3800
westernmechanical@hotmail.com or mike.westernmechanical@gmail.com

Payment Terms: 30 Days

Delivery: Hand Delivery

(BQ) 0000050416
White Sands Construction, Inc.
1700 10th Street
Alamogordo, NM 88310
575-437-7816
catlin@whitesandsconstruction.com

Payment Terms: 21 Days after Submission

Delivery: 1700 10th Street, Alamogordo, NM 88310

Original - File

City of Santa Fe
Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: FIRST MESA CONSTRUCTION INC
DBA: FIRST MESA CONSTRUCTION INC

Business Location: 8819 SECOND ST NW
ALBUQUERQUE, NM 87114

Owner: FIRST MESA CONSTRUCTION INC

License Number: 226466

Issued Date: June 14, 2021

Expiration Date: June 14, 2022

CRS Number: 02-331855-004

License Type: Business License - Renewable

Classification: Out of Jurisdiction Contractor - General

Fees Paid: $10.00

FIRST MESA CONSTRUCTION INC
PO BOX 92258
ALBUQUERQUE, NM 87199

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

Client#: 1142022 FIRSTMES

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 06/14/2021

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
USI Southwest Inc. NM - CL
4100 Osuna Road NE Suite 2-203
Albuquerque, NM 87109
505 262-2621

CONTACT NAME: Stuart Kuyper / Mollie Encee
PHONE (A/C, No, Ext): 505 262-2621 FAX (A/C, No): 855 512-3881
E-MAIL ADDRESS: Mollie.Encee@usi.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : National Fire Insurance Co. of Hartford	20478
INSURER B : Continental Insurance Company	35289
INSURER C : New Mexico Mutual Casualty Company	40627
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
First Mesa Construction, Inc.
PO Box 92258
Albuquerque, NM 87199-2258

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY	X	X	5091435171	03/10/2021	03/10/2022	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$100,000
							MED EXP (Any one person)	$5,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY	X	X	5091435154	03/10/2021	03/10/2022	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
B	X UMBRELLA LIAB X OCCUR	X	X	5091435168	03/10/2021	03/10/2022	EACH OCCURRENCE	$5,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$5,000,000
	DED X RETENTION $10000							$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N		X	17891126	03/10/2021	03/10/2022	X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N	N/A					E.L. EACH ACCIDENT	$1,000,000
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The General Liability and Automobile policies include an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder and Owner, only when there is a written contract or written agreement between the named insured and the certificate holder and with regard to ongoing and completed operations and work performed on behalf of the named insured.
The General Liability, Automobile and Workers' Compensation policies provide a Blanket Waiver of
(See Attached Descriptions)

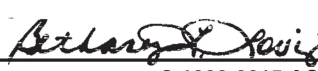
CERTIFICATE HOLDER

For Informational Purposes Only
For Informational Purposes Only
For Informational Purposes Only

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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DESCRIPTIONS (Continued from Page 1)

Subrogation in favor of the same, when required by written contract.
The General Liability policy contains a special endorsement with "Primary and Noncontributory" wording, when required by written contract.

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: First Mesa Construction, LLC

Procurement Title: Ft Marcy Roof and Skylights

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	
☒	☐	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
☐	☒	Bid 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: _____

Caryn Grosse	Facilities Project Administrator	6/28/2021
Department Rep Printed Name (attesting that all information included)	Title	Date
Fran Dunaway (Jun 30, 2021 14:41 MDT)	Chief Procurement Officer	Jun 30, 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 any resulting contract.

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **3202776**

Contractor: **First Mesa Construction, LLC**

Description: **Service Agreement in the Total Amount of $1,444,526.87 to Replace Ft Marcy Roof and Skylights**

Contract [x] Agreement [ ] Lease / Rent [ ] Amendment [ ]

Term Start Date: **upon approval** Term End Date: **June 30, 2022**

[ ] Approved by Council Date: _____

Contract / Lease: Original Contract

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 to replace roof and skylights at Ft Marcy.

3. **Procurement History:** **SWPA # 00-00000-20-00110 General Construction Services Statewide**

Fran Dunaway (Jun 30, 2021 14:41 MDT) Jun 30, 2021

Purchasing Officer Review: Date:

Comment & Exceptions: Procurement Issued utilizing a SWPA.

4. **Funding Source:** CIP BOND GRT18FMD 335.359980.520100 **Org / Object:** _____

Andy Hopkins (Jun 30, 2021 14:18 MDT) Jun 30, 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: _____

ACTION SHEET PUBLIC WORKS AND UTILITES COMMITTEE MEETING OF 07/12/2021
ISSUE NO. 8b 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
PUBLIC WORKS AND UTILITES COMMITTEE ACTION: Pulled by Councilor Lindell for discussion. Approved unanimously to forward to 7/19/2021 Finance Committee
SPECIAL CONDITIONS OR AMENDMENTS:
STAFF FOLLOW UP:

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

ACTION SHEET
/ITEM FROM FINANCE COMMITTEE MEETING OF 07/19/21
FOR CITY COUNCIL MEETING OF 07/28/21

c) 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)

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		

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 NMGRT 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 $1,00,000.00 to a new total of **$1,250,000.00** excluding NMGRT.

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.

Deliverable item:	U/I (unit of issue)	Price
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:

_____
ALAN WEBBER
MAYOR

DATE:_____

CONTRACTOR:

_____
MITCH DAVENPORT
PRESIDENT DCM

DATE: 7/6/2021

CRS#03-053313-00-9
Registration #225440
State Price Agreement #00-00000-20-00110

ATTEST:

_____
KRISTINE BUSTOS_MIHELCIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
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

ITEM # 19-0943

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
CCmtg 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 TRANSFERRABLE 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 **FAX (A/C, No):** (505) 989-9186
E-MAIL ADDRESS: mlatting@danielsinsuranceinc.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Builders Trust	
INSURER B : Cincinnati Insurance Companies	10677
INSURER C : Cincinnati Specialty Underwrit	13037
INSURER D :	
INSURER E :	
INSURER F :	

INSURED (505) 660-7105
Davenport Construction Management, LLC

141 Camino De Las Crucitas

Santa Fe NM 87501

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	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR			CSU0027329	04/18/2020	04/18/2021	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ excluded
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	X POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
B	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	ANY AUTO			ENP/EBA0074852	04/18/2020	04/18/2021	BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
C	UMBRELLA LIAB X OCCUR			CSU0027329	04/18/2020	04/18/2021	EACH OCCURRENCE	$ 1,000,000
	X EXCESS LIAB CLAIMS-MADE						AGGREGATE	$ 1,000,000
	DED RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N	N / A		5928	01/01/2021	01/01/2022	X PER STATUTE OTH-ER	
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?						E.L. EACH ACCIDENT	$ 2,000,000
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	$ 2,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						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 faciliites.**

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 — Purchasing Officer Review: 7/16/21 — Date:

Comment & Exceptions:

4. **Funding Source:** **VARIOUS** **Org / Object:** **VARIOUS**

Andy Hopkins — Budget Officer Approval: 7/16/21 — 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	
☒	☐	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: _____

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
Fran Dunaway (Jul 16, 2021 09:30 MDT)

Email: fadunaway@santafenm.gov

Signature: Andy Hopkins
Andy Hopkins (Jul 16, 2021 10:20 MDT)

Email: aclotero@santafenm.gov

ACTION SHEET
PUBLIC WORKS AND UTILITES COMMITTEE MEETING OF 07/26/2021

ISSUE NO. 7i

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

PUBLIC WORKS AND UTILITES COMMITTEE ACTION: Approved on consent agenda to forward to 7/28/2021 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		

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@santafennm.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

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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

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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:

<u>2.10 Community-Guided Design and Ongoing Community Engagement</u>

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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

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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.

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

CITY OF SANTA FE:

_____
ALAN WEBBER, MAYOR

DATE:_____

CONTRACTOR:

DocuSigned by:
Lee Vardakas
396DA61E67AC4EB...
LEE VARDAKAS

CEO

CEO

DATE: July 15, 2021
CRS#_____

Registration # _____

ATTEST:

_____
KRISTINE BUSTOS MIHELCIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

_____
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED FOR FINANCES:

_____
MARY MCCOY, FINANCE DIRECTOR

_____ AJH
Org. Name/Org.# AJH

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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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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.

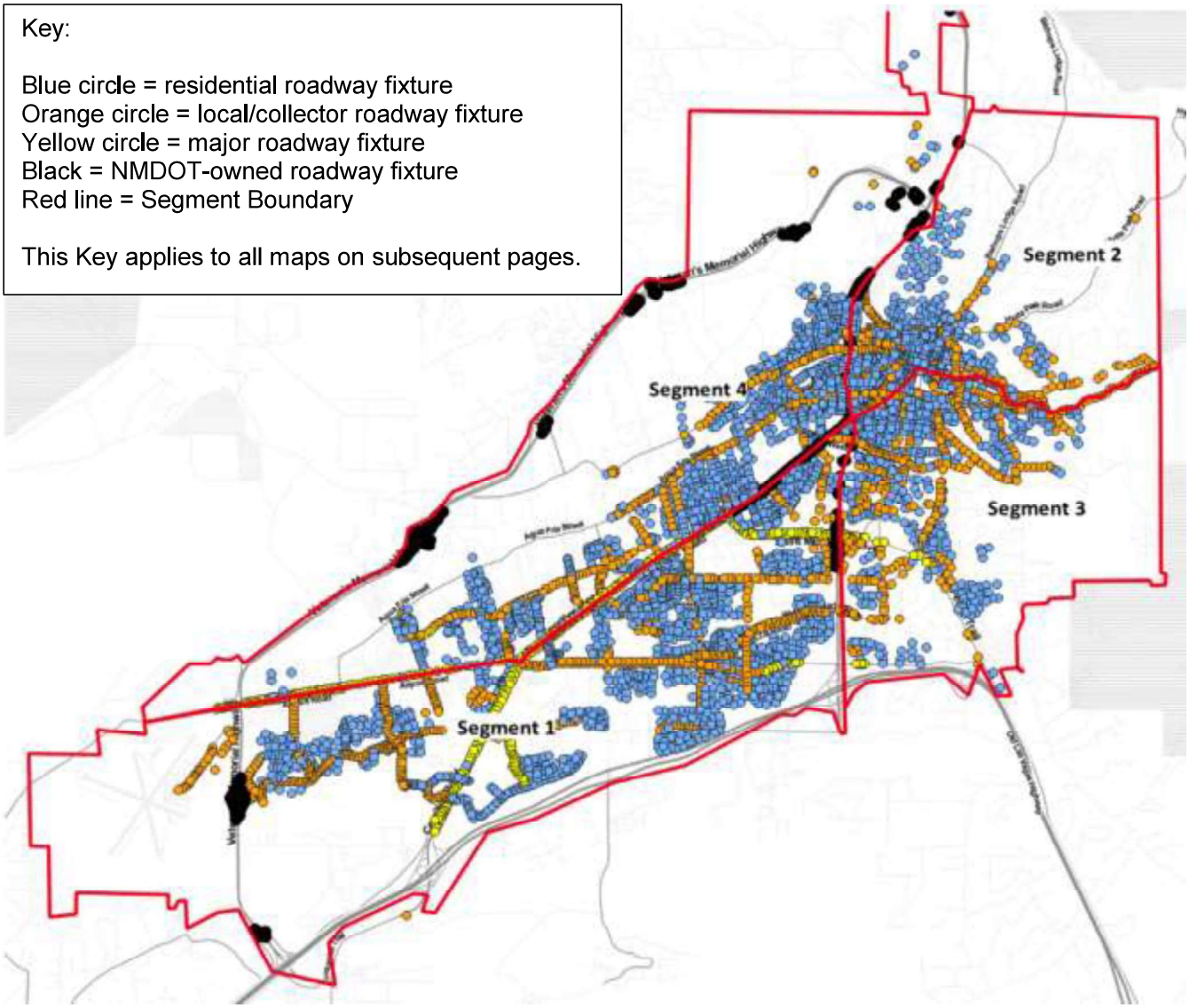
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Map of City of Santa Fe, displaying Works Segments:

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.

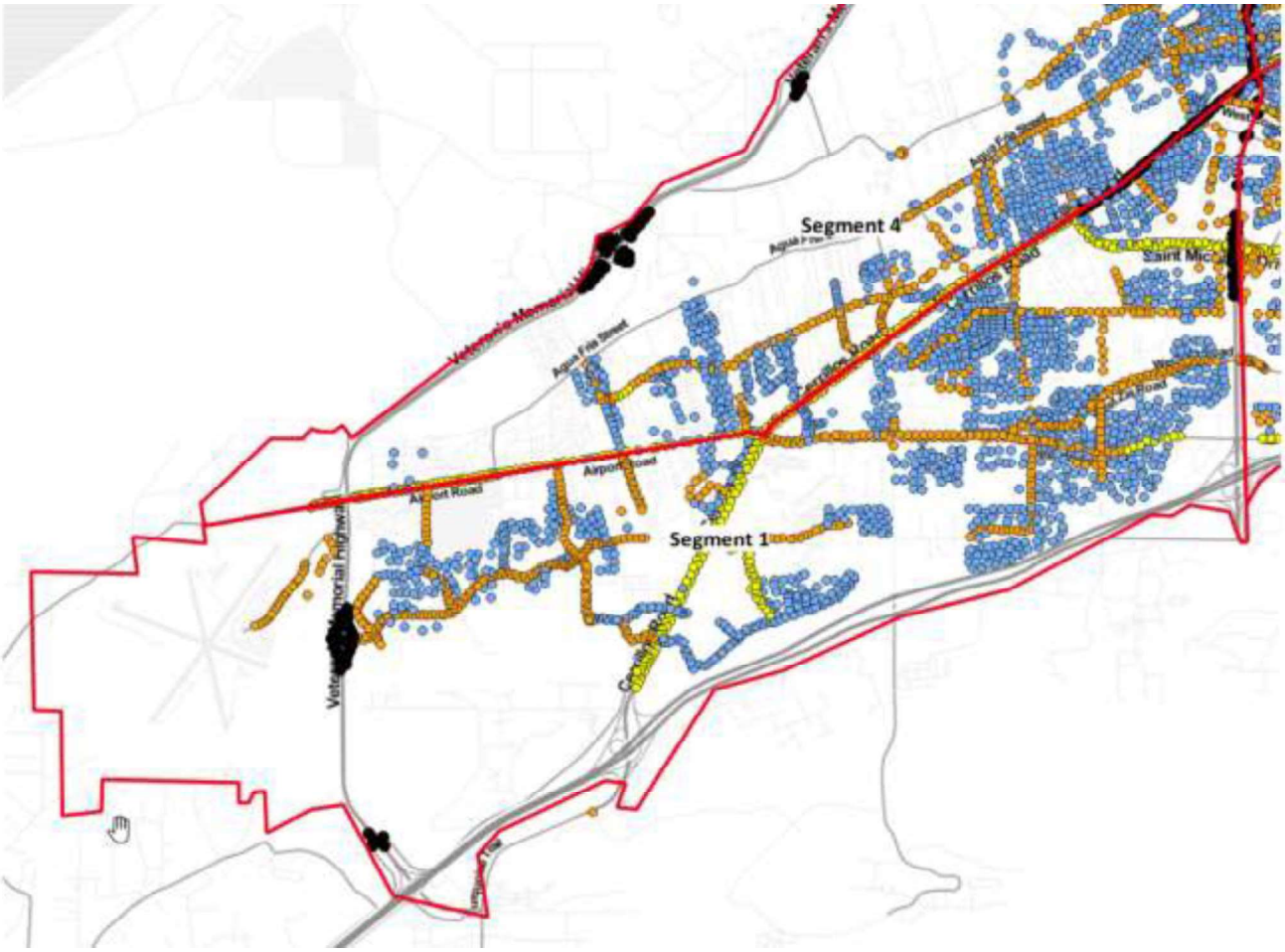


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1.2 Detailed Works Segments

1.2.1 Segment 1, South/Southwest

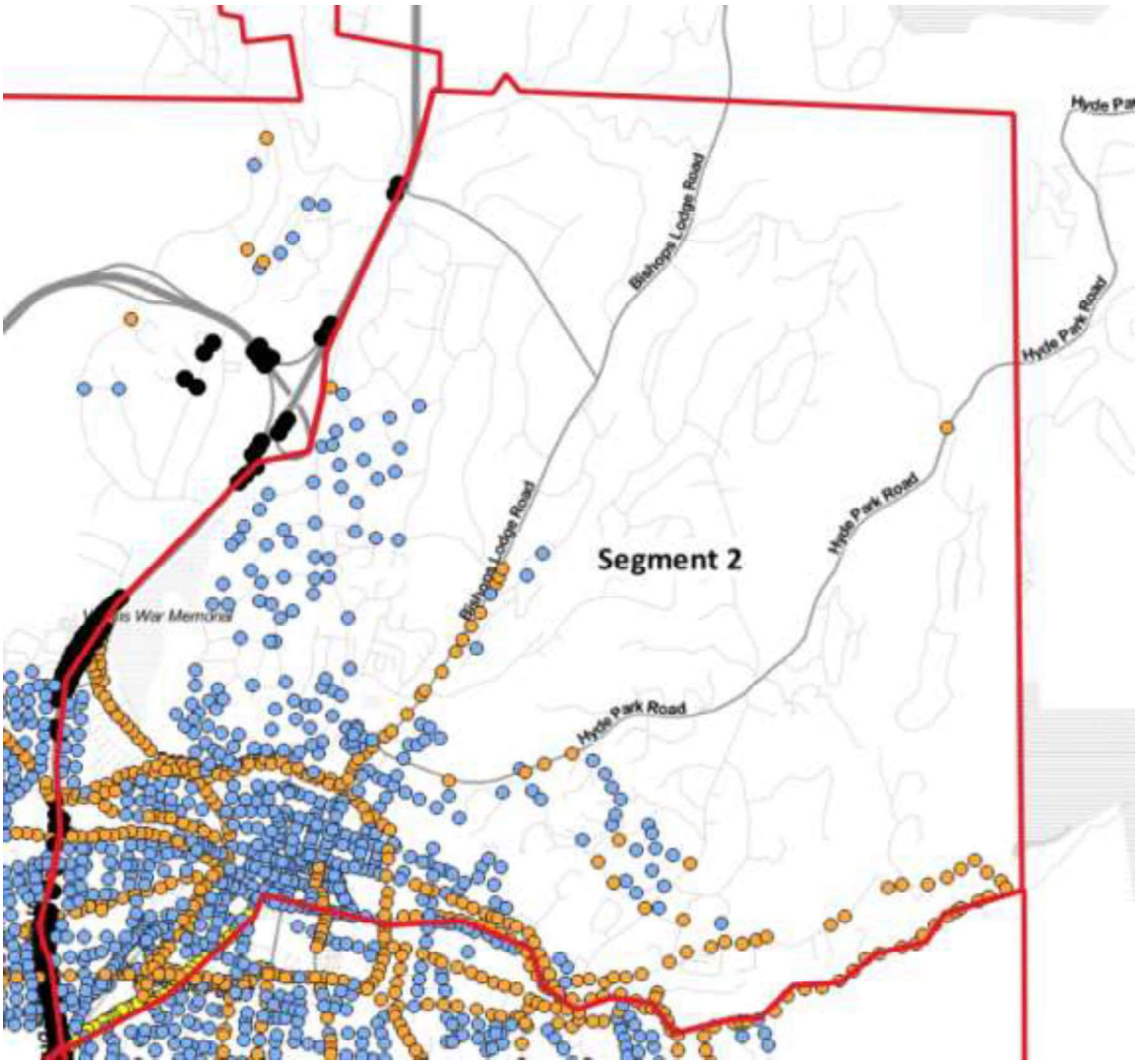
Description : North of I-25, South of 284, West of 14
Estimated Pole Distribution: Residential - 900; Local - 500; Major - 250
Estimated Duration: 1.5 months



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1.2.2 Segment 2, Downtown

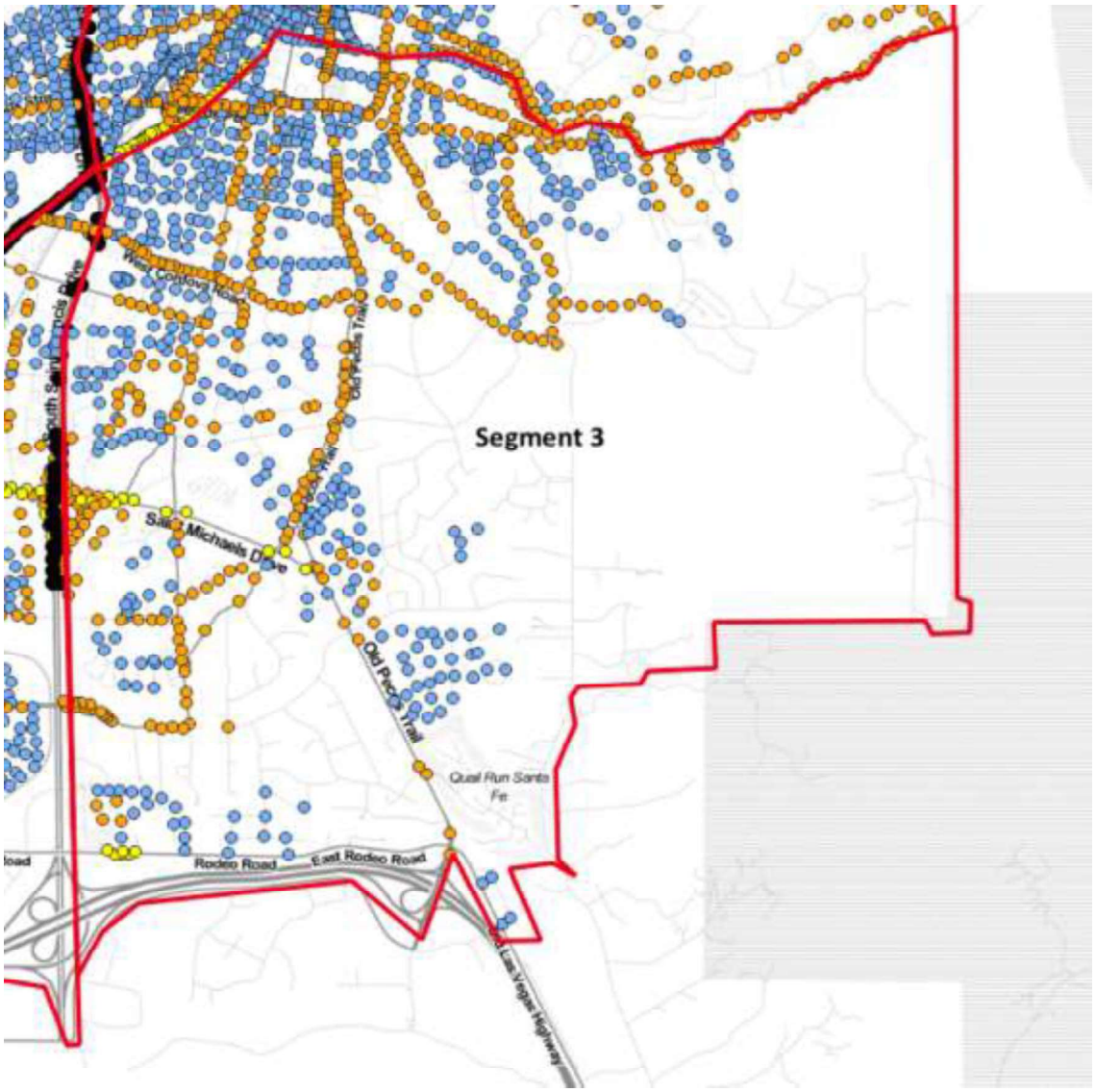
Description: Downtown and North of Downtown
Estimated Pole Distribution: Residential – 330; Local – 190; Major – 50
Estimated Duration: 1 month



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1.2.3 Segment 3, East

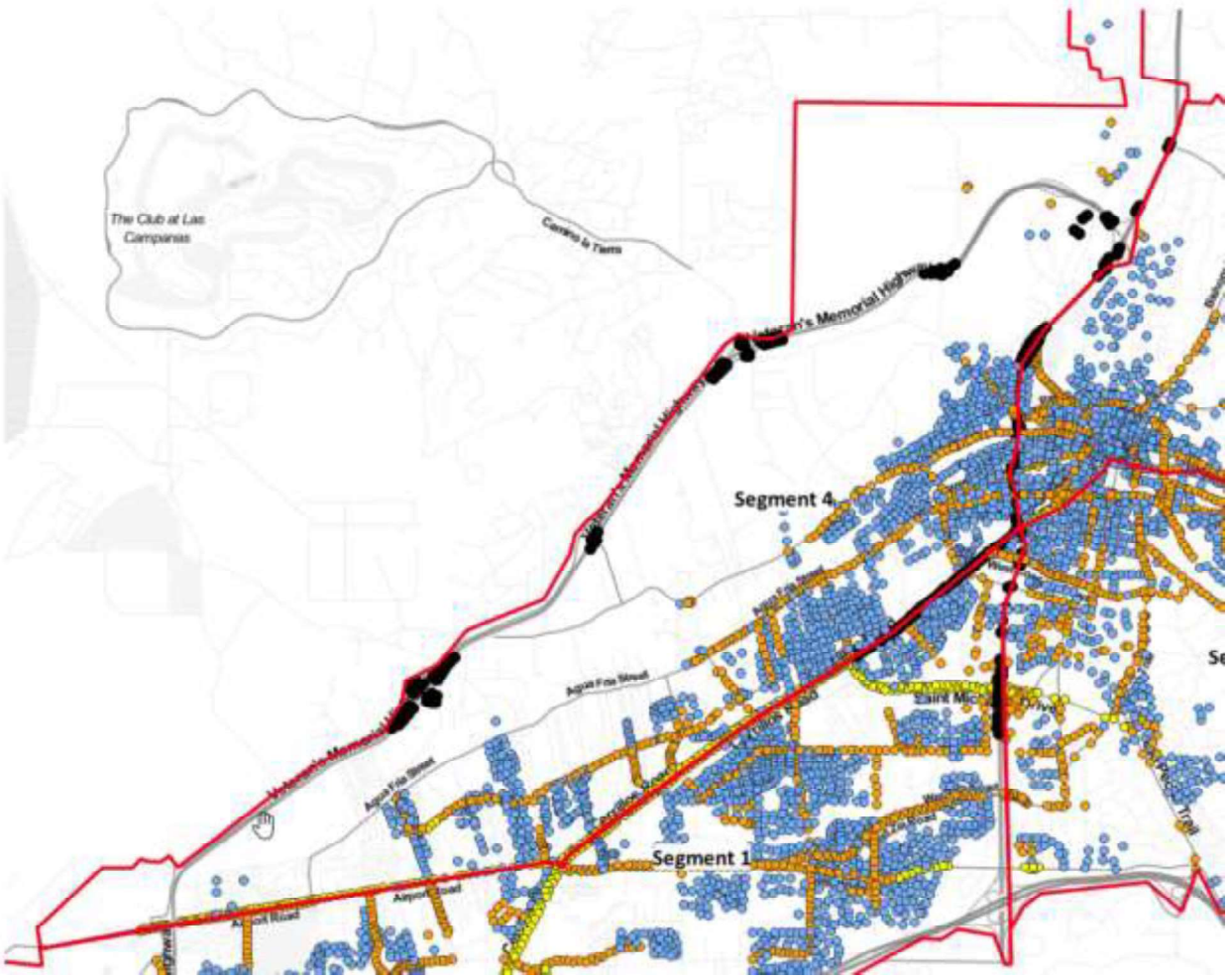
Description: South of 14 and 475, North of I-25
Estimated Pole Distribution: Residential – 170; Local – 150; Major – 30
Estimated Duration: 0.5 month



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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 Conversation 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 Infrastrucure Checklist	Date:	Associated Work Order:	
	Acceptance		
	Field (Contractor)	*City*	*PNM*
	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 achieve 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 NMGRT as described in Schedule 4 Section 1.a.1 of the Agreement.

Milestone	Description	Payment minus NMGRT
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 Installtion: *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, $K_{pb\ unmetered}$ 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 $K_{pb\ metered}$ 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

	Existing			
Roadway Type	**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

	Upgrade LED							
Roadway Type	**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-Sate 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/ANSLG 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.

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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.

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.

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.

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.

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.

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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Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development
GCG#524210

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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)
Mercury Vapor Lights (1)			
175W MV	73	$14.14	$ 5.54
400W MV	162	$21.47	$12.30
Low Pressure Sodium Lights (1)			
55W LPS	28	$12.70	$ 2.13
135W LPS	63	$17.13	$ 4.78
High Pressure Sodium Lights			
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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Fixture Wattage Range (Wattage includes all ballast or driver losses (if applicable)	Monthly kWh Usage (1), (2)	Company Owned And Maintained Option for LED Lighting-Monthly Charge Per Unit Monthly kWh Usage * ($0.0561839 per kWh + $0.1441851 per kWh)		Customer Owned and Maintained Lighting-Monthly Charge Per Unit 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	(3)	$ 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	(4)	$ 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:

Description	Monthly Rates (Customer Owned)
Metered Lighting	$ 0.0561839

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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	$ 4.86
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.

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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.

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III. Changes and Additions:

Changes and Additions to already installed Company-owned or Customer-owned luminaries, poles, lights and fixtures (for purposes of this Rate Schedule, "Lights and Poles"):

A. Company-owned:

1. Except as otherwise provided by state regulation or law, the Customer shall pay all costs for:
   a. Any conversions of Company-owned Lights or Poles made at the request of the Customer, subject to the allowances set forth in this rate schedule; and
   b. Any move or relocation of Company-owned Lights and Poles, including but not limited to regrading, rerouting, improvement or widening, that is undertaken for aesthetic purposes.
2. Except as otherwise provided by state regulation or law, the Company shall include in its rates, all costs of:
   a. Repairs, fixture replacements or knock-down replacements of the Company's Lights and Poles that are necessitated by accidents, vandalism, projectiles, thefts or acts of nature.
   b. Mandatory replacement of or alterations to working luminaire to bring into compliance with changes in federal or state laws to serve the public health and safety.
   c. Any move or relocation of Company-owned Lights and Poles, including but not limited to regrading, rerouting, improvement or widening, that is undertaken by the Customer for reasons associated with municipal, county or other local improvement projects required in the interest of public health and safety. The Customer must inform the Company in writing that any move or relocation is being undertaken for public health and safety reasons.
      i. After written notification from the Customer, if the Company disputes that any move or relocation of Company-owned Lights and Poles benefits public health and safety, the Company shall be required to notify the Customer in writing within fourteen (14) business days.
      ii. If the Customer and the Company cannot reach agreement as to whether any support, disconnect, relocation or removal of Company- owned Lights and Poles benefits public health and safety, the Customer shall file an application with the NMPRC, requesting the NMPRC to determine if the public interest would be better served if the costs of such support, disconnect, relocation or removal should be deemed a cost of service item for the Company.

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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.

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.

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 Change": Maintenance under this section includes faulty photoelectric cell replacement, faulty lamp replacement, faulty fixture fuse replacement, and

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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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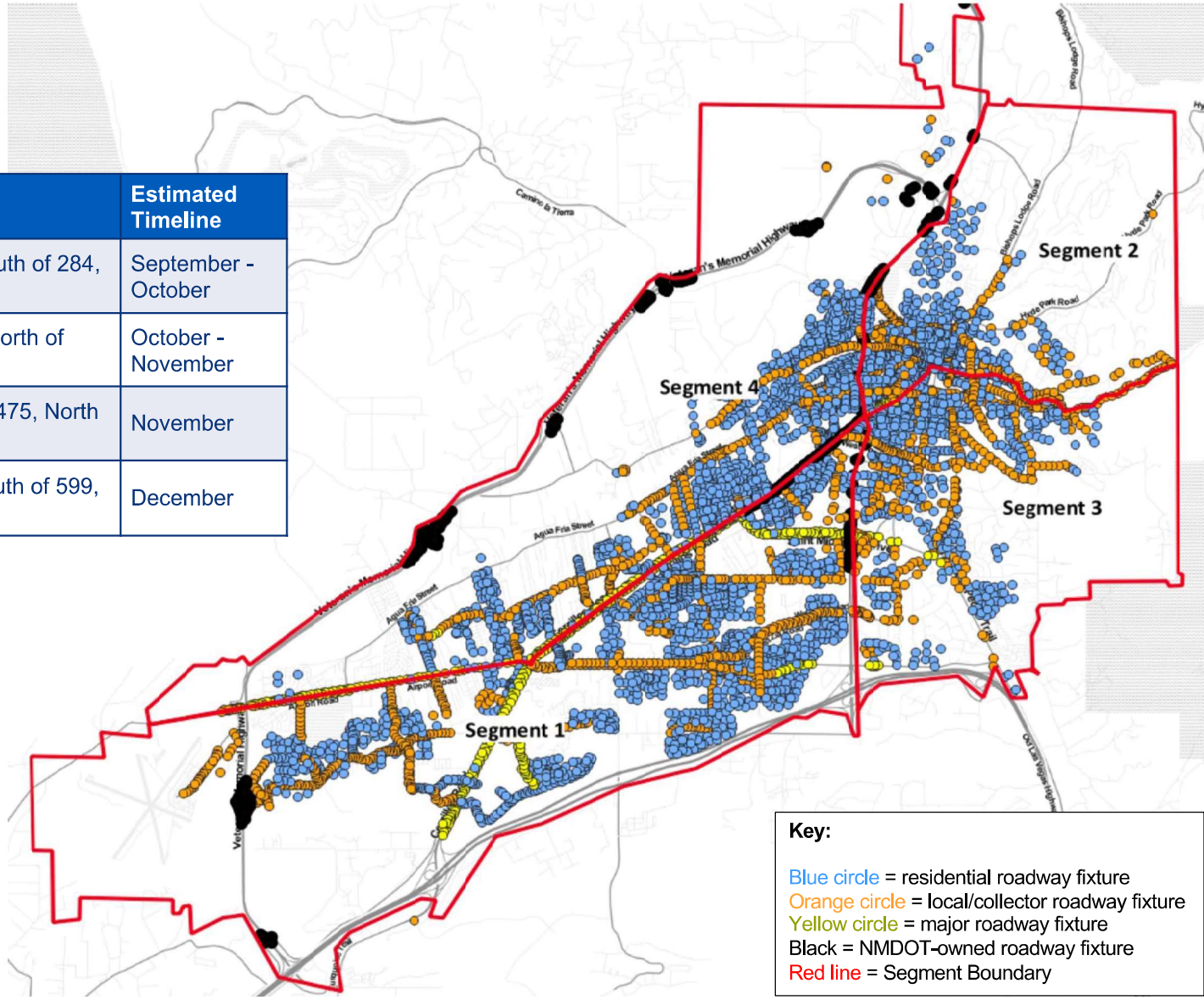
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EDF GROUP
La Villa Real de la Santa Fé de San Francisco de Asís
1610
1821
1846
PNM
The Santa Fe LED Conversion Project
IMPLEMENTATION PLAN

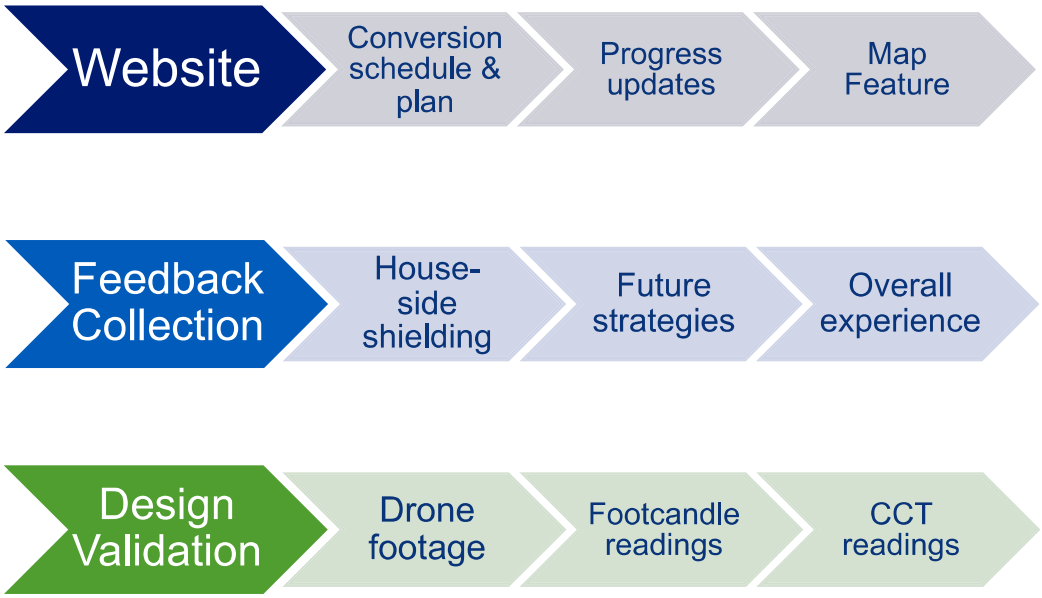
Schedule of Works

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:** _____

Fran Dramaway (Jul 20, 2021 11:19 MDT) Jul 20, 2021

Purchasing Officer Review: Date:

Comment & Exceptions: _____

4. **Funding Source:** **N/A** **Org / Object:** **N/A**

Andy Hopkins (Jul 19, 2021 10:49 MDT) Jul 19, 2021

Budget Officer Approval: Date:

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 Dunaway (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 in 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 FA183200l
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
Summary of Contracts, Agreements, & Amendments

Sole Source ☐ _____ Date: _____

Other _____

6 **Procurement History:** First year of 15 year contract
example: (First year of 4 year contract)

Fran Dunaway
Fran Dunaway (Mar 22, 2021 13:33 MDT)

Purchasing Officer Review

Comments or Exceptions: Use of the City of ABQ current Contract - ABQ & Contractor mutual agreement. City issued contract -same terms & conditions-as well as cost.

7 **Funding Source:** TBD **BU/Line Item:** TBD

Alexis Lotero
Alexis Lotero (Mar 22, 2021 13:19 MDT)

Budget Officer Approval

Comments or Exceptions: Funding verified with Brad Fluetsch

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) ☑

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: 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	
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☒	☐	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: _____

Curt Temple	Project Administrator	2/04/2021
Department Rep Printed Name (attesting that all information included)	Title	Date

Fran Dunaway
Fran Dunaway (Mar 22, 2021 13:33 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.

*

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]

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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.

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;

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.

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.

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.

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.

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.

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;

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.

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.

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).

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.

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.

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.

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:

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.

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

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.

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.

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.

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.

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.

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.

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: 505-690-4197

To CONTRACTOR:

Daikia 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.

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.

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.

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.

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 MIHELCIC, CITY CLERK GC

GB MTG 02/24/2021

CITY ATTORNEY'S OFFICE:

Marcos Martinez

SENIOR ASSISTANT CITY ATTORNEY

APPROVED BUDGET:

MARY MCCOY, FINANCE DIRECTOR

Funding Sources: TBD AL

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.

"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.

"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.

"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.

"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).

"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.

"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.

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.

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.

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.

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.

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.

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.

$$Kr = \frac{R}{S}$$

With S = number of upgraded street lights
R = number of sets of materials recycled/properly disposed

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.

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, CONTRATOR 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.

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).

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.

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.

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.

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.

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.

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.

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 (Ke) is calculated as follow:

$$Ke = K_{sb} - K_{pb}$$

Where:

Ke = 2,234,042 kWh per Annual Period
Ksb = 3,955,572 kWh per Annual Period
Kpb= 1,721,530 kWh per Annual Period

And

$$K_{sb} - K_{sb\ metered} + K_{sb\ unmetered}$$

Where:

K_{sb} = System Baseline: Total consumption in kWh for an Annual Period prior to Works, the sum of metered and unmetered lights.

$K_{sb\ metered}$ = 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

$K_{sb\ unmetered}$ = 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

$$K_{pb} - K_{pb\ metered} + K_{pb\ unmetered}$$

Where:

K_{pb} = Performance Baseline: Total consumption in kWh for Annual Period after completion of Works, the sum of metered and unmetered lights.

$K_{pb\ metered}$ = 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.

$K_{pb\ unmetered}$ = 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.

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

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:

$$Ka = \frac{\sum_i^N (\frac{d_i}{D_m})}{N}$$

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%.

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.

2.5.2 Delay of Unscheduled Maintenance or Repairs (Kd1, Kd2, Kd3)

Kd_1 and Kd_2 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 Kd_1 and Kd_2. The metrics used to determine compliance with delay of Unscheduled Maintenance or Repairs for Kd_1 and Kd_2 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 Kd_1 and Kd_2 are as follows:

- The KPI for Kd_1 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 Kd_2 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.

Kd_3 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 Kd_3 is as follows:

- For KPI for Kd_3, 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:

The KPI associated with the lighting performance is calculated as follow:

Considering: $3 \leq \frac{S}{MH} \leq 5$

$$KIp = \frac{I + \left(E_{avg} / E_{min}\right)}{I_0 + \left(E_{avg0} / E_{min0}\right)}$$

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
$E_{avg}0$ =	IES reference value for the minimum maintained average horizontal illuminance at pavement (see tab below)
E_{min} =	Minimum maintained horizontal illuminance at pavement
$E_{min}0$ =	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.

$$Kw = \frac{W}{S}$$

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

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.

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 reinstituted 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 Ke, 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 (Ke)	KeY ≥ Ke	-1.0 x AES

With:

Ke =	Contractual reference (see Section 3 above, KPI) (Guaranteed Annual Savings)
KeY =	Real value of the considered Annual Period (Annual Realized Savings)
AES =	Difference between the expected and real kWh (KeY-Ke) 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 (Pm)
Accuracy of CMMS Database (Km)	95% ≤ KmM < 99% 90% ≤ KmM < 95% 80% ≤ KmM < 90% 70% ≤ KmM < 80% KmM < 70%	0.99 0.95 0.90 0.75 0.60
KPI	KPI's Value	Penalties Coefficient (Po)
Outage Rate (Ko)	4% ≥ KoM > 2% 6% ≥ KoM > 4% 8% ≥ KoM > 6% KoM > 8%	0.97 0.90 0.75 0.60
KPI	KPI's Value	Penalties Coefficient (Pa)
Availability of Assets (Ka)	99% ≤ KaM < 99.5% 94 % ≤ KaM < 99% 90 % ≤ KaM < 94% KaM < 90%	0.97 0.90 0.75 0.60
KPI	KPI's Value	Penalties Coefficient (Ps)
Self-Detection (Ks)	70% ≤ KsM < 75% 60% ≤ KsM < 70% 50% ≤ KsM < 60% KsM < 50%	0.99 0.95 0.80 0.60

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 (Klp)	$90\% \leq Klp_y < 100\%$	0.99**
	$80\% \leq Klp_y < 90\%$	0.95**
	$70\% \leq Klp_y < 80\%$	0.85**
	$60\% \leq Klp_y < 70\%$	0.75**
	$Klp_y < 60\%$	0.60**

With:

Klp_Y =	Value of the considered Annual Period
Plp =	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 x Kw	0.99
	I.0I x Kw < KwY ≤ 1.03 x Kw	0.97
	1.03 x Kw < KwY ≤1.05 x K	0.90
	1.05 x Kw < KwY ≤1.10 x K	0.80
	1.10 x 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

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 Plan") 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.**

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.

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;

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:_____

dalkia
EDF GROUP

Santa Fe Implementation Plan

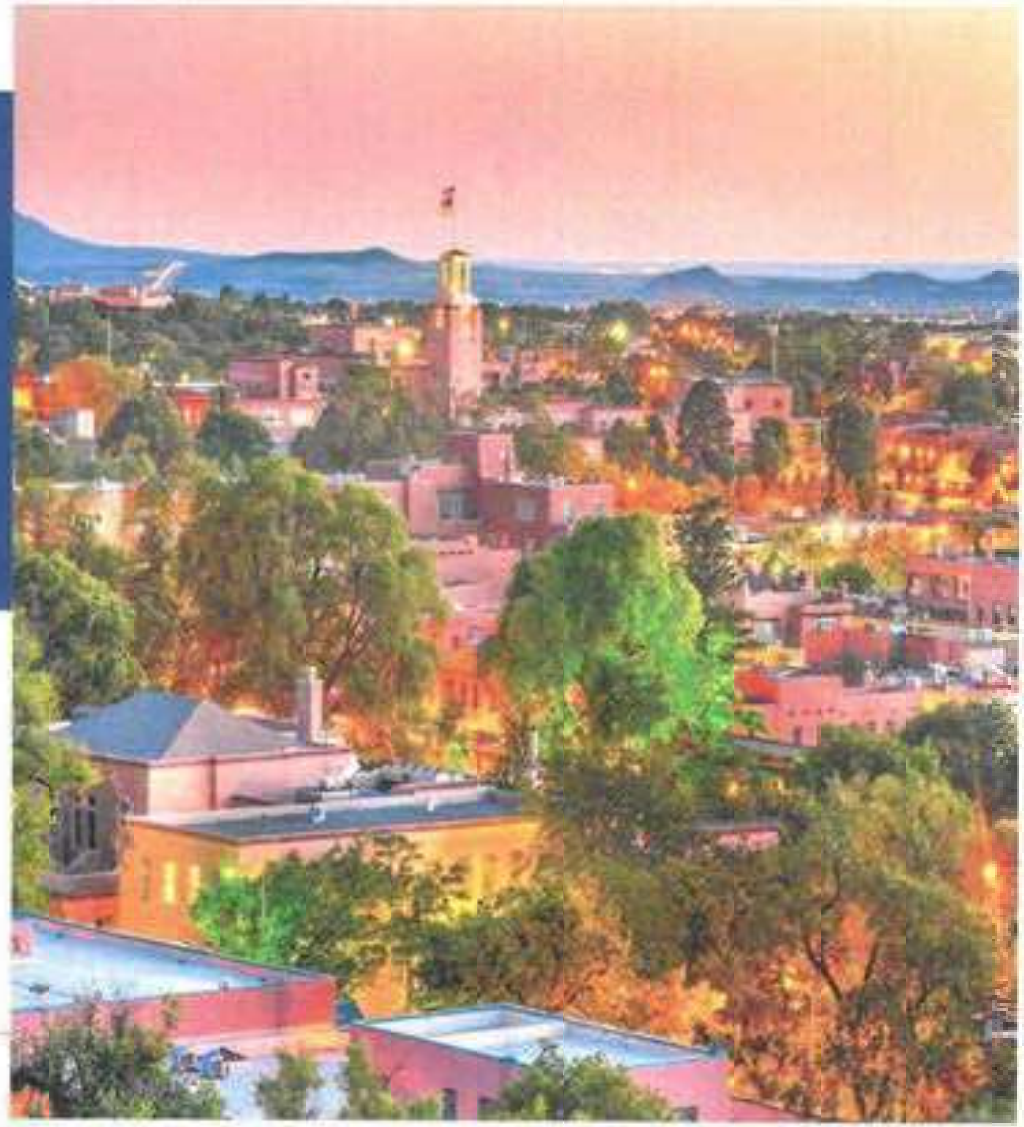


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Logistics/Planning Phase

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		$607.65	
3	Arm Installtion: *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

Deferred Maintenance

Budget

- $89k bucgeted 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 arounc future planned maintenance that falls outside of the plan for deferrec maintenance
- Priorities
  - Log vandalism, camage 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
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

March

Su	M	Tu	W	Th	F	Sa
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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
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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
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9	10	11	12	13	14	15
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23	24	25	26	27	28	29
30	31					

June

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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
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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
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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
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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	[redacted]	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)	• Community Engagement Phase • Design Finalization
Month 3 (May 2021)	• Council Approval for Finalized Design • Product Ordering
Month 4 (June 2021)	• Delivery of Product • Begin Installation of Phase 1 • Weekly Construction Meetings
Month 5 (July 2021)	• Closeout of Phase 1 • Weekly Construction Meetings
Month 6 (August 2021)	• Closeout of Phase 2 • Weekly Construction Meetings
Month 7 (September 2021)	• Closeout of Phase 3 • Weekly Construction Meetings
Month 8 (October 2021)	• Closeout of Phase 4 • Weekly Construction Meetings
Month 9 (November 2021)	• Closeout of Phase 5 • Weekly Construction Meetings • Project Completion/Commencement of Services Phase

Lighting Plan/Energy Savings

Energy Savings

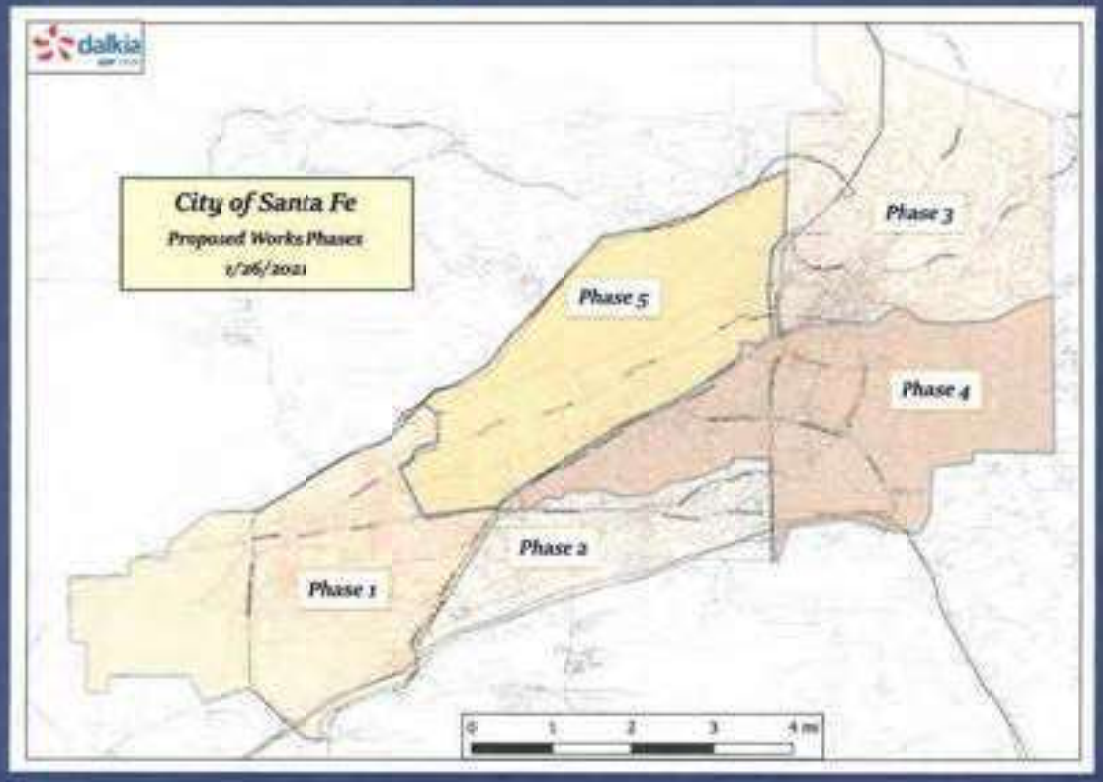
Streetlight Type	Units	kWh/Month	Current kWh/Year	Non-Fuel Rate/Month	Current Non-Fuel Charge/Year	LED Equivalent Wattage	LED Equivalent kWh/Month	LED kWh/Year	Non-Fuel Rate/Month	LED Non-Fuel Charge/Year	LED kWh/Year Savings	LED Non-Fuel Savings/Year
100W HPS	1,316	45.0	710,640	$3.42	$54,008.64	28	14.2	224,246	$0.60	$9,475.20	486,394	$ 44,533.44
250W HPS	1,404	107.0	1,802,736	$8.12	$136,805.76	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 MVOLTR2 3K MP P7	28.0	1316
250W HPS	ATBM P30 MVOLT R2 3K/4K MP P7	118.0	1404
400W HPS	ATBM P70 MVOLT R2 3K/4K MP P7	190.0	635
Decorative 250W	MSPL2 P50 30K AS SN6SS P7 PCS	120.0	144

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Comprehensive Install Plan/Mapping



Phased Install Approach

Phase 1/2 - South

Phase 3 - Downtown

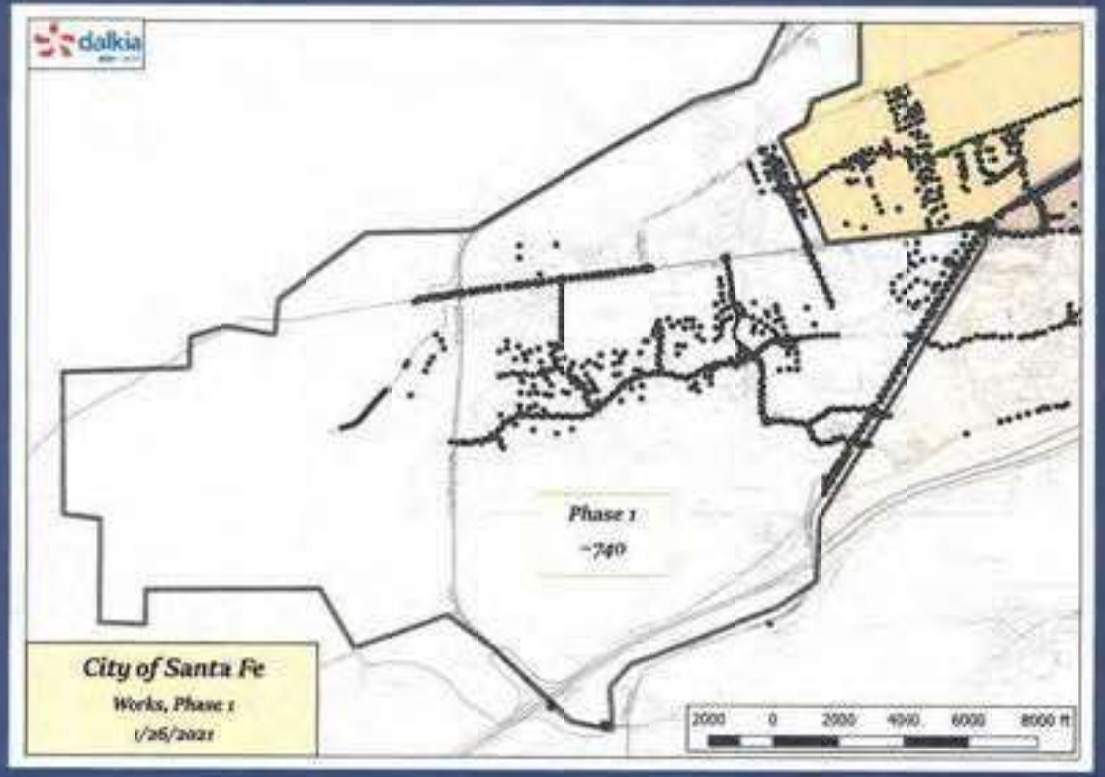
Phase 4 - East

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

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Phase 1



Details

OVERVIEW
South/Southwest

NUMBER OF TEAMS/TIME OF DAY
All teams/Day

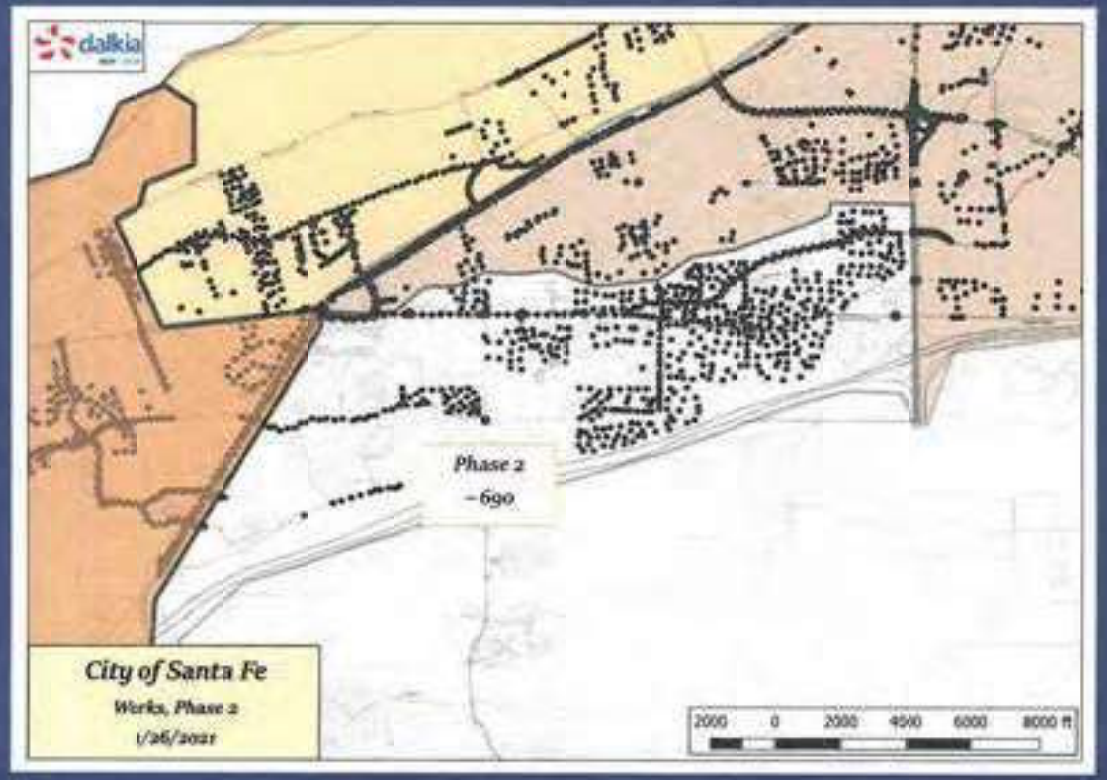
DESCRIPTION
North of I-25, South of 284, West of 14

NUMBER OF POLES
740

DURATION
1 month

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Phase 2



Details

OVERVIEW
South

NUMBER OF TEAMS/TIME OF DAY
All teams/Day

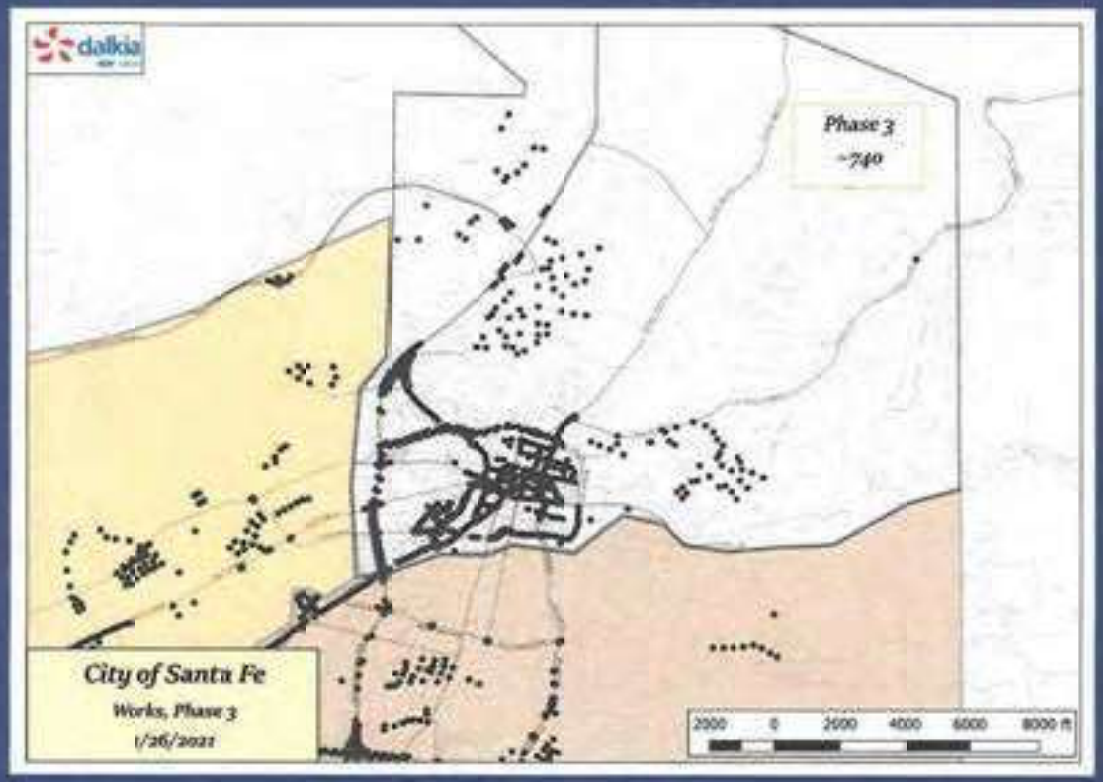
DESCRIPTION
North of I-25, South of 14 and 466, West of 285

NUMBER OF POLES
690

DURATION
1 month

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Phase 3



Details

OVERVIEW
Downtown

NUMBER OF TEAMS/TIME OF DAY
All teams/Day

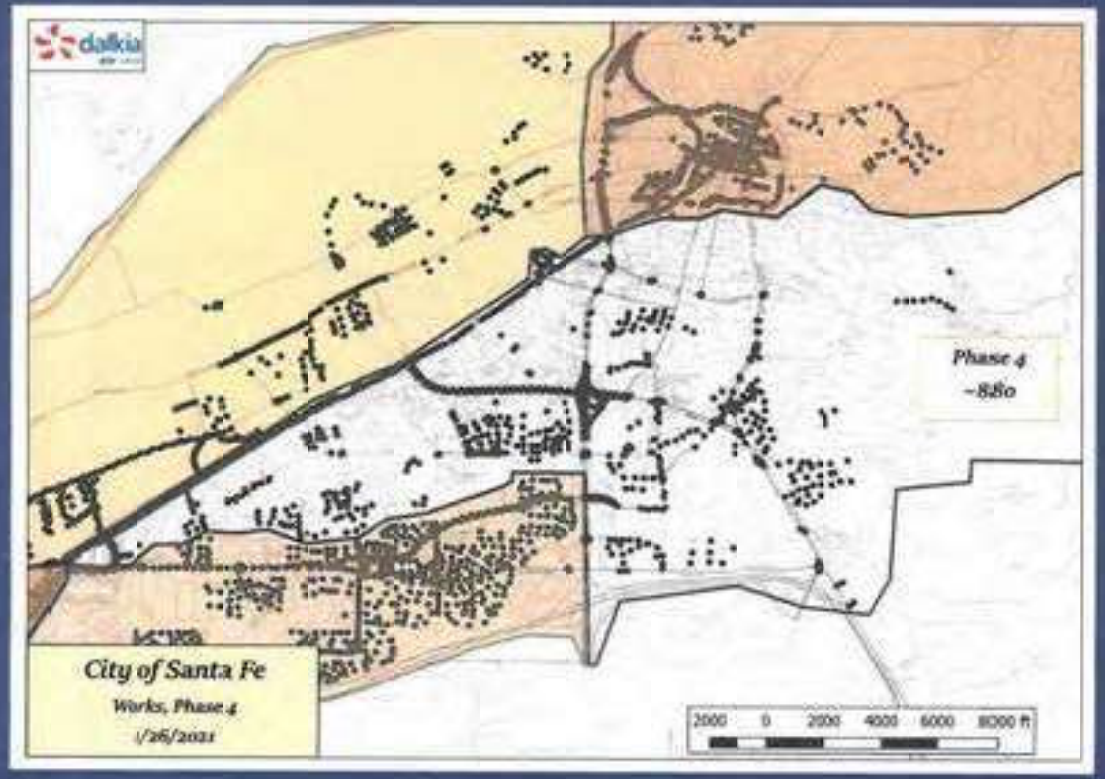
DESCRIPTION
Downtown and North of Downtown

NUMBER OF POLES
740

DURATION
1 month

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EDF GROUP

Phase 4



Details

OVERVIEW
East

NUMBER OF TEAMS/TIME OF DAY
All teams/Day

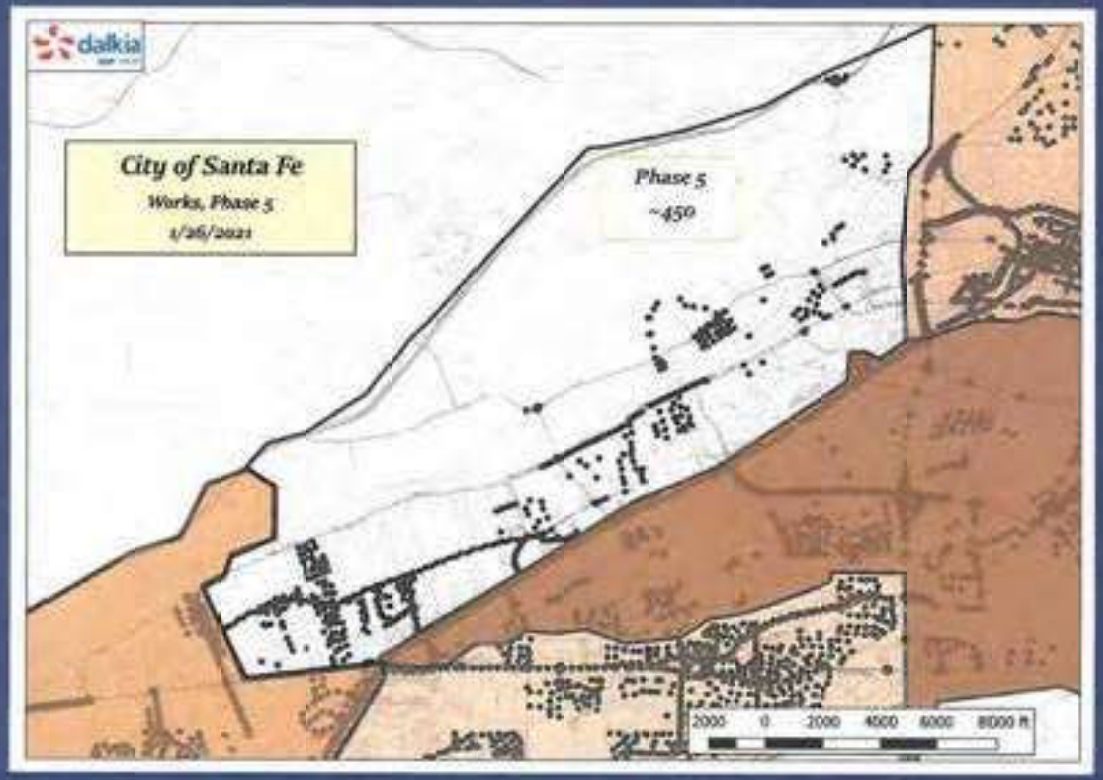
DESCRIPTION
South of 14 and 475, North of I-25

NUMBER OF POLES
880

DURATION
1 month

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Phase 5



Details

OVERVIEW
South/Southwest

NUMBER OF TEAMS/TIME OF DAY
All teams/Day

DESCRIPTION
North of 14, South of 599, West of 285

NUMBER OF POLES
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.

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ASSETS REQUIRING MOT DURING UPGRADE		
ROADWAY TYPE	MOT REQUIRED	
Local	NO	55% (Based on ABQ)
Collector	YES	
Major	YES	45% (Based on ABQ)
Ramp	YES	
Highway	YES	

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**.

Autobahn Series ATBM
Roadway

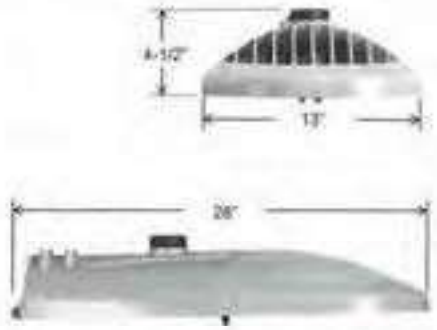
PRODUCT OVERVIEW



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 ≤ 3000K 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).

Mast 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.

Note: Specifications subject to change without notice.

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.

Paint
- **(Blank)** Gray
- **BK** Black
- **BZ** Bronze
- **DDB** 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 (dimmable driver included) [1]
- **NR** No Photocontrol Receptacle
- **AO** Field Adjustable Output [2]
- **DM** 0-10V Dimmable Driver [3]
- **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

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.

AEL American Electric Lighting
AEL Headquarters, 3825 Columbus Road, Granville, OH 43023
www.americanelectriclighting.com
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Warranty Five-year limited warranty. Complete warranty terms located at: www.acuitybrands.com/support/warranties/terms-and-conditions
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.

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	68	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	8,688	142	1	0	3			
	R4		9,030	133	1	0	3	9,340	137	1	0	3			
	R5		10,304	152	3	0	2	10,589	157	3	0	2			
P10	R2	81	10,635	131	3	0	3	11,299	139	2	0	3	0.93	0.86	0.83
	R3		10,875	132	2	0	3	11,302	140	2	0	3			
	R4		10,291	128	2	0	4	10,994	136	2	0	4			
	R5		11,504	142	3	0	2	12,086	149	3	0	2			
P20	R2	94	12,073	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		11,946	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		14,831	124	2	0	3	15,452	131	2	0	3			
	R4		14,317	121	2	0	4	15,151	128	2	0	5			
	R5		15,775	134	4	0	2	16,685	141	4	0	2			
P40	R2	135	16,233	120	2	0	3	17,493	130	2	0	3	0.93	0.86	0.83
	R3		16,452	121	2	0	3	17,367	129	2	0	3			
	R4		15,911	118	2	0	5	17,008	126	2	0	5			
	R5		17,507	130	4	0	2	18,595	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		17,154	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	168	18,770	112	2	0	3	20,055	120	3	0	3	0.93	0.86	0.83
	R3		18,830	112	2	0	4	20,094	120	3	0	4			
	R4		18,363	109	2	0	5	19,648	117	2	0	5			
	R5		20,260	121	4	0	2	21,505	128	4	0	2			
P70	R2	190	20,150	106	3	0	3	21,565	114	3	0	3	0.92	0.86	0.83
	R3		20,142	106	3	0	4	21,504	113	3	0	4			
	R4		19,650	103	2	0	5	21,034	111	3	0	5			
	R5		21,588	116	4	0	2	23,016	121	4	0	2			

Note: Individual fixture performance may vary. Specifications subject to change without notice.

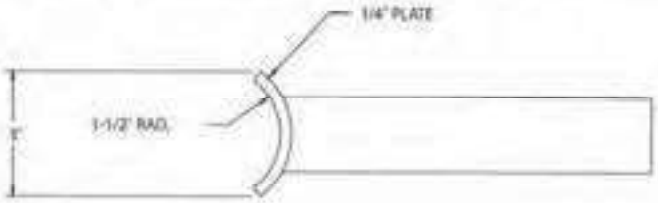
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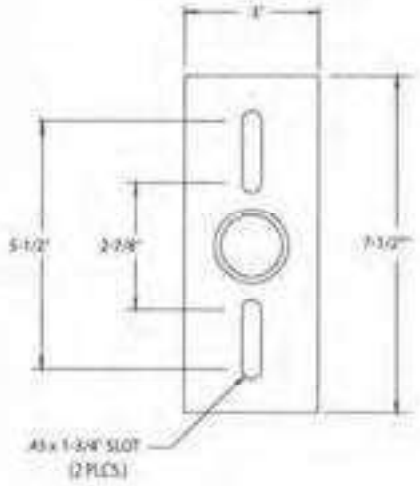
Warranty Five-year limited warranty. Complete warranty terms located at: www.acuitybrands.com/support/warranty-terms-and-conditions
Actual performance may differ as a result of end-user environment and application.
Specifications subject to change without notice.

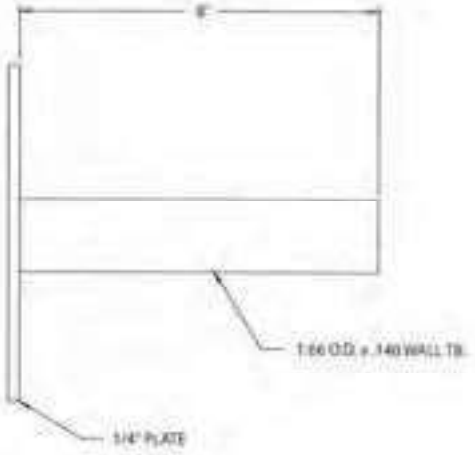
Please contact your sales representative for the latest product offerings.

UMR POLE ADAPTOR

RECOMMENDED FOR USE WITH POLES OF 4" DIAMETER OR SMALLER







UMS POLE ADAPTOR

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Autobahn Series ATBM
Roadway

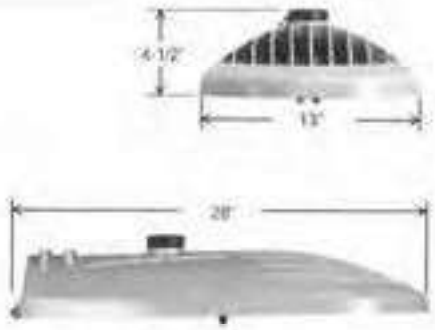
PRODUCT OVERVIEW



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 ≤ 3000K 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 linemen-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).

Mast 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.

Note: Specifications subject to change without notice.

ORDERING INFORMATION

ATBM	P30	MVOLT	R2	
Series	Performance Packages	Voltage	Optics	Mounting

Series		Performance Packages		Voltage		Optics		Mounting	
ATBM	Autobahn LED Roadway	**P05**	9,700 lumens	**MVOLT**	Multi-volt, 120-277V	**R2**	Roadway Type II	**(Blank)**	2 Bolt Mounting
		P10	11,000 lumens	**347**	347V	**R3**	Roadway Type III	**4B**	4 Bolt Mounting
		P20	12,800 lumens	**480**	480V	**R4**	Roadway Type IV		
		P30	15,500 lumens			**R5**	Roadway Type V		
		P40	17,400 lumens						
		P50	18,700 lumens						
		P60	20,000 lumens						
		P70	21,500 lumens						

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
- **DDB** 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 (dimmable driver included) [1]
- **NR** No Photocontrol Receptacle
- **AO** Field Adjustable Output [2]
- **DM** 0-10V Dimmable Driver [3]
- **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

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.

AEL American Electric Lighting
AEL Headquarters, 3825 Columbus Road, Granville, OH 43023
www.americanelectriclighting.com
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Warranty Five year limited warranty. Complete warranty terms located at: www.acuitybrands.com/support/warranty/terms-and-conditions
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Please contact your sales representative for the latest product information.

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	68	9,396	138	1	0	2	9,718	143	1	0	2	0.93	0.86	0.83
	R3		9,396	138	1	0	3	9,688	142	1	0	3			
	R4		9,030	133	1	0	3	9,340	137	1	0	3			
	R5		10,334	152	3	0	2	10,685	157	3	0	2			
P10	R2	81	10,636	131	2	0	3	11,299	139	2	0	3	0.93	0.86	0.83
	R3		10,675	132	2	0	3	11,302	140	2	0	3			
	R4		10,391	128	2	0	4	10,994	136	2	0	4			
	R5		11,504	142	3	0	2	12,096	149	3	0	2			
P20	R2	94	12,073	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	12,505	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	4			
	R5		16,775	134	4	0	2	16,685	141	4	0	2			
P40	R2	135	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	17,367	129	2	0	3			
	R4		15,911	118	2	0	5	17,008	126	3	0	5			
	R5		17,507	130	4	0	2	18,595	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		17,154	113	2	0	5	18,248	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	3	0	3	0.93	0.86	0.83
	R3		18,830	112	2	0	4	20,094	120	3	0	4			
	R4		18,369	109	2	0	5	19,648	117	3	0	5			
	R5		20,350	121	4	0	2	21,555	128	4	0	2			
P70	R2	199	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		19,660	103	2	0	5	21,024	111	3	0	5			
	R5		21,388	118	4	0	2	23,076	121	4	0	2			

Note: Individual fixture performance may vary. Specifications subject to change without notice.

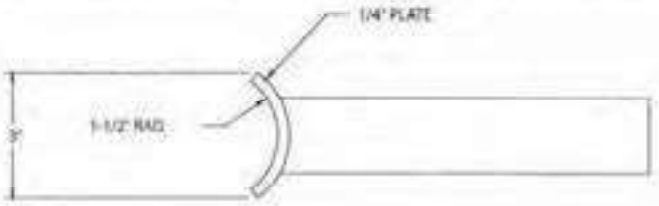
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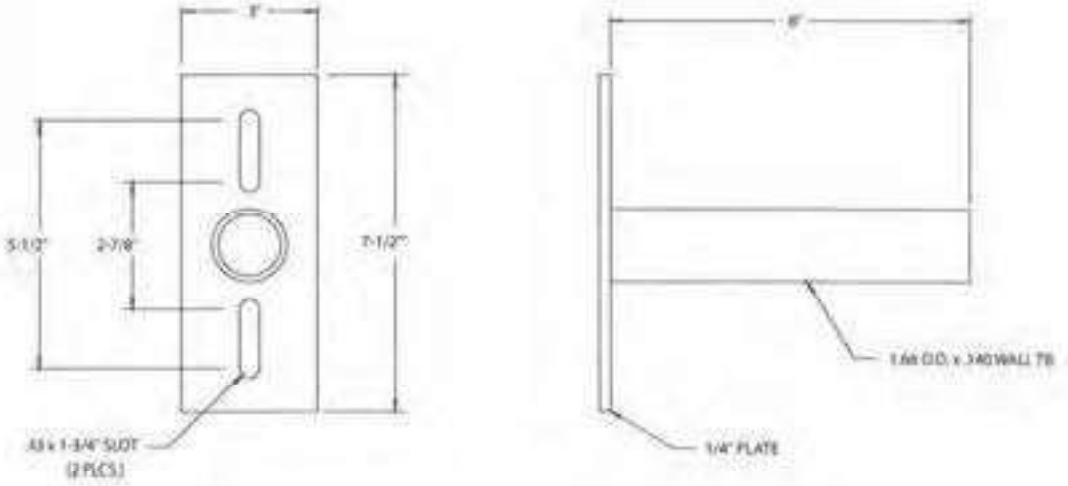
Warranty Five-year limited warranty. Complete warranty terms located at: www.acuitybrands.com/support/warranty/terms-and-conditions
Actual performance may differ as a result of end-user environment and application.
Specifications subject to change without notice.

Please contact your sales representative for the latest product offerings.

UMR POLE ADAPTOR

RECOMMENDED FOR USE WITH POLES OF 4" DIAMETER OR SMALLER





UMS POLE ADAPTOR

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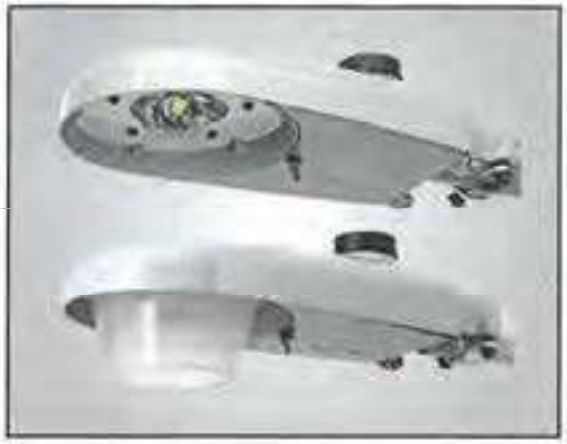
NIGHTTIME FRIENDLY™

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 ≤ 3000K 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.

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 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, 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).

Mast 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.

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AEL American Electric Lighting

ORDERING INFORMATION

P30	MVOLT		3K MP P7
Series	Performance Packages	Voltage	Optics

Series

ATBX Autobahn LED Roadway & Security

Performance Packages

P10 2,000 lumens
P20 2,500 lumens
P30 3,200 lumens
P40 3,900 lumens
P50 5,600 lumens
P60 6,600 lumens
P70 7,400 lumens

Voltage

MVOLT Multi-volt, 120-277V

Optics

R2 Roadway Type II
R3 Roadway Type III
R4 Roadway Type IV
R5 Roadway Type V
D3 Type III, Drop Refractor included
D5 Type V, Drop Refractor included

MP 3K 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 (Standard)
BK Black
WH White
BZ Bronze

Surge Protection
Blank Standard 20kV/10kA SPD
MP MOV Pack

Misc.
VR Visual Comfort Refractor
HSS House Side Shield
NL NEMA Label
XL Not CSA Certified

Controls
(Blank) 3 Pin NEMA Photocontrol Receptacle
NR[1] No Photocontrol Receptacle
DM[2] 0V-10V Dimmable Driver
P7 7 Pin Photocontrol Receptacle (dimmable driver included)
PCSS[1] DTL DSS Photocontrol
PCLL[1] DTL DLL Photocontrol 120-277V
AO Field Adjustable Output
SH Shorting Cap

Packages
(Blank) Standard Pack
JP Job Pack

Install Packages
PKGS DTL DSS Photocontrol
PKGL DTL DLL Photocontrol
Packages ship with selected photocontrol, 24", 1 ¼" diameter arm, 5' of prewire and mounting hardware

Accessories
ATBXREF Drop Refractor for field installation
ATBXHSS House Side Shield for field installation
ATBXLTS Light Trespass Shield for field installation
ATBXVR-XX Comfort Refractor & Uplight Skirt. Select Paint (XX) to Match Fixture

Notes
1. Not available with Install Packages.
2. Not available with AO option.

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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		1,982	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	136	1	2	1	1,992	140	1	2	1			
	D5		2,077	148	1	3	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	139	1	0	1	2,497	139	1	0	1			
	R5		2,715	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	2,648	147	1	2	1			
P30	R2	23	3,192	139	1	0	1	3,243	141	1	0	1	0.92	0.89	0.85
	R3		3,135	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	133	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	3,603	129	1	0	1	3,790	135	1	0	1	0.92	0.89	0.85
	R3		3,705	132	1	0	1	3,890	139	1	0	1			
	R4		3,640	130	1	0	2	3,817	136	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	132	2	0	2	5,425	132	2	0	2	0.92	0.89	0.85
	R3		5,248	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	3	0	1	6,033	147	3	0	1			
	D3		5,123	125	1	3	2	5,481	134	1	3	2			
	D5		5,468	133	2	3	2	5,842	142	2	3	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	3	0	1	7,127	140	3	0	1			
	D3		6,059	119	1	3	2	6,497	127	1	3	2			
	D5		6,478	127	2	3	2	6,901	135	2	3	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	7,449	146	1	0	2			
	R4		6,957	136	1	0	2	7,235	142	1	0	2			
	R5		7,492	147	3	0	1	7,939	156	3	0	1			
	D3		6,800	133	2	3	2	7,271	143	2	3	2			
	D5		7,255	142	2	3	2	7,688	151	2	3	2			

American Electric Lighting
AEL Headquarters, 3825 Columbus Road, Granville, OH 43023
www.americanelectriclighting.com
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PERFORMANCE DATA with VISUAL COMFORT REFRACTOR

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 with VR	14	1,686	120	1	0	1	1,747	125	1	0	1	0.92	0.89	0.85
	R3 with VR		1,669	119	1	0	1	1,698	121	1	0	1			
	R4 with VR		1,602	114	1	0	1	1,626	116	1	0	1			
	R5 with VR		1,814	130	1	0	1	1,862	133	1	0	1			
P20	R2 with VR	18	2,124	118	1	0	1	2,205	123	1	0	1	0.92	0.89	0.85
	R3 with VR		2,104	117	1	0	1	2,138	119	1	0	1			
	R4 with VR		2,019	112	1	0	1	2,053	114	1	0	1			
	R5 with VR		2,290	127	1	0	1	2,346	130	1	0	1			
P30	R2 with VR	23	2,684	117	1	0	1	2,788	121	1	0	1	0.92	0.89	0.85
	R3 with VR		2,659	116	1	0	1	2,698	117	1	0	1			
	R4 with VR		2,553	111	1	0	1	2,594	113	1	0	1			
	R5 with VR		2,892	126	2	0	1	2,959	129	2	0	1			
P40	R2 with VR	28	3,240	116	1	0	1	3,369	120	1	0	1	0.92	0.89	0.85
	R3 with VR		3,204	114	1	0	1	3,261	116	1	0	1			
	R4 with VR		3,081	110	1	0	2	3,134	112	1	0	2			
	R5 with VR		3,495	125	2	0	1	3,584	128	2	0	1			
P50	R2 with VR	41	4,633	113	1	0	2	4,818	118	1	0	2	0.92	0.89	0.85
	R3 with VR		4,499	110	1	0	2	4,612	113	1	0	2			
	R4 with VR		4,343	106	1	0	2	4,504	110	1	0	2			
	R5 with VR		4,859	119	2	0	1	5,117	125	2	0	1			
P60	R2 with VR	51	5,495	108	2	0	2	5,710	112	2	0	2	0.92	0.88	0.84
	R3 with VR		5,320	105	1	0	2	5,490	108	1	0	2			
	R4 with VR		5,145	101	1	0	2	5,328	104	1	0	2			
	R5 with VR		5,771	113	3	0	1	6,061	119	3	0	1			
P70	R2 with VR	60	6,167	121	2	0	2	6,396	125	2	0	2	0.92	0.88	0.84
	R3 with VR		5,978	117	1	0	2	6,110	120	1	0	2			
	R4 with VR		5,772	113	1	0	2	5,982	117	1	0	2			
	R5 with VR		6,482	127	3	0	1	6,799	133	3	0	2			

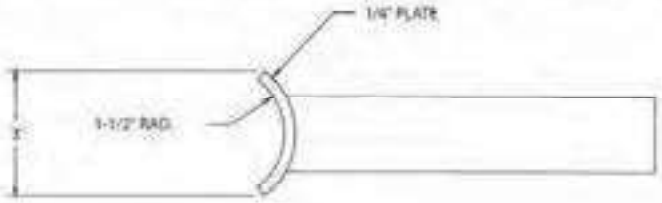
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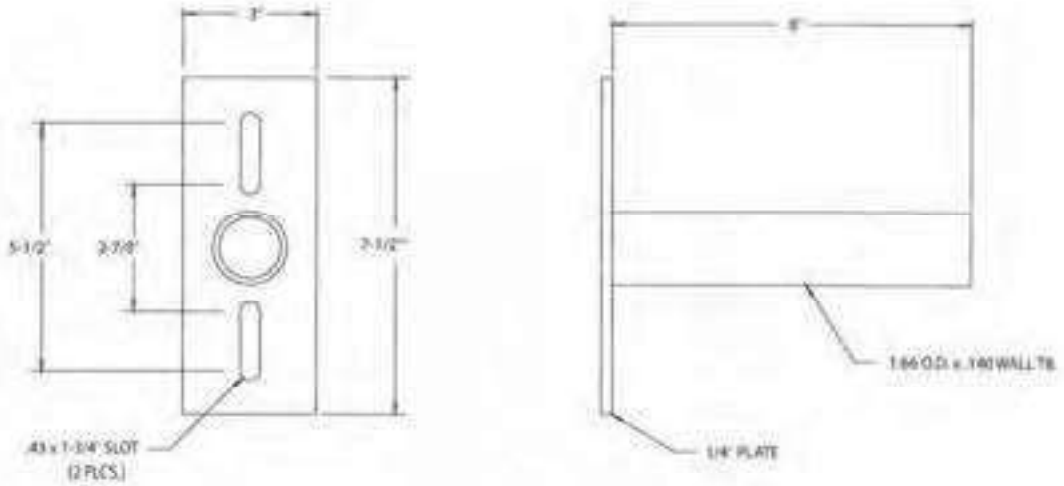
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UMR POLE ADAPTOR

RECOMMENDED FOR USE WITH POLES OF 4" DIAMETER OR SMALLER





UMS POLE ADAPTOR

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Specifications subject to change without notice.
Please contact your sales representative for the latest product information.

Ubicell Model 2.0 Smart Streetlight Controller

ubicell

Specifications

Lamp Interface	LED, CF and HID
Lamp Power	960W@480V, 554W@277V, 480W@240V, 240W@120V
On/Off	Photocell control, software programmable
Dimming Controls	PWM, 0-10V, DALI, DALI2
Dimming Range	DIM 1 - 0-10V PWM, ability to detect stray voltage but prohibits external sensor use DIM 2 - 0-10V PWM, ability to hardwire an external sensor, but prohibits the ability to detect stray voltage DIM 3 - DALI enabled, ability to hardwire an external sensor, plus the ability to detect stray voltage
External Sensor Interface	DALI/DALI 2
Communication Module	LTE CAT-1
Location Based Services	GPS, WiFi traffic movement, Bluetooth Info beacons
OTA Updates	Yes
Security	AES 128/256-bit encryption
Voltage Detection	Real-time detection of "energized" metal poles
Power Surge Protection	10KV/5KA
Power Supply	90V to 506V (50/60Hz)
Average Power Consumption	1W
IP Ratings	IP66
Impact Rating	IK07
Operating Temperature Range	-30C to +70C
Dimensions	Diameter: 82.5mm (3.25 in) Height: 98mm (3.86 in)
Weight	290 grams
Network Protocol	IPV4 and IPV6 network compliant

Utility Power Metering

Accuracy	ANSI C12.20 Class 0.5
Accuracy Verification	Infrared pulse
Line Voltage	90V to 506V (50/60Hz)
Line Voltage Accuracy	+/- 0.5%
Current Accuracy	+/- 0.5%
Power	Active/reactive/power factor
Energy Consumption	kWh
Sag & Swell Detection	Yes
On/Off Cycles	Cycle count and cycle variation (fault detection)
Running Hour	0-10 years

Programmable Parameters

- Constant dimming management
- Scheduling controls
- Alert thresholds
- Sunrise/sunset offsets
- Tilt detection
- Vibration detection
- Voltage detection
- Power detection
- Photocell levels
- Hardware fault detection
- Power fails after power failure
- Network communication failure
- Wireless network configuration

Warranty

5-Year Warranty

10-Year Optional Warranty







ubicquia

Project Recycling

Concurrent with the upgrade installations, Dalkia will dismantle and recycle all parts of the existing luminaires. Components that will be recycled include the fixture housing, lamp, ballast, and all internal wiring as shown in the image. Dalkia will work with the City of Santa Fe to properly dispose of recyclables with licensed local vendors.

Dalkia will provide recycling certificates for recycled components to the City of Santa Fe.



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

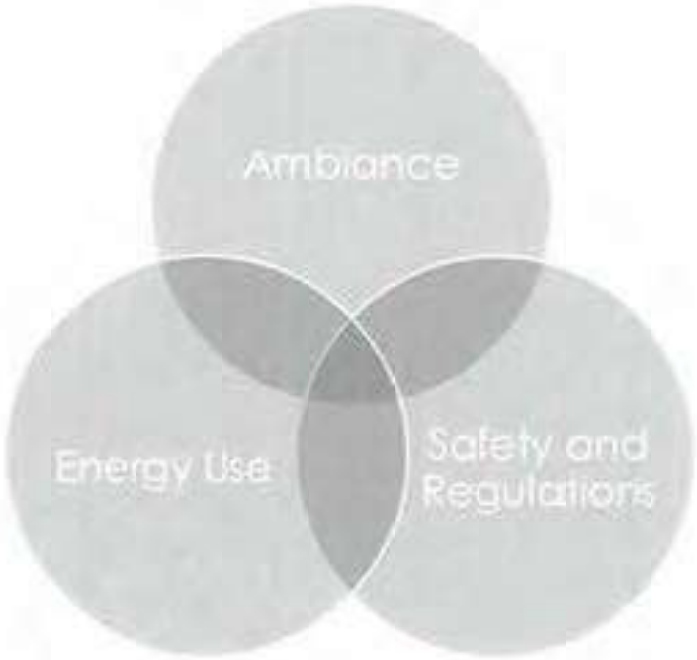
2) Provide regular updates to the upgrade phasing schedule

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

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.

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.

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.

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.

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.

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

EFFECTIVE

FEB - 1 2018

REPLACED BY NMPRC

BY Commission Order Case #16-00276-UT

Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development
CCG#524210

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

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)
Mercury Vapor Lights (1)			
175W MV	73	$14.14	$ 5.54
400W MV	162	$21.47	$12.30
Low Pressure Sodium Lights (1)			
55W LPS	28	$12.70	$ 2.13
135W LPS	63	$17.13	$ 4.78
High Pressure Sodium Lights			
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
ELECTRIC SERVICES

16TH REVISED RATE NO. 20
CANCELING 15TH REVISED RATE NO. 20

INTEGRATED SYSTEM STREETLIGHTING
AND FLOODLIGHTING SERVICE

Fixture Wattage Range (Wattage includes all ballast or driver losses (if applicable)	Monthly kWh Usage (1), (2)	Company Owned And Maintained Option for LED Lighting-Monthly Charge Per Unit Monthly kWh Usage * ($0.0561839 per kWh + $0.1441851 per kWh)		Customer Owned and Maintained Lighting-Monthly Charge Per Unit 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	(3)	$ 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	(4)	$ 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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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 356.5 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

Advice Notice No. 545

Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development

GCG#524210

EFFECTIVE

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PUBLIC SERVICE COMPANY OF NEW MEXICO
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INTEGRATED SYSTEM STREETLIGHTING
AND FLOODLIGHTING SERVICE

D. POLE CHARGE: For company owned lighting attached to a dedicated street lighting pole.

Description	Monthly Charge (Company Owned)
Wood Pole	$ 4.96
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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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

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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
AND FLOODLIGHTING SERVICE

III. Changes and Additions:

Changes and Additions to already installed Company-owned or Customer-owned luminaries, poles, lights and fixtures (for purposes of this Rate Schedule, "Lights and Poles"):

A. Company-owned:

1. Except as otherwise provided by state regulation or law, the Customer shall pay all costs for:
   a. Any conversions of Company-owned Lights or Poles made at the request of the Customer, subject to the allowances set forth in this rate schedule; and
   b. Any move or relocation of Company-owned Lights and Poles, including but not limited to regrading, rerouting, improvement or widening, that is undertaken for aesthetic purposes.
2. Except as otherwise provided by state regulation or law, the Company shall include in its rates, all costs of:
   a. Repairs, fixture replacements or knock-down replacements of the Company's Lights and Poles that are necessitated by accidents, vandalism, projectiles, thefts or acts of nature.
   b. Mandatory replacement of or alterations to working luminaire to bring into compliance with changes in federal or state laws to serve the public health and safety.
   c. Any move or relocation of Company-owned Lights and Poles, including but not limited to regrading, rerouting, improvement or widening, that is undertaken by the Customer for reasons associated with municipal, county or other local improvement projects required in the interest of public health and safety. The Customer must inform the Company in writing that any move or relocation is being undertaken for public health and safety reasons.
      i. After written notification from the Customer, if the Company disputes that any move or relocation of Company-owned Lights and Poles benefits public health and safety, the Company shall be required to notify the Customer in writing within fourteen (14) business days.
      ii. If the Customer and the Company cannot reach agreement as to whether any support, disconnect, relocation or removal of Company- owned Lights and Poles benefits public health and safety, the Customer shall file an application with the NMPRC, requesting the NMPRC to determine if the public interest would be better served if the costs of such support, disconnect, relocation or removal should be deemed a cost of service item for the Company.

Advice Notice No. 545

Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development
GCG#524210

EFFECTIVE
FEB -1 2010
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BY Commission Order Case #16-00276-UT

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.

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.

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

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.

Advice Notice No. 545

Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development
GCG#524219

EFFECTIVE
FEB - 1 2018
REPLACED BY NMPRC
BY: Commission Order Case #16-00276-UT

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,

Lee Vardakas

CEO

DALKIA ENERGY SOLUTIONS, LLC
200 Cummings Center, Suite 177C • Beverly MA, 01970 • https://www.dalkiasolutions.com/

City of Santa Fe

Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: DALKIA ENERGY SOLUTIONS, LLC
DBA: DALKIA ENERGY SOLUTIONS, LLC

Business Location: 200 CUMMINGS CTR SUITE 177C
BEVERLY, MA 01915

CRS Number: 03-526533-00-7

Owner: DALKIA ENERGY SOLUTIONS

License Number: 229388

License Type: Business License - Renewable

Issued Date: February 01, 2021

Classification: Out of Jurisdiction Contractor - Specialty

Expiration Date: February 01, 2022

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 TRANSFERRABLE TO OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 01/21/2021

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 Northeast, 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	NAIC #
INSURER A : Zurich American Insurance Company	16535
INSURER B : American Guarantee and Liability Insurance	26247
INSURER C : Ironshore Specialty Insurance Company	25445
INSURER D : Berkley Assurance Company	39462
INSURER E :	
INSURER F :	

INSURED
Dalkia Energy Solutions, LLC
200 Cummings Center, Suite 177C
Beverly, MA 01915

COVERAGES **CERTIFICATE NUMBER:** W19914307 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:			GLO 4443746-00	06/30/2020	06/30/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 1,000,000 $ 10,000 $ 2,000,000 $ 4,000,000 $ 4,000,000
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY			BAP 4443747-00	06/30/2020	06/30/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $
B	[X] UMBRELLA LIAB [X] OCCUR EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $			AUC 4334449-00	06/30/2020	06/30/2021	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBEREXCLUDED? Y / N [ ] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $
C	Contractors Environmental Legal			002306605	06/30/2020	06/30/2021	Each Occurrence Aggregate Ded	5,000,000 5,000,000 10,000

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

SEE ATTACHED

CERTIFICATE HOLDER

The City of Santa Fe
200 Lincoln Avenue
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



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AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

AGENCY		NAMED INSURED
Willis Towers Watson Northeast, Inc.		Dalkia Energy Solutions, LLC 200 Cummings Center, Suite 177C Beverly, MA 01915
POLICY NUMBER See Page 1		
CARRIER See Page 1	NAIC CODE See Page 1	EFFECTIVE DATE: 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

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The ACORD name and logo are registered marks of ACORD

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	NAIC #
INSURER A : New Hampshire Ins Co	23841
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

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

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						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PROJECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	☐ OTHER							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO							
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per person)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DEC ☐ RETENTION $							
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N	N / A		WC 027115075 NM	07/12/20	07/01/21	X PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						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

The City of Santa Fe
200 Lincoln Avenue
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

Aon Risk Services, Inc of Florida

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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		

AN ABSTRACT OF PROCEEDINGS

STATE OF NEW MEXICO)

COUNTY OF SANTA FE) ss.

CITY OF SANTA FE)

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

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

PRESENT:	Mayor:	Alan Webber
	Councilor:	Roman Abeyta
	Councilor:	Jamie Cassutt-Sanchez
	Councilor:	Michael J. Garcia
	Councilor:	Signe I. Lindell
	Councilor:	Chris Rivera
	Councilor:	Carol Romero-Wirth
	Councilor:	JoAnne Vigil Coppler
	Councilor:	Renee Villarreal
ABSENT:		

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

PUBLIC HEARINGS

***

CONSIDERATION OF BILL NO. 2021-2

ADOPTION OF ORDINANCE NO. 2021-3

Approval of Global Management Performance Contract with Dalkia Energy Solutions, LLC

CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2021-3

INTRODUCED BY:

AN ORDINANCE

APPROVING A GLOBAL MANAGEMENT PERFORMANCE CONTRACT BY AND BETWEEN THE CITY AND DALKIA ENERGY SOLUTIONS, LLC (THE "AGREEMENT") FOR THE INSTALLATION OF STREETLIGHT UPGRADES, SUBJECT TO CITY COUNCIL APPROVAL OF A SEPARATE FINANCING TRANSACTION TO FINANCE THE COSTS OF THE AGREEMENT; AUTHORIZING THE PLEDGE OF UTILITY COST SAVINGS AS SECURITY FOR THE TRANSACTION FOR THE FINANCING OF THE AGREEMENT, AND THE EXECUTION AND DELIVERY OF CERTAIN OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE EPC; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION WITH THE AGREEMENT; REPEALING ALL ORDINANCES AND PRIOR ACTION IN CONFLICT HEREWITH; AND RELATED MATTERS.

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

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

WHEREAS, Dalkia Energy Solutions, LLC, a Massachusetts limited liability company ("Contractor") has agreed to perform Street Light LED Upgrade and Maintenance (the "Project") for the City per the pricing structure and the contractual terms of the Global Management

Performance Contract by and between Citelum US, Inc. and the City of Albuquerque, New Mexico dated September 28, 2017, as agreed to by the letter submitted by the Contractor to the City dated September 10, 2019; and

WHEREAS, the amount of savings to be realized through the implementation of the Project appears to be sufficient to cover all costs associated with the Project; and

WHEREAS, the Contractor has proposed that the City and the Contractor enter into a Global Management Agreement (the "Agreement"), a copy of which has been presented to the City Council in connection with its consideration of this Ordinance, and pursuant to which the Contractor will complete the Project at a total cost not to exceed $3,187,337.78, including gross receipts taxes; and

WHEREAS, the Project consists of the installation and maintenance of LED streetlight conversion and routine and non-routing maintenance of the converted streetlights; and

WHEREAS, the City recognizes the need to regulate street lighting in order to preserve our dark skies, 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 street lighting in keeping with the character of Santa Fe; and

WHEREAS, the City intends to finance the costs of the Project through a separate financing arrangement with a third-party financial institution (the "Financing Transaction") which will be paid from pledged Utility Cost Savings as authorized pursuant to the Act, and pursuant to which the Pledged Utility Cost Savings are net revenues of the Project (the "Pledged Revenues") which constitute a special fund; and

WHEREAS, the Governing Body intends to approve the Agreement and authorize its execution, delivery, and assignment of the Pledged Revenues, subject to the terms and provisions of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE

CITY OF SANTA FE, NEW MEXICO:

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

"Act" means the general laws of the State, including the home-rule charter of the City, Sections 3-31-1 through 3-31-12 NMSA 1978, as amended, and enactments of the Governing Body relating to the Agreement and the Financing Transaction, 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.

"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.

"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.

"Conservation Measures" mean, collectively or individually, as the context may require, the energy savings equipment and improvements of which the Project is comprised.

"Contract Price" means $3,187,337.78, including gross receipts taxes, which is the maximum amount payable pursuant to the Agreement.

"Contractor" means Dalkia Energy Solutions, LLC, a Massachusetts limited liability company.

"Costs of Issuance" means all costs relating to the execution and delivery of the Agreement and the Financing Transaction, including, without limitation, costs of advertising and publication, costs of fees and expenses of the financial advisor, Bond Counsel, the Paying Agent, and other

reasonable and necessary fees and costs, including applicable gross receipts taxes, related to the execution and delivery of the Agreement and the Financing Transaction.

"Financing Transaction" means the transaction to be entered into by and between the City and the Lender, proceeds of which shall be applied to pay the Contract Price; the principal of, interest on and other payments due in connection with the Financing Transaction shall be payable solely from Pledged Revenues; provided, that the Financing Transaction may be in the form of a lease-purchase agreement, a loan agreement or other form of debt obligation.

"Governing Body" means the members of the governing body designated as councilors who, together with the mayor, are the governing body of the City.

"Lender" means the bank or other financial institution serving as the lender in connection with the Financing Transaction; if applicable, the Lender may be the lessor if the Financing Transaction is a lease-purchase transaction.

"Ordinance" means this City Ordinance as amended or supplemented from time to time.

"Placement Agent" means D.A. Davidson & Co., Kansas City, Missouri.

"Placement Agent Agreement" means the professional services agreement by and between the City and the Placement Agent for the placement of the Financing Transaction with the Lender.

"Pledged Revenues" means amounts generated by Utility Cost Savings pursuant to the Agreement, which constitute net revenues of the Project, which shall be deposited monthly to the Pledged Revenue Fund as provided in Section 6 of this Ordinance.

"Pledged Revenue Fund" means the fund created pursuant to Section 6 of this Ordinance.

"Project" means the implementation of LED streetlight upgrades and associated routine and non-routine maintenance for the purpose of achieving Utility Cost Savings: the following energy savings measures:

(1) LED Streetlight conversion:

The Contractor will upgrade all City owned lights that are not currently LED to LED. The

estimated type and amount of lights to be converted will be confirmed by the Contractor in the field through the course of installation.

(2) Routine Street light Maintenance:

The Contractor will perform routine maintenance of City-owned streetlights, including regular maintenance, including bulbs, photocells, minor wiring & fuses, and cleaning, night patrols.

Management of Computerized Maintenance Management System ("MUSE").

The Contractor will manage lights-out hotline including coordination with PNM regarding PNM owned street lights.

Provide emergency response 24 hours a day 7 days a week.

The Contractor will maintain accurate inventory of changes to City owned lighting system.

(3) Non-Routine Street light Maintenance and Installation:

The Contractor will provide on-call street light maintenance and construction services for non-routine maintenance and installation of City Street Lights that are not otherwise covered under Routine Street Light Maintenance. The Contractor will perform this work upon written authorization to proceed,

"Related Documents" means, as applicable, the lease-purchase agreement, loan agreement, promissory note, escrow agreement, account control agreement and any other document or agreement containing an obligation of the City as may be required by the Lender or otherwise in connection with the Agreement pursuant to the Financing Transaction.

"Utility Cost Savings" means the amounts saved by the City in the purchase of electricity or water that are a direct result of the Conservation Measures.

Section 2. Ratification of Prior Action. All action heretofore taken (not inconsistent with the express provisions of this Ordinance) by the Governing Body and officers of the City directed toward the Project, the Agreement and the Financing Transaction, including,

without limitation, the publication of a notice of public meeting and intent to adopt this Ordinance authorizing the execution and delivery of the Agreement, and the engagement of D.A Davidson as Placement Agent pursuant to the Placement Agent Agreement, and the same hereby is ratified, approved and confirmed, notwithstanding any inconsistent prior action.

Section 3. **Findings.** The Governing Body hereby finds:

A. The amount that the City would spend on the Project is not likely to exceed the cumulative amount of Utility Cost Savings over the ten year term of the Agreement from the date of installation of streetlight upgrades, including the financing of those costs pursuant to the Financing Transaction, and excluding the cost of normal repair and replacement of components of the streetlight upgrades; and

B. The streetlight upgrades, and the routine and non-routine maintenance thereof pursuant to the Agreement which constitute the Project will generate Utility Cost Savings equal to or greater than the costs of the Project, including the financing of those costs pursuant to the Financing Transaction.

C. The Project is a revenue-producing project, the Conservation Measures are reasonably related to and constitute a substantial part of the Project, and the Utility Cost Savings constitute net revenues of the Project, each within the meaning of Section 3-31-1(F) NMSA 1978.

Section 4. **Authorization of the Project; Financing Transaction Condition.** The Project is hereby authorized at a total cost not to exceed the Contract Price, excluding any such cost defrayed or to be defrayed by any source other than proceeds of the Financing Transaction allocable to the Contract Price; provided, that the Project and execution and delivery of the Agreement shall be subject to the authorization and closing of the Financing Transaction.

Section 5. **Execution and Delivery of Agreement.** The Mayor or, in the absence of the Mayor, the Mayor pro tempore, is authorized to execute and delivery the Agreement, which shall be attested by the City Clerk or an assistant City Clerk, in substantially the form presented to

the Governing Body in its consideration of this Ordinance, with such modifications or revisions as the Mayor, in consultation with the City's municipal advisor and bond counsel, determines are necessary or convenient to implement the Project, and the execution and delivery of the Agreement by the Mayor, or in the absence of the Mayor, the Mayor pro tempore, shall be conclusive evidence of the City's approval thereof, as may be modified or revised.

Section 6. Establishment and Administration of Pledged Revenue Fund; Assignment as Security for Financing Transaction. A special revenue fund is hereby established, to be identified as the "City of Santa Fe/Dalkia Project Revenue Fund (the "Pledged Revenue Fund"). In the first month following substantial completion of the installation of streetlight upgrades as described in Appendix 2A to Schedule 2 of the Agreement, the City shall deposit Pledged Revenues to the Pledged Revenue Fund. The assignment of the Pledged Revenues as security for the payment of debt service in connection with the Financing Transaction is hereby authorized, with such details as shall be provided in the Financing Transaction documentation authorized by the Governing Body.

Section 7. Period of Project's Usefulness. It is hereby determined and recited that the average useful life of the Project is not less than 15 years.

Section 8. Authorization to Execute Related Documents and Delegated Authority.

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

B. Delegated Authority and Execution of Documents. The officers, agents, and employees of the City are authorized, empowered and directed to take all action required by this Ordinance, and all such other action as may be necessary or appropriate to effectuate the provisions

of this Ordinance, the Related Documents, and any other documents as may be necessary or appropriate to carry out and comply with the provisions of this Ordinance.

Section 9. Severability. If any Section, paragraph, clause or provision of this Ordinance shall be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 10. Repealer Clause. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

Section 11. Effective Date, General Summary for Publication. Upon due adoption of this Ordinance, the ordinance shall be recorded and preserved by the City Clerk, authenticated by the signature of the Mayor and City Clerk, and the seal of the City impressed hereon, and the title and general summary of the subject matter contained in this Ordinance (set out below) shall be published in a newspaper which maintains an office and is of general circulation in the City and this Ordinance shall be in full force and effect after its publication in accordance with law.

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

(Form of Summary of Ordinance for Publication)

CITY OF SANTA FE, NEW MEXICO

NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter contained in an ordinance duly adopted and approved by the Governing Body of the City of Santa Fe on February 24, 2021. A complete copy of the ordinance is available for public inspection during the normal and regular business hours of the City Clerk in the office of the City Clerk, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico and is available online at santafe.primegov.com.

The title of the ordinance is:

AN ORDINANCE

APPROVING A GLOBAL MANAGEMENT PERFORMANCE CONTRACT BY AND BETWEEN THE CITY AND DALKIA ENERGY SOLUTIONS, LLC (THE "AGREEMENT") FOR THE INSTALLATION OF STREETLIGHT UPGRADES, SUBJECT TO CITY COUNCIL APPROVAL OF A SEPARATE FINANCING TRANSACTION TO FINANCE THE COSTS OF THE AGREEMENT; AUTHORIZING THE PLEDGE OF UTILITY COST SAVINGS AS SECURITY FOR THE TRANSACTION FOR THE FINANCING OF THE AGREEMENT, AND THE EXECUTION AND DELIVERY OF CERTAIN OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE EPC; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION WITH THE AGREEMENT; REPEALING ALL ORDINANCES AND PRIOR ACTION IN CONFLICT HEREWITH; AND RELATED MATTERS.

A general summary of the subject matter contained in such ordinance is set forth in the title. COMPLETE COPIES OF THE ORDINANCE ARE ON FILE IN THE OFFICE OF THE CITY CLERK AT THE CITY HALL, 200 LINCOLN AVENUE, SANTA FE, NEW MEXICO, ARE AVAILABLE ONLINE AT SANTAFE.PRIMEGOV.COM, AND ARE AVAILABLE FOR INSPECTION AND/OR PURCHASE DURING REGULAR OFFICE HOURS. THIS NOTICE ALSO CONSTITUTES COMPLIANCE WITH SECTION 3-17-5 AND SECTIONS 6-14-4 THROUGH 6-14-7, NMSA 1978.

WITNESS my hand and the seal of the City on February 24, 2021.

CITY OF SANTA FE

(SEAL)

KRISTINE MIHELCIC, CITY CLERK

(End of Form of Ordinance for Publication)

PASSED, APPROVED, and ADOPTED this 24th day of February, 2021.

GOVERNING BODY OF THE CITY OF SANTA FE

(SEAL)

ALAN WEBBER, MAYOR

ATTEST:

KRISTINE MIHELCIC, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Modrall, Sperling, Roehl, Harris & Sisk, P.A. as Bond Counsel

By: Peter Franklin (Feb 28, 2021 19:59 MST)

PETER FRANKLIN

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

Those voting AYE:

Mayor: Alan Webber

Councilor: Roman Abeyta

Councilor: Jamie Cassutt-Sanchez

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 MIHELCIC, 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		

AN ABSTRACT OF PROCEEDINGS

STATE OF NEW MEXICO)

COUNTY OF SANTA FE) ss.

CITY OF SANTA FE)

The Governing Body (the "Governing Body") of the City of Santa Fe (the "City") in the County of Santa Fe, State of New Mexico, met in regular session in full conformity with law and ordinances and rules of the City, at City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico, being the regular meeting place of the Governing Body, at the hour of 5:00 p.m., on Wednesday, the 24th day of February, 2021.

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

PRESENT:	Mayor:	Alan Webber
	Councilor:	Roman Abeyta
	Councilor:	Jamie Cassutt-Sanchez
	Councilor:	Michael J. Garcia
	Councilor:	Signe I. Lindell
	Councilor:	Chris Rivera
	Councilor:	Carol Romero-Wirth
	Councilor:	JoAnne Vigil Coppler
	Councilor:	Renee Villarreal
ABSENT:		

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

PUBLIC HEARINGS

***

CONSIDERATION OF BILL NO. 2021-4

ADOPTION OF ORDINANCE NO. 2021-5

Approval of Lease Purchase Agreement with Sterling National Bank, as Lessor

CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2021-5

AN ORDINANCE

AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE AGREEMENT BY AND BETWEEN THE CITY OF SANTA FE, NEW MEXICO (THE "CITY") AND STERLING NATIONAL BANK (THE "LESSOR"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY AN AMOUNT OF UP TO $20,000,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF ACQUIRING, INSTALLING, AND EQUIPPING ENERGY EFFICIENCY MEASURES THROUGHOUT THE CITY; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE AMOUNTS DUE UNDER THE LEASE-PURCHASE AGREEMENT SOLELY FROM THE UTILITY COST AND WATER CONSERVATION SAVINGS AND PAYMENTS RECEIVED BY THE CITY PURSUANT TO (1) THE ENERGY PERFORMANCE CONTRACT BY AND BETWEEN THE CITY AND YEAROUT ENERGY SERVICES COMPANY, LLC, AND (2) THE GLOBAL MANAGEMENT PERFORMANCE CONTRACT BY AND BETWEEN THE CITY AND DALKIA ENERGY SOLUTIONS, LLC; PROVIDING THAT CERTAIN TERMS OF THE LEASE-PURCHASE AGREEMENT WILL BE ESTABLISHED IN A PRICING CERTIFICATE TO BE EXECUTED AND DELIVERED AS AUTHORIZED PURSUANT TO SECTION 6-14-10.2 NMSA 1978; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LEASE-PURCHASE AGREEMENT.

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

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

WHEREAS, the City has authorized the execution and delivery of (1) an Energy Savings Performance Contract with Yearout Energy Services Company, LLC, a New Mexico limited liability company (the "Yearout Agreement") for the installation, implementation, monitoring and maintenance of energy savings measures and water conservation measures throughout City owned facilities (the "Yearout Project Component"); and (2) a Global Management Performance Contract by and between the City and Dalkia Energy Solutions, LLC, a Massachusetts limited liability company ("the Dalkia Agreement") for the installation, implementation and maintenance of street light LED upgrades to street light improvements owned and operated by the City (the "Dalkia Project Component"); and

WHEREAS, the execution and delivery of the Yearout Agreement and the Dalkia Agreement (collectively, the "Energy Savings Agreements") is subject to the condition that a financing transaction be authorized and completed to finance the aggregate contract prices of the Energy Savings Agreements and the Costs of Issuance; and

WHEREAS, the Governing Body has determined and hereby determines that the Yearout Project Component and the Dalkia Project Component (each a "Project Component" and collectively, the "Energy Savings Project") may be financed by and completed by entering into the Lease-Purchase Agreement, a copy of which has been presented to the City Council in connection with its consideration of this Ordinance, and that it is in the best interest of the City and its residents that the Lease-Purchase Agreement be executed and delivered, and that the financing occur by executing and delivering the Lease-Purchase Agreement; and

WHEREAS, the energy cost savings and water conservation-related cost savings derived from each Project Component exceed the cost of implementing that Project Component, and collectively, the aggregate cost of the Energy Savings Project, and constitute the net revenues of the Energy Savings Project; and

WHEREAS, the Energy Savings Project is a "revenue producing project" within the meaning of the Act; and

WHEREAS, the City may pledge the energy cost savings and water conservation-related cost savings derived from the Energy Savings Project (the "Pledged Revenues"), which constitute a special fund; and

WHEREAS, the City may lawfully pledge the Pledged Revenues for the payment of amounts due pursuant to the Lease-Purchase Agreement; and

WHEREAS, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, the Lease-Purchase Agreement shall be a special, limited obligation of the City, payable solely from the Pledged Revenues and shall not constitute a general obligation of the City, or a debt or pledge of the full faith and credit of the City or the State; and

WHEREAS, the Lease-Purchase Agreement shall be executed and delivered pursuant to the Act, with an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues; and

WHEREAS, the Governing Body intends by this Ordinance to authorize the execution and delivery of the Lease-Purchase Agreement for the purposes set forth therein; and

WHEREAS, the Governing Body expects to receive an offer from the Lessor to enter into the Lease-Purchase Agreement, as approved pursuant to the terms of the Pricing Certificate; and

WHEREAS, the Governing Body hereby determines that the Energy Savings Project to be financed with the Lease-Purchase Agreement is to be used for governmental purposes of the

City and will not be used for purposes which would cause the Lease-Purchase Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Lessor (or its assigns) for the payment of amounts due under the Lease-Purchase Agreement, (ii) the financing of the Energy Savings Project pursuant to the Lease-Purchase Agreement and the Energy Savings Agreements, and (iii) the authorization, execution and delivery of the Lease-Purchase Agreement, the Energy Savings Agreements, and the Escrow Agreement (if determined in the Pricing Certificate to be necessary), which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

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

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

"Act" means the general laws of the State, including the home-rule charter of the City, Sections 3-1-2 and 3-31-1 through 3-31-12 NMSA 1978, as amended, and enactments of the Governing Body relating to the Lease-Purchase Agreement, 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.

"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.

"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.

"Closing Date" means the date of execution, delivery and funding of the Lease-Purchase Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Conservation Measures" mean, collectively or individually, as the context may require, the energy savings equipment and improvements of which the Energy Savings Project is comprised.

"Costs of Issuance" means all costs relating to the execution and delivery of the of the Lease-Purchase Agreement and the Energy Savings Agreements, including, without limitation, costs of advertising and publication, costs of fees and expenses of the City's municipal advisor, Bond Counsel, the Paying Agent, and other reasonable and necessary fees and costs, including applicable gross receipts taxes, related to the execution and delivery of the Lease-Purchase Agreement and the Energy Savings Agreements.

"Dalkia Agreement" means the Global Management Performance Contract by and between the City and Dalkia Energy Solutions, a Massachusetts limited liability company, for implementation of the Dalkia Project Component.

"Dalkia Project Component" means the installation, implementation, monitoring, and maintenance of upgrades to street light improvements leased to, and operated by, the City by Public Service Company of New Mexico.

"Energy Savings Agreements" means, collectively, the Yearout Agreement and the Dalkia Agreement.

"Energy Savings Project" means, collectively, the Yearout Project Component and the Dalkia Project Component.

"Escrow Agreement" means, if required by the Lessor, the escrow agreement relating to the Energy Savings Project among the City, the Lessor and the Escrow Agent, into which the proceeds received by the City pursuant to the Lease-Purchase Agreement shall be deposited for payment of Energy Savings Project costs.

"Escrow Fund" means, if required by the Lessor, the "City of Santa Fe, New Mexico 2021 Lease-Purchase Agreement Escrow Fund" created by Section 8 hereof.

"Governing Body" means the members of the governing body designated as councilors who, together with the mayor, are the governing body of the City.

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to the entire Ordinance and not solely to the particular section or paragraph of the Ordinance in which such word is used.

"Lease-Purchase Agreement" means the Lease-Purchase Agreement dated the Closing Date between the Lessor and the City which provides for the financing of the Energy Savings Project and requires payments by or on behalf of the City to the Lessor, and any amendments or supplements thereto, and including the exhibits attached to the Lease-Purchase Agreement.

"Lease-Purchase Transaction" means the financing of the Energy Savings Project through the execution and delivery of the Lease-Purchase Agreement and the Related Documents.

"Lessor" means Sterling National Bank in connection with the Lease-Purchase Agreement.

"NMSA 1978" means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented.

"Ordinance" means this City Ordinance as amended or supplemented from time to time.

"Placement Agent" means D.A. Davidson & Co., Kansas City, Missouri.

"Placement Agent Agreement" means the professional services agreement by and between the City and the Placement Agent for the placement of the Financing Transaction with the Lessor.

"Pledged Energy Cost Savings Revenues" or "Pledged Revenues" means amounts

generated by Utility Cost Savings pursuant to the Energy Savings Agreements, which constitute net revenues of the Energy Savings Project, which shall be deposited monthly to the Pledged Revenue Fund as provided in Section 8 of this Ordinance.

"Pledged Energy Cost Savings Revenue Fund" or "Pledged Revenue Fund" means the fund created pursuant to Section 8 of this Ordinance.

"Pricing Certificate" means the certificate executed and delivered by the any of the Mayor, City Manager or Finance Director of the City subsequent to the date of this Ordinance which shall specify the exact principal amount of the Lease-Purchase Agreement, the rental payment dates, the amounts payable on each rental payment date, the interest rate, and the prepayment features applicable to the Lease-Purchase Agreement and which shall approve the final forms of the Lease-Purchase Agreement, the Escrow Agreement (if applicable), Energy Savings Agreements, and other documents and which may contain such other terms and provisions as set forth in the Pricing Certificate; provided that in no event shall the Pricing Certificate specify a principal amount of the Lease-Purchase Agreement in excess of $20,000,000 or a net effective interest rate on the Lease-Purchase Agreement in excess of the statutory maximum of twelve percent (12%) per annum.

"Project Component" or "Project Components" means, as the context requires, each or all of the Yearout Project Component and the Dalkia Project Component.

"Related Documents" means, as applicable, the Escrow Agreement, account control agreement, closing documents, including, without limitation, a tax compliance certificate, and any other document or agreement containing a representation, certification or obligation of the City as may be required by the Lessor or otherwise in connection with the Lease-Purchase Agreement pursuant to the Lease-Purchase Financing.

"Rental Payment Fund" means the "City of Santa Fe, New Mexico 2021 Lease-Purchase Agreement Rental Payment Fund" created by Section 8 hereof.

"State" means the State of New Mexico.

"Utility Cost Savings" means the amounts saved by the City in the purchase of electricity or water that are a direct result of the Conservation Measures.

"Yearout Agreement" means the Energy Savings Performance Contract with Yearout Energy Services Company, LLC for implementation of the Yearout Project Component.

"Yearout Project Component" means the installation, implementation, monitoring and maintenance of energy savings measures and water conservation measures throughout City owned facilities.

Section 2. Ratification of Prior Action. All action heretofore taken (not inconsistent with the express provisions of this Ordinance) by the Governing Body and officers of the City directed toward the Energy Savings Agreements, the Energy Savings Project, the Lease-Purchase Agreement, including, without limitation, the publication of a notice of public meeting and intent to adopt this Ordinance authorizing the execution and delivery of the Lease-Purchase Agreement, and the engagement of D.A Davidson as Placement Agent pursuant to the Placement Agent Agreement, and the same hereby is ratified, approved and confirmed, notwithstanding any inconsistent prior action.

Section 3. Authorization of the Lease-Purchase Transaction. The Energy Savings Project and the financing of the Energy Savings Project through the Lease-Purchase Transaction are hereby approved, the final terms of which shall be as provided in the Pricing Certificate. The Lease-Purchase Agreement, in substantially the form presented to the Governing Body in connection with this Ordinance, is hereby approved. The Mayor, or in the Mayor's absence, the Mayor *Pro Tem*, is hereby authorized to execute and deliver the Lease-Purchase Agreement, as modified by the Pricing Certificate. The Lease-Purchase Agreement shall be attested by the City Clerk or Deputy Clerk.

Section 4. Findings; Parameters for Lease-Purchase Transaction. The Governing Body hereby declares that it has considered all relevant information and data and hereby makes the

following findings:

A. The Energy Savings Project is needed to meet the needs of the City and its residents and the execution and delivery of the Lease-Purchase Agreement and the Escrow Agreement (if determined to be required for the Lease-Purchase Transaction as set forth in the Pricing Certificate) is necessary and advisable.

B. Moneys available and on hand for the Energy Savings Project from all sources other than the Lease-Purchase Agreement are not sufficient to defray the cost of the Energy Savings Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Lease-Purchase Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the Energy Savings Project by the execution and delivery of the Lease-Purchase Agreement.

E. The Energy Savings Project and the execution and delivery of the Lease-Purchase Agreement pursuant to the Act to provide funds for the financing of the Energy Savings Project are necessary and in the interest of the public health, safety, and welfare of the residents of the City and will result in energy and water conservation savings and other economies for the City.

F. The Energy Savings Project is a revenue-producing project within the meaning of the Act. Implementation of the Energy Savings Project pursuant to the Energy Savings Agreements will generate utility cost savings equal to or greater than the costs of the Energy Savings Project, including the financing of those costs pursuant to the Lease-Purchase Transaction, and constitute net revenues of the Energy Savings Project within the meaning of the Act. The Conservation Measures are reasonably related to and constitute a substantial part of the Energy Savings Project.

G. The average economic life of the Project Components comprising the Energy Savings Project will be at least 20 years.

H. The Lease-Purchase Agreement shall be within the following parameters:

(i) the net effective interest rate on the Lease-Purchase Agreement shall not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

(ii) The maximum term of the Lease-Purchase Agreement shall not exceed 25 years.

(iii) The maximum principal amount of the Lease-Purchase Agreement shall not exceed $20,000,000.

Section 5. Authorization of the Lease-Purchase Transaction.

A. Authorization. This Ordinance has been adopted by the affirmative vote of a three-fourths (3/4) majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the City and completing the Energy Savings Project, it is hereby declared necessary that the City, pursuant to the Act, execute and deliver the Lease-Purchase Agreement, evidencing a special, limited obligation of the City to pay an amount of up to $20,000,000, plus interest, and the execution and delivery of the Lease-Purchase Agreement is hereby authorized. The City shall use the proceeds of the Lease-Purchase Agreement to finance the Energy Savings Project and pay Costs of Issuance.

B. Detail. The Lease-Purchase Agreement shall be in form consistent with this Ordinance, as supplemented by the Pricing Certificate. The Lease-Purchase Agreement shall be in an aggregate principal amount of up to $20,000,000, shall be payable in installments or rent and interest due on the dates set forth in the Pricing Certificate.

Section 6. Approval of the Lease-Purchase Agreement; Execution and Delivery. The Mayor or, in the absence of the Mayor, the Mayor *pro tem*, is authorized to execute and delivery the Lease-Purchase Agreement, which shall be attested by the City Clerk or a deputy City Clerk,

in substantially the form presented to the Governing Body in its consideration of this Ordinance, with such modifications or revisions as the Mayor, in consultation with the City's municipal advisor and Bond Counsel, determines are necessary or convenient to implement the Energy Savings Project, and the execution and delivery of the Lease-Purchase Agreement by the Mayor, or in the absence of the Mayor, the Mayor *pro tem*, shall be conclusive evidence of the City's approval thereof, as may be modified or revised.

Section 7. **Special Limited Obligations.** The Lease-Purchase Agreement and the Energy Savings Agreements shall be secured by the pledge of the Pledged Energy Cost Savings Revenues as set forth in the Lease-Purchase Agreement and the Energy Savings Agreements, respectively, and shall be payable solely from the Pledged Energy Cost Savings Revenues. The Lease-Purchase Agreement, together with interest thereon and other obligations of the City thereunder, and the Energy Savings Agreements, shall be special, limited obligations of the City, payable solely from the Pledged Energy Cost Savings Revenues as provided in this Ordinance, the Lease-Purchase Agreement and the Energy Savings Agreements and shall not constitute a general obligation of the City or the State, and the holders of the Lease-Purchase Agreement or the Energy Savings Agreements may not look to any general or other fund of the City for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Lease-Purchase Agreement, the Energy Savings Agreements, or any other instruments, shall be construed as obligating the City (except with respect to the application of the Pledged Energy Cost Savings Revenues), as incurring a pecuniary liability or a charge upon the general credit of the City or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Lease-Purchase Agreement, the Energy Savings Agreements or any other instrument impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power. The Lease-Purchase Agreement and the Energy Savings Agreements shall never constitute an indebtedness of the City within the meaning of any State constitutional provision or statutory limitation and shall never constitute or

give rise to a pecuniary liability of the City or a charge against its general credit or taxing power. Nothing herein shall prevent the City from applying other funds of the City legally available therefor to payments required by the Lease-Purchase Agreement or the Energy Savings Agreements, in its sole and absolute discretion.

Section 8. Creation of Funds and Accounts; Disposition of Proceeds: Completion of the Energy Savings Project.

A. Rental Payment Fund, Escrow Fund and Pledged Revenue Fund. The City hereby consents to creation of: (i) the special fund known as the Rental Payment Fund to be held and maintained by the City, (ii) if applicable, the Escrow Fund to be held and maintained by the Escrow Agent pursuant to the Escrow Agreement and (iii) the Pledged Revenue Fund to be held and maintained by the City, each in connection with the Lease-Purchase Agreement.

B. Disposition of Proceeds of Lease-Purchase Agreement. The proceeds derived from the execution and delivery of the Lease-Purchase Agreement shall be deposited promptly upon the receipt thereof in the Escrow Fund, as provided in the Escrow Agreement.

C. Completion of Energy Savings Project. The City will cause the installation of the Project Components with all due diligence, and in any event within three years after the date of execution and delivery of the Lease-Purchase Agreement.

Section 9. Deposit of Pledged Energy Cost Savings Revenues and Flow of Funds.

A. Pledged Revenue Fund. So long as payments are due under the Lease-Purchase Agreement, the City shall credit all Pledged Energy Cost Savings Revenues to the Pledged Revenue Fund. As a first charge on the Revenue Fund, amounts due under the Lease-Purchase Agreement shall be withdrawn from the Pledged Revenue Fund and shall be credited to the Rental Payment Fund on the dates and in the amounts set forth in the Lease-Purchase Agreement.

B. Credit. In making the deposits required to be made into the Rental Payment Fund, if there are any amounts then on deposit in the rental Payment Fund available for

the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph (A) above shall be reduced by the amount available in such fund for such purpose.

C. Transfer of Money out of Rental Payment Fund. Each payment due on the Lease-Purchase Agreement shall be transferred from the Rental Payment Fund to the Lessor on the due date of such payment.

D. Termination Upon Deposits to Maturity. No payment shall be made into the Rental Payment Fund if the moneys in such fund totals a sum at least equal to the entire aggregate amount due on the Lease-Purchase Agreement, in which case moneys in said fund in an amount at least equal to such payment requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in said funds and any other moneys derived from the Pledged Energy Cost Savings Revenues may be used in any lawful manner determined by the City.

E. Defraying Delinquencies in the Rental Payment Fund. If, on any payment date, the amount on deposit in the Rental Payment Fund is insufficient to make the payments due on the Lease-Purchase Agreement, then an amount shall be paid into the Rental Payment Fund from the first Pledged Energy Cost Savings Revenues thereafter received that are not required to be deposited in the Rental Payment Fund as set forth in Paragraph C of this Section.

F. Payment from Other Sources. Notwithstanding any other provisions of this Ordinance, the City may, in its sole discretion, choose to apply other legally available funds to the payment of the Lease-Purchase Agreement.

G. Surplus Revenues. After making all the payments hereinabove required to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other lawful purpose, as the City may from time to time determine.

Section 10. Lien on Pledged Energy Cost Savings Revenues. Pursuant to this Ordinance and the Lease-Purchase Agreement, the Pledged Energy Cost Savings Revenues are

hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the rent, interest, and any other amounts due under the Lease-Purchase Agreement subject to the uses thereof permitted by and the priorities set forth in this Ordinance. The Lease-Purchase Agreement constitutes an irrevocable and first lien on the Pledged Energy Cost Savings Revenues.

Section 11. **Authorized Officers.** Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Lease-Purchase Agreement and the Related Documents, and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Lease-Purchase Agreement and the Related Documents for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Lease-Purchase Agreement and the Related Documents, the execution and delivery of closing documents in connection with the execution and delivery of the Lease-Purchase Agreement, the Escrow Agreement (if applicable), and the publication of the summary of this Ordinance set out in Section 18 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 12. **Amendment of Ordinance.** Prior to the Closing Date, the provisions of this Ordinance may be supplemented or amended by ordinance or resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. Following the Closing Date, this Ordinance may be amended by ordinance of Governing Body without receipt by the City of any additional consideration, but only with the prior written consent of the Lessor.

Section 13. **Ordinance Irrepealable.** After the Lease-Purchase Agreement has been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due

under the Lease-Purchase Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 14. **Severability Clause.** If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. **Repealer Clause.** All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. **Effective Date, General Summary for Publication.** Upon due adoption of this Ordinance, the ordinance shall be recorded and preserved by the City Clerk, authenticated by the signature of the Mayor and City Clerk, and the seal of the City impressed hereon, and the title and general summary of the subject matter contained in this Ordinance (set out below) shall be published in a newspaper which maintains an office and is of general circulation in the City and this Ordinance shall be in full force and effect after its publication in accordance with law.

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

(Form of Summary of Ordinance for Publication)

CITY OF SANTA FE, NEW MEXICO

NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter contained in an ordinance duly adopted and approved by the Governing Body of the City of Santa Fe on February 24, 2021. A complete copy of the ordinance is available for public inspection during the normal and regular business hours of the City Clerk in the office of the City Clerk, City

Hall, 200 Lincoln Avenue, Santa Fe, New Mexico and is available online at santafe.primegov.com. The title of the ordinance is:

AN ORDINANCE

AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE AGREEMENT BY AND BETWEEN THE CITY OF SANTA FE, NEW MEXICO (THE "CITY") AND STERLING NATIONAL BANK (THE "LESSOR"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY AN AMOUNT OF UP TO $20,000,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF ACQUIRING, INSTALLING, AND EQUIPPING ENERGY EFFICIENCY MEASURES THROUGHOUT THE CITY; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE AMOUNTS DUE UNDER THE LEASE-PURCHASE AGREEMENT SOLELY FROM THE UTILITY COST AND WATER CONSERVATION SAVINGS AND PAYMENTS RECEIVED BY THE CITY PURSUANT TO (1) THE ENERGY PERFORMANCE CONTRACT BY AND BETWEEN THE CITY AND YEAROUT ENERGY SERVICES COMPANY, LLC, AND (2) THE GLOBAL MANAGEMENT PERFORMANCE CONTRACT BY AND BETWEEN THE CITY AND DALKIA ENERGY SOLUTIONS, LLC; PROVIDING THAT CERTAIN TERMS OF THE LEASE-PURCHASE AGREEMENT WILL BE ESTABLISHED IN A PRICING CERTIFICATE TO BE EXECUTED AND DELIVERED AS AUTHORIZED PURSUANT TO SECTION 6-14-10.2 NMSA 1978; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LEASE-PURCHASE AGREEMENT.

A general summary of the subject matter contained in such ordinance is set forth in the

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

WITNESS my hand and the seal of the City on February 24, 2021.

CITY OF SANTA FE

(SEAL)

~~Kristine Mihelcic (Mar 3, 2021 10:02~~ MST)

KRISTINE MIHELCIC, CITY CLERK

(End of Form of Ordinance for Publication)

PASSED, APPROVED, and ADOPTED this 24th day of February, 2021.

GOVERNING BODY OF THE CITY OF SANTA FE

(SEAL)

ALAN WEBBER, MAYOR

ATTEST:

~~Kristine Mihelcic (Mar 3, 2021 10:02~~ MST)

KRISTINE MIHELCIC, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Modrall, Sperling, Roehl, Harris & Sisk, P.A. as Bond Counsel

Peter Franklin

By: Peter Franklin (Feb 26, 2021 18:00 MST)

PETER FRANKLIN

After discussion, Councilor Lindell moved for approval, with Councilor Romero-Wirth seconding the motion. Bill No. 2021-4 passed upon the following roll call vote:

Those voting AYE:

Mayor: Alan Webber

Councilor: Roman Abeyta

Councilor: Jamie Cassutt-Sanchez

Councilor: Michael J. Garcia

Councilor: Signe I. Lindell

Councilor: Chris Rivera

Councilor: Carol Romero-Wirth

Councilor: Renee Villarreal

Those voting NAY: JoAnne Vigil Coppler

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. 2021-4 the motion was carried and Ordinance No. 2021-5 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 Mihelcic (Mar 3, 2021 10:02 MST)

KRISTINE MIHELCIC, CITY CLERK

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

Document emailed to Thoma A Martinez for R.W. (tamartinez@santafenm.gov) for signature
2021-07-16 - 2:12:44 PM GMT

Email viewed by Thoma A Martinez for R.W. (tamartinez@santafenm.gov)
2021-07-19 - 1:53:22 PM GMT- IP address: 104.47.64.254

Document e-signed by Thoma A Martinez for R.W. (tamartinez@santafenm.gov)
Signature Date: 2021-07-19 - 1:55:47 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Andy Hopkins (ajhopkins@santafenm.gov) for signature
2021-07-19 - 1:55:52 PM GMT

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2021-07-19 - 4:48:35 PM GMT- IP address: 104.47.65.254

Document e-signed by Andy Hopkins (ajhopkins@santafenm.gov)
Signature Date: 2021-07-19 - 4:49:55 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Fran Dunaway (fadunaway@santafenm.gov) for signature
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

ACTION SHEET
PUBLIC WORKS AND UTILITES COMMITTEE MEETING OF 07/26/2021

ISSUE NO. 7l

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

PUBLIC WORKS AND UTILITES COMMITTEE ACTION: Pulled by Councilor Garcia for discussion. Motion denied for the item to move forward but to incorporate the request that the Governing body made prior to include the pause.

SPECIAL CONDITIONS OR AMENDMENTS: recommendation from Councilor Rivera is for a written amendment prepared on a written sheet with further discussion by entire Governing Body

STAFF FOLLOW UP:

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

PUBLIC WORKS AND UTILITES COMMITTEE ACTION: 2nd motion to approve to forward to 7/28/2021 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		

City of Santa Fe, New Mexico

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

Alan Webber, Mayor

Councilors:
Signe I. Lindell, Mayor Pro Tem, District 1
Renee Villarreal, District 1
Michael J. Garcia, District 2
Carol Romero-Wirth, District 2
Roman "Tiger" Abeyta, District 3
Chris Rivera, District 3
Jamie Cassutt, District 4
JoAnne Vigil Coppler, District 4

MEMORANDUM

To: **Members of the Governing Body**

From: **Michael Prinz, Assistant City Attorney**

Via: **Erin K. McSherry, City Attorney**

Re: **Decision to accept or reject the City Attorney Office's Recommendation Concerning Case Number #2021-3812; Concurring with the Land Use Director's Determination that an Appeal Filed by Julia Hosford Barnes of Short-Term Rental Permit Denial for 322 Otero Street Does not Conform with the Requirements of the Santa Fe City Code and Should be Denied Without a Board of Adjustment Hearing. (Michael Prinz, Assistant City Attorney, 955-6554)**

Date: **July 22, 2021; for the July 28, 2021 Meeting of the Governing Body**

I. Background

On March 2, 2021, Julia Hosford Barnes ("Appellant") applied for a short-term rental permit for 322 Otero Street. The Land Use Department denied the application on June 3, 2021, because 322 Otero is located within 50 feet of 328 Otero, which already has a STR permit. Ordinance 2020-35, which went into effect on January 1, 2021, provides, in part, that "the land use director shall not issue a new permit for a short-term rental unit if the subject property, as identified in the application, is within a fifty (50)-foot radius of a residentially zoned property that has a permitted short-term rental unit." Section 14-6.2(A)(5)(c)(vi).

The Appellant appealed the application denial. **Exhibit A – Appeal Letter**. The appeal explained that they had a STR permit since 2016 and were unaware that it had lapsed. The applicant stated that when the Covid-19 pandemic began, the applicant took the STR off the market from January 2020 to February 2021. Because the permit had lapsed, when the applicant for a permit, it was a new application and therefore subject to the 50-foot proximity restriction. Without citing a

legal basis for the request, the appeal asks that the City take into account the unusual circumstances of the Covid-19 pandemic and treat the applicant's application as a renewal or waive the 50-feet proximity restriction. The appellant also argues that the written notice the applicant received from the Land Use Director on June 9 notifying them that the application was denied did not identify the precise basis for the denial. **Exhibit B – Email from Land Use Director to Appellant**.

The Land Use Director reviewed the appeal and determined that it does not conform to the requirements for appeals because the Appellant did not provide a valid basis for an appeal as required under Section 14-3.17(A)(2). **Exhibit C – Land Use Director's Determination**. The Director noted:

> *"The appellant acknowledges that the permit application was denied on the basis of the newly enacted 50' proximity limitation, and has requested a waiver from this provision due to the unforeseen consequences of COVID 19. There are no existing code provisions in Chapter 14 that would allow for such a waiver to be granted."*

The Land Use Director notified the City Attorney's Office of his determination. The City Attorney's Office reviewed the Director's determination and agrees that it correctly applies Section 14-3.17(A)(2). This memo serves as the recommendation of the City Attorney's Office to the Governing Body that is required under City Code Section 14-3.17(6)(a).

II. Analysis

Pursuant to Code Section 14-3.17(A)(2), land use appeals may only be filed for one or more of three specific reasons: (1) to contest noncompliance of a final action with Chapter 14 or Sections 3-21-1 through 3-21-14 NMSA 1978; (2) to contest the application of Chapter 14; or (3) to appeal a decision lacking substantial evidence to support it.

In this case, the appeal does not cite any of these three required reasons for appeal. Rather, it requests either a waiver of the 50-feet proximity limitation or to have the permit application considered a renewal of the prior permit because of the unforeseen consequences of Covid-19. These requests do not fall within the three grounds for appeals mentioned above. First, this is not a case of noncompliance of a final action with Chapter 14. Second, the appeal does not contest the application of Chapter 14 because the Appellant does not claim that 322 Otero is outside of the 50 feet radius of another permitted property. The Appellant acknowledges being aware of the 50-feet rule and requests a waiver to the rule because she didn't know that the permit had lapsed and the Covid-19 pandemic effectively stopped them from renting out their STR unit in 2020. As the Land Use Director pointed out, there are no existing code provisions in Chapter 14 that allows for such a waiver. Third, and finally, the Appellant does not claim that the denial was lacking substantial evidence to support it.

For these reasons, the City Attorney's Office recommends that the Governing Body accept the Director's determination that the appeal does not conform with Section 14-3.17(A)(2).

If the Governing Body accepts the recommendation, the decision is final and the Appellant may appeal to the district court. If the Governing Body does not accept the recommendation, the appeal shall be heard by the Board of Adjustment.

III. MOTION OPTIONS

There are two options for motions in this case. Sample motions follow:

Motion 1: *I move to **accept** the recommendation of the City Attorney's Office on the conformity of Appellant's appeal.*

Motion 2: *I move to **not accept** the recommendation of the City Attorney's Office on the conformity of Appellant's appeal.*

APPENDIX A:
RELEVANT SECTIONS OF THE CITY LAND USE CODE

A. Section 14-6.2(A)(5)(c)(vi) – Proximity.

Subject to the exceptions listed below, the land use director shall not issue a new permit for a short-term rental unit if the subject property, as identified in the application, is located within a fifty (50)-foot radius of a residentially zoned property that has a permitted short-term rental unit. The radius shall be measured from the subject property boundary. This limitation shall not apply to the following:

(A) an application for a short-term rental unit that complies with the requirements set forth in the accessory dwelling unit ordinance, subsection 14-6.3(D)(1);

(B) an application for a short-term rental unit in a multiple-family dwelling development that contains four (4) or more dwelling units, provided, however, that the land use director shall not issue short-term rental permits for more than twenty five (25%) of such dwelling units, rounded down to the nearest whole number, and shall not issue more than twelve (12) short-term rental permits within a single building within a multiple-family dwelling development.

B. Section 14-3.17(A)(2) – Basis for Appeal

An appeal may only be filed for the following reasons:

(a) to contest noncompliance of a final action with Chapter 14 or Sections 3-21-1 through 3-21-14 NMSA 1978;

(b) to contest the application of Chapter 14; or

(c) to appeal a decision lacking substantial evidence to support it.

C. Section 14-3.17(D)(6) – Conformity of appeal

The land use director shall promptly review all appeals for conformity with the requirements of Section 14-3.17. Upon determining that an appeal does not conform to the requirements, the land use director shall refer the matter to the city attorney for review.

(a) If the city attorney concurs with the land use director's determination, the city attorney's written recommendation shall be forwarded to the governing body for discussion. The governing body may accept the city attorney's written recommendation and the decision is final and may be appealed to district court. If the governing body does not accept the city attorney's recommendation, the appeal shall be heard as set forth in Chapter 14.

Exhibit A
Case #2021-3812

Julia Hosford Barnes

June 18, 2021

City of Santa Fe
Short Term Rental Division

Notice of Appeal of Short Term Rental Application: 322 Otero

Dear Sir or Madam:

I am writing to appeal a decision regarding our short-term rental application. While we have received no formal decision in writing, we were notified by email on June 9th that a decision was made on June 3. We have not been provided with a written decision to understand that grounds for the denial. However, because we were told by email that we have 15 days from the June 3rd date, we submit this request for an appeal process to start. We asked for an appeal by email but was told that this was not the proper way to request an appeal. We now submit this letter formally requesting an appeal.

We have had a short-term permit with the City since the beginning of your short-term rental program in 2016. We live in our primary residence at 322 Otero and rent it out occasionally with Airbnb. We are superhosts on Airbnb and have never had a complaint regarding our short-term rental. Airbnb has collected and submitted taxes for our guests since the inception of their program. We show that our guests have paid over $1000 a year for the rental of our home in lodger's taxes.

Last year, at the beginning of the pandemic, we were notified that we needed to reinstate our license. It had lapsed without us being aware of it. At that point, the pandemic had hit; the public health order did not allow us to rent to more than 1 person at a time due to the size restrictions. This effectively shut down our ability to rent out our home. Additionally, all businesses in Santa Fe had shut down and there was a lockdown. Our family situation further did not allow us to rent our home out. My husband had to move his office home; we were caregivers for our grandson; and my husband's 83 year-old-mother was at high risk for COVID. In order to comply with the COVID requirements of the City and State, we took our home off the short-term rental market since the beginning of January 2020 through February 2021.

In February 2021, we began the process to restart our home business through Airbnb. We submitted the application again to the City and opened the home back up on the Airbnb calendar. After more than 30 days passed, we were told that the City was not looking at new permits. Once they did agree to look at the application, they indicated to us for the first time

200 West De Vargas, Suite 2
Santa Fe, New Mexico
87501
Jhbnm1@gmail.com
(505) 982-3993 Santa Fe phone and
(505) 212-0604 fax (Albuquerque number)

that our permit was being considered "new" and therefore subject to the 50-foot density provisions as a "new" permit. In reality, we have been renting on the short-term rental market for over 5 years. Our use will not create any additional density of use. It will continue the same level of density of use that has existed for many years. However, the permit was not issued to us.

We believe that it would be reasonable to grant a waiver in this case or to consider our previous license as renewed following the pandemic rather than a new application. The renewal was delayed only because of COVID. The density in the neighborhood will not be impacted because we have rented our home out for the past 6 years without incident. Our home will be rented out fewer days in the short-term rental market than with monthly rentals. Providing us with a short-term rental permit will reduce the density of renters in the area. While we are not sure of the exact homes that may have short-term permits, there are only 4 possible homes within 50 feet of our property. We do not believe that any of them actively rent out units.

The actions of the City need to be reasonable and not arbitrary. The City has taken into consideration the impacts of COVID in the taxing division for business and in granting other relief due to COVID. It appears arbitrary that a waiver of the density requirement on our permit, if needed, would not be granted here. There are numerous ways to ensure that no one objects to the waiver or to set conditions to the application which has never been objected to in any manner in the last 6 years. The City is looking to allow other short-term rental projects in the area, such as the new application for 220 Otero which is fashioned as a "short-term rental hotel." We believe that there are two short-term rentals on either side of this structure. Treatment of our application differently from properties providing similar services is arbitrary.

We will not be in Santa Fe until July 11. We do not know Karl Sommer's schedule to represent us at an appeal. However, we ask that both his and our schedule be taken into consideration.

Respectfully,

Julia Hosford Barnes

SUBSCRIBED AND SWORN to before me this 18 day of June, by Julia Hosford Barnes.

My Commission Expires: 6/8/23.

Notary Public

Official Seal
MARSHALL C SHARP
Notary Public
State of New Mexico
My Comm. Expires 6/8/23

cc: Karl Sommer
Elias Isaacson
Jason Sena
Sally Paez

Exhibit B
Case #2021-3812

PRINZ, MICHAEL N.

From: ISAACSON, ELIAS S.
Sent: Wednesday, June 9, 2021 8:35 AM
To: jhbnm1@gmail.com; LAPAN HILL, JAREL
Cc: 'Karl H. Sommer'; SENA, JASON D.; PAEZ, SALLY A.; PRINZ, MICHAEL N.
Subject: RE: Short term rental application pending for 322 Otero

Hello Julia,

Your application was formally denied on June 3rd, 2020. If you wish, you can appeal this decision within 15 calendar days of that date. Please submit your appeal to me via Assistant City Attorney Michael Prinz (cc'd here for your convenience). Once we have it, I will direct you to the appropriate staff person so that you may pay your invoice for the appeal fee of $200.

Please feel free to contact me with any questions.

Regards,

ELIAS ISAACSON AIA | AICP | CBO | LEED AP
Planning and Land Use Director
City of Santa Fe Land Use Department
200 Lincoln Ave. | Santa Fe, NM 87504 | 505-955-6730
esisaacson@santafenm.gov
https://www.santafenm.gov/promise

For additional information and updates regarding remote operations:
Land Use Department: https://www.santafenm.gov/land_use
Historic Preservation: https://www.santafenm.gov/historic_preservation
Building Permits: https://www.santafenm.gov/building_permits

From: jhbnm1@gmail.com <jhbnm1@gmail.com>
Sent: Thursday, June 3, 2021 2:22 PM
To: LAPAN HILL, JAREL <jlapanhill@santafenm.gov>
Cc: 'Karl H. Sommer' <karls@sommerkarnes.com>; ISAACSON, ELIAS S. <esisaacson@santafenm.gov>; SENA, JASON D. <jdsena@santafenm.gov>; PAEZ, SALLY A. <sapaez@santafenm.gov>
Subject: Short term rental application pending for 322 Otero

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please see the attached letter. Thank you. Julia Barnes

Exhibit C
Case #2021-3812

PRINZ, MICHAEL N.

From: ISAACSON, ELIAS S.
Sent: Thursday, June 24, 2021 9:44 AM
To: PRINZ, MICHAEL N.
Cc: PAEZ, SALLY A.
Subject: RE: STR Permit Revocation Appeal - 322 Otero

Sending again with the proper address in subject line.....

From: ISAACSON, ELIAS S.
Sent: Thursday, June 24, 2021 9:12 AM
To: PRINZ, MICHAEL N. <mnprinz@santafenm.gov>
Cc: PAEZ, SALLY A. <sapaez@santafenm.gov>
Subject: RE: STR Permit Revocation Appeal - 521 1/2 San Francisco

Hello Mike,

I have reviewed the appeal for 322 Otero pursuant to Section 14-3.17(D)(6) and have determined that it does not conform to the requirements of the appeal ordinance because the appellant does not provide a valid basis for appeal under Section 14-3.17(A)(2). The appellant acknowledges that the permit application was denied on the basis of the newly enacted 50' proximity limitation, and has requested a waiver from this provision due to the unforeseen consequences of COVID 19. There are no existing code provisions in Chapter 14 that would allow for such a waiver to be granted.

Please let me know if you have any additional questions.

ELIAS ISAACSON AIA | AICP | CBO | LEED AP
Planning and Land Use Director
City of Santa Fe Land Use Department
200 Lincoln Ave. | Santa Fe, NM 87504 | 505-955-6730
esisaacson@santafenm.gov
https://www.santafenm.gov/promise

For additional information and updates regarding remote operations:
Land Use Department: https://www.santafenm.gov/land_use
Historic Preservation: https://www.santafenm.gov/historic_preservation
Building Permits: https://www.santafenm.gov/building_permits

CITY OF SANTA FE
AMENDMENT No. 2 TO
PROFESSIONAL SERVICES AGREEMENT (AHTF)
ITEM #19-0345

AMENDMENT No. 2 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated April 24, 2019 (the "Agreement"), between the City of Santa Fe (the "City") and Santa Fe Community Housing Trust (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 provide zero percent mortgage principal reduction funding to a minimum of seven (7) client households at or below 120% AMI that have completed homebuyer training and are certified as "mortgage ready".

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. 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 thousand dollars ($200,000) 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 three hundred fifty seven thousand, five hundred dollars ($357,500). **The total amount payable to the Contractor under this**

Agreement, including gross receipts tax, shall not exceed ($357,500). 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.

2. TERM.

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

3. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 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 MIHELCIC
CITY CLERK

CONTRACTOR:
SANTA FE COMMUNITY HOUSING TRUST

By: _____
EXECUTIVE DIRECTOR

CITY ATTORNEY'S OFFICE::
Marcos Martinez
Marcos Martinez (Jun 8, 2021 11:17 MDT)
_____
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

_____
MARY MCCOY
FINANCE DIRECTOR

2400223.510500_____ AJH
AJH
ORG/OBJ #

Amendment - Housing Trust

Final Audit Report 2021-06-09

Created:	2021-06-08
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAApPx3iHBuhlv2asmvjhdH83VKVGWeTHAT

"Amendment - Housing Trust" History

Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-06-08 - 7:51:18 PM GMT- IP address: 63.232.20.2

Document emailed to Daniel H Werwath (dwerwath@housingtrustonline.org) for signature
2021-06-08 - 7:51:36 PM GMT

Email viewed by Daniel H Werwath (dwerwath@housingtrustonline.org)
2021-06-08 - 9:07:48 PM GMT- IP address: 74.125.212.9

Document e-signed by Daniel H Werwath (dwerwath@housingtrustonline.org)
Signature Date: 2021-06-09 - 4:00:54 PM GMT - Time Source: server- IP address: 65.155.97.210

Agreement completed.
2021-06-09 - 4:00:54 PM GMT

Adobe Sign

ITEM # 19-0345

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 Community Housing Trust**, 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 provide the following services for the City:

A. Provide zero percent mortgage principal reduction funding to a minimum of eight (8) client households at or below 120% AMI that have completed homebuyer training and are certified as "mortgage ready".

B. Upon resale, liens will be repaid to the Contractor and revolved back into its down payment assistance program.

C. Contractor will report to the City on a quarterly basis the use of funds, including any income from prior allocations that was revolved as down payment assistance to new homebuyers.

D. Provide accurate and thorough recordkeeping copies on file for annual monitoring to include income verification, certification, and other supporting documentation for financial 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 at the rate of one hundred fifty-seven thousand five hundred dollars ($157,500), inclusive of applicable gross receipts tax.

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. The total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed ($157,500). 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.

E. 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.

F. 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, 2020 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. 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.

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. Invalid Term or Condition.

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

24. Enforcement of Agreement.

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

25. Notices. 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 Community Housing Trust
1111 Agua Fria St
Santa Fe, NM 87501

26. Authority.

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

27. 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.

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: 5/9/19

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK
CC mtg. 4/24/2019

APPROVED AS TO FORM:

3/1
ERIN K. MCSHERRY
CITY ATTORNEY

APPROVED:

MARY MCCOY
FINANCE DIRECTOR

22831.510500
Business Unit/Line Item

SANTA FE COMMUNTIY HOUSING TRUST:

JUSTIN ROBISON
EXECUTIVE DIRECTOR

CRS# 02-171649-008

Registration # 19-00063137

ITEM # 20-0303

CITY OF SANTA FE
AMENDMENT No. 1 TO
AFFORDABLE HOUSING TRUST FUND (AHTF)
PROFESSIONAL SERVICES CONTRACT

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES CONTRACT, dated April 24, 2019 (the "Agreement"), between the City of Santa Fe (the "City") and Santa Fe Community Housing Trust (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 provide zero percent mortgage principal reduction funding to a minimum of eight (8) client households at or below 120% AMI that have completed homebuyer training and are certified as "mortgage ready".

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

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, 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.

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 Contract as of the date signed by the City set forth below.

CITY OF SANTA FE:

ALAN M. WEBBER, MAYOR

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jun 4, 2020 15:49 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Mary McCoy

MARY MCCOY
FINANCE DIRECTOR

2402750.510500
ORG/OBJ

CONTRACTOR:
SANTA FE COMMUNITY HOUSING TRUST

Justin Robison (Jul 6, 2020 12:06 MDT)

JUSTIN ROBISON
EXECUTIVE DIRECTOR

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **3201056**

Contractor: **Santa Fe Community Housing Trust (SFCHT)**

Description: **Provide zero percent Principal Reduction funding to a minimum of 8 client households at or below 120% AMI**

Contract ☐ Agreement ☐ Lease / Rent ☐ Amendment ☉

Term Start Date: **07/01/2020** Term End Date: **06/30/2021**

☐ Approved by Council Date: _____

Contract / Lease: **Amendment**

Amendment # **2** to the Original Contract / Lease # **19-0345;20-0303**

Increase/(Decrease) Amount $ **200,000 (for a total of $357,500)**

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 - $157,500
Amend #1 - Extending term to 06/30/2021
Amend #2 - Increasing compensation by $200,000 for a total of $357,500; extending term to 06/30/2022

3. **Procurement History:** **Covid-19 funds**

Fran Delaway (Jul 16, 2021 9:09 MDT) Jul 16, 2021

Purchasing Officer Review: Date:

Comment & Exceptions: Initiated from RFP #19/24/P affordable housing. Amendment to increase & extend term

4. **Funding Source:** _____ **Org / Object:** **2400223.510500**

Andy Hopkins (Jul 15, 2021 12:04 MDT) Jul 15, 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: Santa Fe Community Housing Trust

Procurement Title: AHTF RFP 19/24/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

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
Fran Delaway (Jul 16, 2021 19:09 MDT)	Chief Procurement Officer	Jul 16, 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.

SANTFEC-02 JSANCHEZ3

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 4/23/2021

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 License # 0757776 HUB International Insurance Services (SOW) 2905 Rodeo Park Drive East Building 6, Suite 100 Santa Fe, NM 87505	CONTACT NAME: Johanna Sanchez PHONE (A/C, No, Ext): (505) 992-1849 FAX (A/C, No): (866) 621-0427 E-MAIL ADDRESS: johanna.sanchez@hubinternational.com
INSURED Santa Fe Community Housing Trust and Tierra Contenta P O Box 713 Santa Fe, NM 87504	INSURER(S) AFFORDING COVERAGE / NAIC # INSURER A : Central Mutual Insurance Company 20230 INSURER B : New Mexico Mutual Casualty Company 40627 INSURER C : Philadelphia Indemnity Insurance Company 18058 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	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:	X		CLP8889277	1/1/2021	1/1/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY			CLP8889277	1/1/2021	1/1/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N: N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		0099999103	6/27/2021	6/27/2022	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
A	Employee Theft			CLP8889277	1/1/2021	1/1/2022	$1,000 Ded/Limit	25,000
C	Directors & Officers			PHSD1596937	1/1/2021	1/1/2022		1,000,000

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

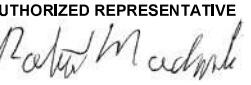
CERTIFICATE HOLDER

City of Santa Fe
PO 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



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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

Re. Amendment #2 to Housing Trust Mortgage Principal Reduction

---

ACTION REQUESTED:
Approve amendment #2 to the Housing Trust's contract for Mortgage Principal Reduction Assistance awarded through RFP# 19/24/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 $200,000 for a total contract amount of $357,500.

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 of residents to cover their housing costs. With home prices in the city limits increasing by

almost 20% over the last 12 months, partially fueled by pandemic-inspired supply chain issues, a historically low inventory of available homes for sale, and lifestyle changes driving the market, homebuyers are particularly challenged to find homes they can afford.

The Housing Trust's program works to provide loans that are no-interest, no-payment due until the home is sold or transferred to "buy down" the amount of mortgage required to purchase the home. A smaller mortgage translates into a lower monthly payment and makes the home more affordable for the assisted household. The limit is $30,000 per transaction and households cannot earn more than 120% of the area median income (AMI) to qualify. An additional seven to eight homebuyers will be assisted with these funds.

Council_Packet_Memo_AHTF_Housing Trust DPA

Final Audit Report 2021-07-07

Created:	2021-07-07
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAA223mp0M_n_OVkKN2hUBw-U65lyQdgM2X

"Council_Packet_Memo_AHTF_Housing Trust DPA" History

Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-07-07 - 5:30:03 PM GMT- IP address: 63.232.20.2

Document emailed to rich brown (rdbrown@santafenm.gov) for signature
2021-07-07 - 5:30:19 PM GMT

Email viewed by rich brown (rdbrown@santafenm.gov)
2021-07-07 - 8:16:01 PM GMT- IP address: 71.228.116.134

Document e-signed by rich brown (rdbrown@santafenm.gov)
Signature Date: 2021-07-07 - 8:16:24 PM GMT - Time Source: server- IP address: 71.228.116.134

Agreement completed.
2021-07-07 - 8:16:24 PM GMT

CITY OF SANTA FE

"REQUEST FOR PROPOSALS"

AFFORDABLE HOUSING TRUST FUND (AHTF)

RFP #'19/24/P

PROPOSAL DUE:

February 4, 2019
2:00 P.M.
PURCHASING OFFICE
CITY OF SANTA FE
2651 SIRINGO ROAD
BUILDING "H" SANTA FE,
NEW MEXICO 87505

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Attachments:

1. Sample Matching and Leveraging
2. 2018 AMI Table
3. Sample Professional Services Agreement
4. Non-Disclosure and Conflict of Interest Statement
5. Campaign Contribution Disclosure Statement
6. Minimum Wage Ordinance

January 11, 2018

Dear AHTF Applicant:

The City of Santa Fe and the Office of Affordable Housing appreciate your services to help provide affordable housing to benefit the low to moderate-income residents of our city. We look forward to receiving your proposal.

All agencies requesting AHTF funding for Fiscal Year 2019-2020 must be certain to review and comply with all requirements of the RFP packet. Any requirements not complied with could delay or disqualify your agency from funding consideration. **Submit an original and one copy of all submittal requirements, and eight (8) copies of your application without the submittal requirements.**

You may pick up a copy of this RFP at the Purchasing Office located at 2651 Siringo Road, Building H, anytime beginning January 11, 2019. The Purchasing Office is closed from 12:00 noon to 1:00 p.m. If you have any questions or need assistance with the RFP packet, please contact Purchasing Division at sarodriguez@santafenm.gov .

Thank you,

City of Santa Fe Office of Affordable Housing

REQUEST FOR PROPOSALS

PROPOSAL NUMBER '19/24/P

Proposals will be received by the City of Santa Fe and shall be delivered to the City of Santa Fe Purchasing Office, 2651 Siringo Road Building "H" Santa Fe, New Mexico 87505 **until 2:00 P.M. local prevailing time, February 4, 2019.** Any proposal received after this deadline will not be considered. This proposal is for the purpose of procuring professional services for the following:

Affordable Housing Trust Fund FUNDING

The proponent's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the proposal throughout, and they will be deemed to be included in the proposal document the same as though herein written out in full.

The City of Santa Fe is an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin. The successful proponent will be required to conform to the Equal Opportunity Employment regulations.

Proposals may be held for sixty (60) days subject to action by the City. The City reserves the right to reject any of all proposals in part or in whole. Proposal packets are available by contacting: Jessica Chavez , City of Santa Fe, Purchasing Office, 2651 Siringo Road, Building "H" Santa Fe, New Mexico, 87505, (505) 955-5701.

Shirley Rodriguez

Shirley Rodriguez, Purchasing Officer

Received by the Santa Fe New Mexican Newspaper on: January 8, 2019
To be published on: January 11, 2019, January 18, 2019

Received by the Albuquerque Journal Newspaper on: January 8, 2019
To be published on: January 11, 2019, January 18, 2018

PROPOSAL SCHEDULE

RFP # '19/24/P

1.	Advertisement	January 11, 2019 January 18, 2019
2.	Issuance of RFP'S:	January 11, 2018
3.	Mandatory Technical Assistance Training: 1:30 to 3:00 p.m. 500 Market Station, Suite 200 Santa Fe, NM 87501	January 22, 2019
4.	Receipt of proposals:	February 4, 2019, at 2:00 p.m. local prevailing time. Purchasing Office 2651 Siringo Road Bldg., "H" Santa Fe, New Mexico 87505 (505) 955-5711
5.	Staff Evaluation of proposals:	February 5-February 8, 2019
6.	Interviews: Presentation to Community Development Commission and Grant Award Meeting:	February 20, 2019
7.	Request to Publish for Public Hearing at City Council:	March 13, 2019
8.	Recommendation of award to Finance Committee:	April 1, 2019
9.	Recommendation of award to City Council and Public Hearing:	April 24, 2019

DATES OF CONSIDERATION BY FINANCE COMMITTEE AND CITY COUNCIL ARE TENTATIVE AND SUBJECT TO CHANGE WITHOUT NOTICE.

INFORMATION FOR PROPONENTS

1. RECEIPT OF PROPOSALS

The City of Santa Fe (herein called "City"), invites firms to submit one electronic file and two copies of the proposal. Proposals will be received by the Purchasing Office, until 2:00 p.m. local prevailing time, February 4, 2019.

The packets shall be submitted and addressed to the Purchasing Office, at 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico 87505. No late proposals will be accepted whether hand delivered, mailed or special delivery. Do not rely on "overnight delivery" without including some lead-time. "Overnight delivery" will be determined to be non-responsive if delivered late, no matter whose fault it was. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope should clearly indicate the following information:

Proposal number: '19/24/P
Title of the proposal: **AFFORDABLE HOUSING TRUST FUND (AHTF)**

Name and address of the proponent:

Any proposal received after the time and date specified shall not be considered. No proposing firm may withdraw a proposal within 60 days after the actual date of the opening thereof.

2. PREPARATION OF PROPOSAL

Vendors shall comply with all instructions and provide all the information requested. Failure to do so may disqualify your proposal. All information shall be given in ink or typewritten. Any corrections shall be initialed in ink by the person signing the proposal.

This request for proposal may be canceled or any and all proposals may be rejected in whole or in part, whenever the City of Santa Fe determines it is in the best interest of the city.

3. ADDENDA AND INTERPRETATIONS

No oral interpretation of the meaning of any section of the proposal documents will be binding. Oral communications are permitted in order to make an assessment of the need for an addendum. Any questions concerning the proposal must be addressed prior to the date set for receipt of proposal.

Every request for such interpretation should be in writing addressed to, Purchasing Officer, 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico, 87505 and to be given

consideration must be received at least (5) days prior to the date set for the receiving of proposals.

Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the RFP, which if issued, will be delivered to all prospective firms not later than three days prior to the date fixed for the receipt of the proposals. Failure of any proposing firm to receive any such addenda or interpretations shall not relieve such firm from any obligation under their proposal as submitted. All addenda so issued shall become part of the contract documents.

The City reserves the right to not comply with these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of the City of Santa Fe.

4. LAWS AND REGULATIONS

The proposing firm's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the contract throughout. They will be deemed to be included in the contract the same as though herein written out in full.

5. METHOD OF AWARD

The proposal is to be awarded based on qualified proposals as per the enclosed rating system and at the discretion and consideration of the governing body of the City of Santa Fe. The selection committee may interview the top three rated proponents; however, contracts may be awarded without such interviews. At its discretion the city reserves the right to alter the membership or size of the selection committee. The City reserves the right to change the number of firms interviewed. The City may extend the purchase of goods under the RFP at the option of the City for a period of four (4) years from the date of the executed purchase order, subject to the agreement of the offeror.

6. COMPLIANCE WITH CITY'S MINIMUM WAGE RATE ORDINANCE (LIVING WAGE ORDINANCE)

A copy of the City of Santa Fe Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003 is attached. The proponent or bidder will be required to submit the proposal or bid such that it complies with the ordinance to the extent applicable. The recommended Contractor will be required to comply with the ordinance to the extent applicable, as well as any subsequent changes to the Ordinance throughout the term of this contract.

7. CITY LOCAL PREFERENCE

A state of New Mexico Taxation and Revenue Department Resident Business Certification of eligibility must be attached. If an offer is received without a copy of the appropriate State of New Mexico Taxation and Revenue Department issued Resident Business Certificate, the preference will not be applied.

The City shall apply the following definitions and preferences:

1) "resident business" means a business that has a valid resident business certificate issued by the taxation and revenue department pursuant to Section 13-1-22, and which shows that the resident business resides within the Santa Fe municipal limits.

2) When the city makes a purchase using a formal bid process, the public body shall deem a bid submitted by a resident business to be 3% percent lower than the bid actually submitted. In addition, if the bid includes subcontractors who are also resident businesses, the public body shall deem a bid submitted by a resident business with resident business subcontractors to be 6% lower than the bid actually submitted. If a non-resident business hires all resident business subcontractors, the public body shall deem the bid to be 3% percent lower than the bid actually submitted.

3) When the city makes a purchase using a formal request for proposals process, not including contracts awarded on a point-based system, the city shall award an additional:

   (a) three percent or the total weight of all the factors used in evaluating the proposals to a resident business; and

   (b) three percent or the total weight of all the factors used in evaluating the used in evaluating the proposals to a business with all resident business subcontractors.

4) When the city makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the city shall award additional points equivalent to:

(1) three percent of the total possible points to a resident business: and

(2) three percent of the total possible points to a business with all resident business subcontractors.

5) The maximum available local preference shall be 6%.

6) Competitive sealed proposals valued in excess of one million dollars ($1,000,000.00)

(1) If the bid or proposal includes to subcontractors who are also resident business, the public body shall deem a bid or proposal submitted by a resident business to be six percent (6%) lower than the bid actually submitted, if and only if at least fifty percent (50%) of the subcontracted services go to subcontractors who are resident businesses.

(2) If a non-resident business hires resident business subcontractors, the public body shall deem the bid or proposal to be three percent (3%) lower than the bid actually submitted, if and only at least fifty percent (50%) of the subcontracted services go to subcontractors who are resident businesses."

8. PROTESTS AND RESOLUTIONS PROCEDURES

Any proponent, offeror, or contractor who is aggrieved in connection with a procurement may protest to the Purchasing Officer. The protest must be in writing and submitted within fifteen (15) days and requirements regarding protest and resolution of protests are available from the Purchasing Office upon request.

SPECIAL CONDITIONS

1. **GENERAL**
When the City's Purchasing Officer issues a purchase order document in response to the vendor's bid, a binding contract is created.

2. **ASSIGNMENT**
Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the vendor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the vendor from its obligations and liabilities under this order.

3. **VARIATION IN SCOPE OF WORK**
No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the city or if such variation has been caused by documented conditions beyond the vendor's control, and then only to the extent, as specified elsewhere in the contract documents.

4. **DISCOUNTS**
Any applicable discounts should be included in computing the bid submitted. Every effort will be made to process payments within 30 days of satisfactory receipt of goods or services. The City Purchasing Officer shall be the final determination of satisfactory receipt of goods or services.

5. **TAXES**
The price shall include all taxes applicable. The city is exempt from gross receipts tax on tangible personal property. A tax exempt certificate will be issued upon written request.

6. **INVOICING**
(A) The vendor's invoice shall be submitted in duplicate and shall contain the following information: invoice number and date, description of the supplies or services, quantities, unit prices and extended totals. Separate invoices shall be submitted for each and every complete order.

(B) Invoice must be submitted to ACCOUNTS PAYABLE and NOT THE CITY PURCHASING AGENT.

7. **METHOD OF PAYMENT**
Every effort will be made to process payments within 30 days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby

contracted or as otherwise specified in the compensation portion of the contract documents.

8. **DEFAULT**

The City reserves the right to cancel all or any part of this order without cost to the City if the vendor fails to meet the provisions for this order, 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 cost if failure to perform the order arises out of causes beyond the control and with the fault or negligence of the Vendor and these causes have been made known to the City of Santa Fe in written form within five working days of the vendor becoming aware of a cause which may create any delay; such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the 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 suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. The rights and remedies of the city are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

9. **NON-DISCRIMINATION**

By signing this City of Santa Fe bid or proposal, the vendor agrees to comply with the Presidents Executive Order No. 11246 as amended.

10. **NON-COLLUSION**

In signing this bid or proposal, the vendor certifies they have not, either directly or indirectly, entered into action in restraint of full competition in connection with this bid or proposal submittal to the City of Santa Fe.

SCOPE OF SERVICES
'19/24/P
GENERAL INFORMATION on Affordable Housing Trust Fund

The primary purpose of the fund is to increase and preserve the supply of affordable housing for low to moderate income residents and local employees. To maximize the limited resources available to support local affordable housing efforts, funds repaid from revenue generating activities (repayment of liens, etc.), including principal and interest, will be reallocated to the AHTF and used to support future affordable housing programs and projects in the City of Santa Fe or properties which will be annexed into the City within 6 months of application.

The AHTF is allocated in conjunction with the City's Community Development Block Grant (CDBG) funding cycle. Funds are disbursed in alignment with the City's fiscal year: **July 1 2019 to June 30, 2020.** This allows applicants to leverage funding sources and coordinate programming as well as helping the City to maximize the efficiency in decision making.
A total allocation up to four hundred thousand dollars ($475,000) is available for Fiscal Year 2019-2020. Of this amount, at least 50% ($237,500) must be allocated to projects that support homeownership per the AHTF Ordinance and Administrative procedures. The remainder will be allocated to projects that address the priorities described on the following pages. All uses of funds must be consistent with the NM Affordable Housing Act.

Eligible Applicants
Funding is available to developers and sponsors of affordable housing, including partnerships, corporations, limited liability companies, joint ventures, public/private partnerships and non-profit organizations that are organized under state, local, or tribal laws and can provide proof of such organization. Eligible applicant must have proven financial capacity and organizational experience to carry out the activities described in the proposal submitted to receive an AHTF allocation.
More specifically in accordance with the MFA Affordable Housing Act Rules, the following individuals or entities ("Applicants") are eligible under the Act to apply for Affordable Housing Funds or a Housing Assistance Grant to provide housing or related services to persons of low-to-moderate income in Santa Fe:

A. All individuals who are qualified to receive assistance pursuant to the Act and these Rules.
B All regional housing authorities, tribal governments, tribal housing agencies, and any governmental housing agencies;
C. All for-profit organizations, including any corporation, limited liability company, partnership, joint venture, syndicate, or association; or,
D. Nonprofit organizations are eligible to apply if the following requirements are met:

(1) A primary mission of the nonprofit organization must be to provide housing or housing-related services to persons of low-to-moderate income;

(2) The non-profit organization must have received its 501(c) (3) designation prior to submitting an application.

(3) The non-profit organization must have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual.

E. For any non-individual applicant to be eligible, it must also:
(1) Be organized under state, local, or tribal laws and can provide proof of such organization;

(2) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles or has designated an entity that will maintain such an accounting system consistent with generally accepted accounting principles.

(3) Have among its purposes significant activities related to providing housing or services to persons of low-to-moderate income; and

(4) Evidence or certification that the applicant has no significant outstanding or unresolved monitoring findings from the City of Santa Fe, the MFA, or its most recent independent financial audit, or if it has any such findings, it has a certified letter from the City of Santa Fe, the MFA, or auditor stating that the findings are in the process of being resolved.

SUBMITTAL REQUIREMENTS
'19/24/P

In accordance with the New Mexico Affordable Housing Act, individual Applicants and all other Applicants wishing to apply for a Housing Assistance Grant or Affordable Housing Trust Funds are also required to submit to the City of Santa the following, as applicable:

A. One original Application, together with all required attachments as detailed in this RFP packet;
B. A proposal describing the scope of the Affordable Housing Project proposed by the Applicant and for which the Applicant is applying for funds or a grant under the Act, and which describes the type and/or amount of assistance which the Applicant proposes to provide to Persons of Low or Moderate Income;
C. For non-profit organizations, proof of 501(c) (3) tax status;
D. A proposed budget for the Affordable Housing Project for which the Applicant is applying for Affordable Housing Funds or for a Housing Assistance Grant;
E. Most recent independent financial audit;
F. Evidence or a certification as may be allowed by the City of Santa Fe that the Applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has a designated entity that will maintain such an accounting system consistent with generally accepted accounting principles;

G. Evidence or certification that the Applicant has no significant outstanding or unresolved monitoring findings from the City of Santa Fe, the MFA, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from the City of Santa Fe, the MFA, or its most recent independent financial audit, it has a certified letter from the City of Santa Fe, the MFA, or the auditor stating that the findings are in the process of being resolved.

H. Organizational chart, including job titles and qualifications for the Applicant's employees or as otherwise may be required by the City of Santa Fe and/or the MFA in its discretion. Job descriptions may be submitted as appropriate;

I. Documentation that the Applicant is duly organized in accordance with State or local law and is in good standing with any state authorities such as the Public Regulation Commission (e.g. Articles, Bylaws, and Certificate of Good Standing for a Corporation; Articles, Operating Agreement, and Certificate of Good Standing for a Limited Liability Company; partnership agreement and certificate of limited partnership for a partnership);

J. The application must clearly evidence the need for the subsidy, that the value of the housing assistance grant reduces the housing costs to persons of low or moderate income, and that there is or will be a direct benefit from the project proposed by the Applicant to the community and/or to the purported beneficiaries of the project, consistent with the provisions of the Act;

K. The City of Santa Fe will require that the Applicant provide proof of matching funds, leveraged funds, and/or in-kind donations to the AHTF proposal in connection with the Application for funds under the Act. Nothing contained herein shall prevent or preclude an Applicant from matching or using local, private, or federal funds in connection with a specific Housing Assistance Grant or a grant of Affordable Housing Funds under the Act;

L. For Applicants who are submitting Applications in connection with a **Multi-Family Housing Project**, the following additional information shall also be required to be submitted by the Applicant to the Governmental Entity (City of Santa Fe) and/or the MFA:

(1) A verified certificate that, among other things:

a. Identifies every Multi-Family Housing Program, including every assisted or insured project of HUD, RHS, FHA and any other state or local government housing finance agency in which such Applicant has been or is a principal;

b. Except as shown on such certificates, states that:

i. No mortgage on a project listed on such certificate has ever been in default, assigned to the United States Government or

foreclosed, nor has any mortgage relief by the mortgagee been given;

ii. There has not been a suspension or termination of payments under any HUD assistance contract in which the Applicant has had a legal or beneficial interest;

iii. Such applicant has not been suspended, debarred or otherwise restricted by any department or agency of the federal government or any state government from doing business with such department or agency because of misconduct or alleged misconduct; and

iv. The Applicant has not defaulted on an obligation covered by a surety or performance bond.

Note: If such Applicant cannot certify to each of the above, such Applicant shall submit a signed statement to explain the facts and circumstances which such Applicant believes will explain the lack of certification. The Governmental Entity and/or the MFA may then determine if such Applicant is or is not qualified.

(2) The experience of the Applicant in developing financing and managing Multiple-Family Housing Projects.

(3) Whether the Applicant has been found by the United States Equal Employment Opportunity Commission or the New Mexico Human Rights Commission to be in noncompliance with any applicable civil rights laws.

M. If the **Applicant is a Mortgage Lender**, the City of Santa Fe shall consider, among other things:

(1) The financial condition of the Applicant;

(2) The terms and conditions of any loans to be made;

(3) The aggregate principal balances of any loans to be made;

(4) The City of Santa Fe's assessment of the ability of the Applicant or its designated servicer to act as originator and servicer of Mortgage Loans for any Multi-family Housing Programs or other programs to be financed; and

(5) Previous participation by the Applicant in the MFA's programs and JUD, FHA, or RHS programs.

N. All Applications shall contain a verification signed by the Applicant before a notary public that the information provided, upon penalty of perjury, is true and correct to the best of the Applicant's information, knowledge, and behalf.

Certification

The MFA Affordable Housing Act Rules require the City of Santa Fe to certify to MFA that the applicant is a qualifying grantee, prior to approving an award, based on the Applicant Eligibility and Application requirements listed in the sections above. Specifically the City will certify that it has completed its review of the Application;

determined that the application is complete; determined that the requirements listed in Applicant Eligibility and Application sections of this document are met; and determined that the Applicant is a Qualifying Grantee. Qualifying Grantee is defined by the MFA Housing Act Rules as:

A. An individual who is qualified to receive assistance pursuant to the Act and is approved by the City of Santa Fe; and

B. A governmental housing agency, regional housing authority, tribal housing agency, corporation, limited liability company, partnership, joint venture, syndicate, association or a nonprofit organization that:

(1) Is organized under State, local, or tribal laws and can provide proof of such organization;

(2) If a non-profit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

(3) Is approved by the City of Santa Fe.

Affordability Period Defined

If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds which have been awarded, loaned, donated, or otherwise conveyed to the Qualifying Grantee is from $1 to $14,999, then the Affordability Period shall be not less than five (5) years. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is from $15,000 up to and including $40,000, then the Affordability Period shall be not less than ten (10) years. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is from $40,000 up to and including $100,000, then the Affordability Period shall be not less than fifteen (15) years. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is greater than $100,000, then the Affordability Period shall be not less than twenty (20) years. The City of Santa Fe, in its discretion, may increase the Affordability Period in any contract, note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the City of Santa may enter into with any Qualifying Grantee or beneficiary of the Affordable Housing Funds or of the Housing Assistance Grant. Notwithstanding the foregoing, in the MFA and/or any other similar conveyances where an Affordability Period is not practical, shall not be subject to the Affordability Period requirements of this Section; but nevertheless, any such conveyances may be subject to recapture on some pro-rated basis as determined by the City of Santa Fe.

Additional Requirements

Upon acceptance, the following additional requirements shall apply to any Applicant, who is a Qualifying Grantee:

A. Contractual Requirements. The Qualifying Grantee shall enter into one or more contracts with the City of Santa Fe, which contract(s) shall be consistent with the Act and subject to the review of the MFA, in its discretion, and which contract(s) shall include remedies and default provisions in the event of the unsatisfactory performance by the Qualifying Grantee;

B. Security Provisions; Collateral Requirements. In accordance with the Act and these Rules, the City of Santa Fe shall require the Qualifying Grantee to execute documents, which will provide adequate security against the loss of public funds or property in the event the Qualifying Grantee abandons or fails to complete the Affordable Housing Project, and which shall further provide, as may be permitted by law, for the recovery of any attorneys' fees and costs which the Governmental Entity and/or the MFA may incur in enforcing the provisions of these Rules, the Act and/or any agreement entered into by the City of Santa Fe and the Qualifying Grantee, and which documents may include, but are not limited to the following: note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the City of Santa Fe may require in order to allow for any funds which the Qualifying Grantee may receive under a Housing Assistance Grant to be adequately secured and to allow the City of Santa Fe to ensure that such funds shall be utilized by the Qualifying Grantee in accordance with the Act and these Rules;

C. Performance Schedule and Criteria. The Qualifying Grantee shall be required to abide by a reasonable performance schedule and performance criteria which the City of Santa Fe in its discretion, may establish;

D. Examination of Books and Records. The Qualifying Grantee shall submit to and the City of Santa Fe shall cause to be made such examinations of the books and records of each Qualifying Grantee as the City of Santa Fe deems necessary or appropriate to determine the Qualifying Grantee's compliance with the terms of the Act, these Rules and any contracts between the Qualifying Grantee and the City of Santa Fe. The City of Santa Fe may require each Qualifying Grantee to pay the costs of any such examination;

E. Cost Reimbursement Contracts:

(1) Cost Reimbursements. Payment to a Qualifying Grantee under cost reimbursable contract provisions shall be made upon the City of Santa Fe's receipt from the Qualifying Grantee of certified and documented invoices for actual expenditures allowable under the terms of any agreement between the Qualifying Grantee and the City of Santa Fe.

(2) Cost Reimbursements for Units of Service. Payment under any unit cost contract provisions shall be made upon the City of Santa Fe's receipt from the Qualifying Grantee of a certified and documented invoice showing the number of units of service provided during the billing period.

(3) Rate at which Costs Incurred. Under unit cost or cost reimbursable contracts, it is anticipated that costs will be incurred by the Qualifying Grantee at an approximate level rate during the term of any agreement between the Qualifying Grantee and the City of Santa Fe. If the City of Santa Fe determines that the Qualifying Grantee is underspending or overspending, then the City of Santa Fe may reduce the budget and/or exercise such other budgetary fiscal controls it deems appropriate.

(4) Invoices. Qualifying Grantees shall not submit invoices more than once a month, unless written approval is obtained in advance from the City of Santa Fe.

Failure to submit invoices within twenty (20) days of the [illegible] which payment is sought may result in the non-availability of funds for reimbursement.

(5) No Dual Application of Costs. The Qualifying Grantee shall certify that any direct or indirect costs claimed by the Qualifying Grantee will not be allocable to or included as a cost of any other program, project, contract, or activity operated by the Qualifying Grantee and which has not been approved by the City of Santa Fe in advance in writing.

(6) Prohibition of Substitution of Funds. Any Affordable Housing Funds or other amounts received by Qualifying Grantee may not be used by Qualifying Grantee to replace other amounts made available or designated by State or local governments through appropriations for use for the purposes of the Act.

(7) Cost Allocation. If required by the City of Santa Fe, the Qualifying Grantee shall clearly identify and distribute all costs incurred pertaining to the Affordable Housing Project by a methodology and cost allocation plan at times and in a manner prescribed by, or acceptable to the Governmental Entity and/or the MFA.

F. Additional Information. Qualifying Grantees shall provide the City of Santa Fe with any and all information which the City of Santa Fe reasonably may require in order for it to confirm that the Qualifying Grantees continue to satisfy the requirements of the Act and these Rules throughout the term of any contract and/or any Affordability Period (defined below) or otherwise as may be required by the City of Santa Fe in its discretion. At a minimum, on an annual basis, the City of Santa Fe shall certify to the MFA in writing that the Qualifying Grantee is still in compliance with the Act and these Rules.

RFP Technical Assistance Training:

RFP training is mandatory and will be conducted on **Tuesday, January 22, 2019, 1:30-3:00 p.m.** Applicants will be required to sign in. All questions following the training will be directed to the Purchasing Division and all attendees will be notified of the questions asked via email.

How To Apply for AHTF Funding in the 2019-2020 Program Year:
All agencies requesting City funding for Fiscal Year 2019-2020 must be certain to review and comply with all requirements of the RFP packet as described on page 2 of this document. Any requirements not complied with could delay or disqualify your agency from funding consideration. **Submit an original and one copy with all submittal requirements and eight (8) copies of your proposal without the submittal requirements** by **Monday, February 4, 2019 by 2:00 p.m.** They may be mailed or hand delivered to:

City of Santa Fe Purchasing Office
2651 Siringo Road Bldg., "H"
Santa Fe, New Mexico
87505
(505) 955-5711

Applicants will have the opportunity to make a presentation to the Community Development Commission (CDC) on Wednesday February 20, 2019. The order of the presentations is random and the staff planner will schedule each approved applicant an allotted 15 minute time slot to present each application. The presentations will take place at the City of Santa Fe Market Street Office, Roundhouse Room, 500 Market Street, Suite 200. At this meeting, the CDC will decide and approve the projects and allocation amounts.

AHTF GRANT APPLICATION CHECKLIST:

_____One original Application, together with all required attachments as detailed on page 25 in this RFP packet;

_____A proposal describing the scope of the Affordable Housing Project proposed by the Applicant and for which the Applicant is applying for funds or a grant under the Act, and which describes the type and/or amount of assistance which the Applicant proposes to provide to Persons of Low or Moderate Income;

_____For non-profit organizations, proof of 501(c) (3) tax status;

_____A proposed budget for the Affordable Housing Project for which the Applicant is applying for Affordable Housing Funds or for a Housing Assistance Grant;

_____Most recent independent financial audit;

_____Evidence or a certification as may be allowed by the City of Santa Fe that the Applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has a designated entity that will maintain such an accounting system consistent with generally accepted accounting principles;

_____Evidence or certification that the Applicant has no significant outstanding or unresolved monitoring findings from the City of Santa Fe, the MFA, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from the City of Santa Fe, the MFA, or its most recent independent financial audit, it has a certified letter from the City of Santa Fe, the MFA, or the auditor stating that the findings are in the process of being resolved.

_____Organizational chart, including job titles and qualifications for the Applicant's employees or as otherwise may be required by the City of Santa Fe and/or the MFA in its discretion. Job descriptions may be submitted as appropriate;

_____Documentation that the Applicant is duly organized in accordance with State or local law and is in good standing with any state authorities such as the Public Regulation Commission (e.g. Articles, Bylaws, and Certificate of Good Standing for a Corporation; Articles, Operating Agreement, and Certificate of Good Standing for a Limited Liability Company; partnership agreement and certificate of limited partnership for a partnership);

_____The application must clearly evidence the need for the subsidy, that the value of the housing assistance grant reduces the housing costs to persons of low or moderate income, and that there is or will be a direct benefit from the project proposed by the Applicant to the community and/or to the purported beneficiaries of the project, consistent with the provisions of the Act;

_____The City of Santa Fe will require that the Applicant provide proof of matching funds, leveraged funds, and/or in-kind donations to the AHTF proposal in connection with the Application for funds under the Act. Nothing contained herein shall prevent or preclude an Applicant from matching or using local, private, or federal funds in connection with a specific Housing Assistance Grant or a grant of Affordable Housing Funds under the Act;

_____For Applicants who are submitting Applications in connection with a **Multi-Family Housing Project**, the following additional information shall also be required to be submitted by the Applicant to the Governmental Entity (City of Santa Fe) and/or the MFA:

(1) _____A verified certificate that, among other things:

c. Identifies every Multi-Family Housing Program, including every assisted or insured project of HUD, RHS, FHA and any other state or local government housing finance agency in which such Applicant has been or is a principal;

d. Except as shown on such certificates, states that:

v. No mortgage on a project listed on such certificate has ever been in default, assigned to the United States Government or foreclosed, nor has any mortgage relief by the mortgagee been given;

vi. There has not been a suspension or termination of payments under any HUD assistance contract in which the Applicant has had a legal or beneficial interest;

vii. Such applicant has not been suspended, debarred or otherwise restricted by any department or agency of the federal government or any state government from doing business with such department or agency because of misconduct or alleged misconduct; and

viii. The Applicant has not defaulted on an obligation covered by a surety or performance bond.

Note: If such Applicant cannot certify to each of the above, such Applicant shall submit a signed statement to explain the facts and circumstances which such Applicant believes will explain the lack of certification. The Governmental Entity and/or the MFA may then determine if such Applicant is or is not qualified.

(4) _____The experience of the Applicant in developing financing and managing Multiple-Family Housing Projects.

(5) _____Whether the Applicant has been found by the United States Equal Employment Opportunity Commission or the New Mexico Human Rights Commission to be in noncompliance with any applicable civil rights laws.

2019-2020 AHTF APPLICATION

General Information

Applicant Name(s): _____

Address: _____

_____

Federal Tax ID #:_____

City Business Reg. #:_____

CRS#: _____

City/State/Zip Code:_____

Telephone: _____

Project Contact: _____

Email Address: _____

Amount of Allocation Requested: $_____

Type of Applicant:

☐ Partnership ☐ Corporation ☐ Non-Profit* ☐ Other

* Non-profit must provide proof of non-profit status. This proof includes submittal of current registration as charitable organization with the NM Attorney General's Office, covering the most recent Fiscal Year, or proof of exemption. Information can be obtained online at https://secure.nmag.gov/coros/. Verification should be in the form of the first page of the "NM Charitable Organization Statement."

Project Name: _____

Project Address (if applicable):_____

City/State/Zip Code:_____

Priority Project

Select one of the categories your project falls under:

☐ **Rental Vouchers** - Provide supported rental vouchers (includes access to counseling, health services, case management, and other services) to renters earning less than 50%AMI;

☐ **Emergency Shelters including permanent supported shelter housing** - Development, construction, and preservation of shelter/permanent supported rental facilities, including infrastructure improvements;

☐ **Provision of Rental Units and Support Services for Low Income (up to 50% AMI) and Extremely Low Income Renters (less than 30% AMI)** - Acquisition, conversion, preservation and new construction of tiered income multi-family rental properties; including infrastructure or one-time emergency rental assistance;

☐ **Down payment Assistance/Increase of Ownership Opportunities** - Down payment assistance in the form of soft-second mortgage that "buys down" principal amount of loan to lower monthly payment; Acquisition, conversion, preservation and new construction of homeownership housing;

☐ **Homeowner Rehabilitation Programs, Energy Efficiency Upgrades, Accessibility Retrofits** - Aacquisition, conversion, and preservation of affordable housing that accommodates needs of current householders.

Project Description:

Please provide a narrative of your project. Specifically who will be served, how the services will address the improvement of systemic root challenges in the community, anticipated outcomes, etc. (If needed continue on a separate sheet)

1. Funding:

How will the AHTF allocation be used for this project? What additional funding sources are secured or will be secured upon receipt of allocation? The City of Santa Fe requires financing from other sources to be committed prior to the release of funds from the AHTF.

Leveraging/Matching Requirement:

$3 to $1 Leveraging: for every $1 allocated through the AHTF, at least $3 from other sources will be expected (leveraged funds can include long term mortgages, other sources of grants, owner equity, proceeds from Low Income Housing Tax Credits, or the current value of land); organizational resources should be used to provide $1 of match (See Exhibit A for example)
Briefly Describe:

Project Budget and/or Development Pro-Forma: demonstrate use of leveraged and matching funds as well as evidence that operating budget is sufficient to administer the proposed program/project (please attach documents as well as give brief overview below)

2. Need/Benefit & Project Feasibility:
Demonstrate, using data-based analysis, that there is a clear connection between the proposed project/program and adopted Priority(s), and evidence that the proposed project/program meets current and future market demands to include contributions toward the Sustainable Santa Fe 2040 Carbon Neutral Plan. Please fill out Project Sustainability worksheet, exhibit and provide narrative below (use additional sheets as necessary):

What is the timeline for the project?

Site Information (if applicable)

If your proposed project include acquisition, conversion, preservation and new construction of homeownership or rental housing, please provide the following information.

Site control is or will be in the form of*: ☐ Deed ☐ Option
☐ Lease (Term ____ Years) ☐ Purchase Contract ☐ Other (explain)

* If project is recommended for funding, proof of site control must be provided before funds are disbursed.

Expiration Date of Contract, Option, or Lease _____ (month/year)

Site Description:

Area of Site: _____ acres or _____square feet

Is site zoned for your development? ☐ Yes ☐ No Zoning_____

If no, is site currently in the process of re-zoning?

☐ Yes ☐ No Re-Zoning_____

When is zoning issue to be resolved? _____ (month/year)

Has the City approved the site plan and/or plat?

☐ Yes ☐ No

If yes, provide a copy of the site plan/plat.

Are there any other development reviews and approvals required?

☐ Yes ☐ No

If yes, explain:

List any required reports or studies underway or completed such as soils report, environmental assessment, traffic study)

Has the City issued the building permit? ☐ Yes ☐ No

Are all utilities presently available to the site? ☐ Yes ☐ No

If no, which utilities need to be brought to the site? _____

Who has responsibility of bringing utilities to site? _____

3. Affordability:

Outline the affordability time period for this project based on the following: (i.e. loans to $14,999 – 5 years, $15,000 to $40,000 – 10 years, 40,001-$100,000 – 15 years and over $100,000 – 20 years)

4. Demonstrated Capability - Organizational Capacity – Partnerships and Collaborations

Describe the expertise of your organization and past projects to provide the type of housing or programs proposed for funding. Include community partnerships and collaborations that will be achieved in order to strengthen community networking ties, expand and deepen access to the housing/services offered through the project:

Describe your staffing and attach resumes of key personnel:

Demonstrate Financial Soundness. Please submit the following documentation:

- Audited Financial Statements for 2018 and 2017.
- Current Statement of Assets & Liability

EVALUATION CRITERIA
&
WEIGHTED VALUES

EVALUATION COMMITTEE MEMBERS

Applications will be scored according the following criteria:

- Degree of leveraging of other sources against those allocated from the AHTF;

- Operating budget that shows evidence of sufficient revenue to administer the proposed program and loans. All proposed new construction or rehabilitation projects must provide sources and uses statement to show committed and proposed funding. In addition, if rental housing is proposed, provide a five year operating budget;

- Demonstration of clear connection between the proposed project, community housing priorities, strategic action plan for improving systemic root challenges within the community, and that the proposed project meets current and future market demand;

- Program/Project Feasibility
  - Site control
  - Secured matching resources
  - Realistic time frame for completion of funded project/program activities;

- Proven Capacity
  - Staff
  - Organizational experience
  - Expertise in type(s) of housing or service(s) proposed
  - Sound financial management

At its discretion, the City reserves the right to alter the membership and size of the committee.

Scores of the evaluation committee members will be totaled to determine the top rated firms.

If interviews are conducted for the top three rated firms, those scores totaled from the evaluation committee members from the interview evaluations will determine the final top rated firm, unless other tangible extenuating circumstances are documented.

Unless noted elsewhere in this RFP, the same evaluation form will be used to separate the interview scores.

Scores of the evaluation committee members will be totaled to rate the applicants. Applications shall be scored according to the following criteria and minimum standards:

CRITERIA	Weighted Value	Evaluation Points (1-5)	Total Points	Max. Score
Funding • Leverage amounts from other sources • Operating budget shows evidence of sufficient revenue to administer the proposed program • Secured matching resources	**20%**			**100**
Need/Benefit & Project Feasibility Data driven analysis that shows: • The proposal is responsive to current and future market demand • Income mix, if applicable • Site control • Realistic time frame for completion of funded project/program activities • Strategically improves systemic root challenges in the community	**40%**			**200**
Affordability • The proposal meets the Affordability Requirements serving households earning no more than 120% AMI.	**20%**			**100**
Demonstrated Capability – Organizational Management • Staff • Organizational Experience • Expertise in type(s) of housing or service(s) proposed • Demonstrated Financial Soundness	**20%**			**100**
TOTAL:	**100%**			**500**

EVALUATION POINTS: 1 -- Lowest 5 – Highest

SAMPLE MATCHING AND LEVERAGING FOR HOME PUCHASE AND RENTAL UNITS

Sample Calculation: Sub-recipient Matching and Leveraging: Home Purchase

Funding Sources		**Project Budget for 10 homebuyers**	
First Mortgage	$175,000	$1,750,000	Leverage
Sub-recipient's Amortizing Second Mortgage	$40,000	$400,000	Sub-recipient Match
Buyer's Cash Contribution	$6,500	$65,000	Leverage
Down Payment Assistance Loan	$10,000	$100,000	AHTF
Total Home Purchase Financing	**$231,500**	**$2,315,000**	

AHTF Grant Request	$100,000	Ratio
Total Leverage	$1,815,000	$18 to $1
Total Sub-recipient Match	$400,000	$4 to $1

Sample Calculation: Sub-recipient Matching and Leveraging: Rental Units

Sources of Funds		
Per unit/renter (avg.)	Project Budget for 10 units/renters	
$150/mo.	$150 X 10 = $1,500 X 12mo = $18,000	Leverage
$550/mo. (rental voucher)	$550 X 10 = $5,500 X 12mo = $66,000	AHTF
100 hrs. counseling & case mgt.* (@20/hr) = $2,000/mo	$2,000 X 10 = $20,000 X 12mo = $240,000	Leverage
40 hrs staff time (@20/hr) = $800 10% of facility used for this program = $5,000/mo facility cost ($500/mo)= $1,300	$1,300 X 10 = $13,000 X 12 = $156,000	Match
Total cost per renter = $2,500	Total Project Cost = $216,000	

AHTF Grant Request	$66,000	Ratio
Total Leverage	$258,000	$3.90 to $1
Total Sub-recipient Match	$156,000	$2.36 to $1

AMI TABLE

2018 Area Median Income (AMI) by Household Size
Santa Fe, New Mexico

# in Household	UP TO 30%	50%AMI	65%AMI	80%AMI	100%AMI	120%AMI
	Very Low	Low/Moderate			Moderate	
1	<$14,549	$24,300	$31,550	$38,850	$48,550	$58,250
2	<$16,649	$27,750	$36,100	$44,400	$55,500	$66,600
3	<$18,749	$31,200	$40,600	$49,950	$62,450	$74,900
4	<$20,799	$34,650	$45,050	$55,450	$69,300	$83,150
5	<$22,449	$37,450	$48,700	$59,900	$74,900	$89,900

As stated in the adopted City of Santa Fe Administrative Procedures: Low income is defined as households whose income does not exceed 80% of the AMI and Moderate income is defined as households whose income falls within 81% to 120% of AMI. Per HUD's definition, Extremely Low Income is households whose income is less than 30% AMI.

REQUEST FOR PROPOSAL

CITY OF SANTA FE

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 **NAME OF CONTRACTOR**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work

The Contractor shall utilize Affordable Housing Trust Funds (AHTF) to provide one of the following services for the City:

A. Provide supported rental vouchers, including access to counseling, health services, case management, and other services, to renters earning less than 50 percent of Area Median Income (AMI); or

B. Provide for the development, construction, and preservation of shelter or permanent supported rental facilities, including infrastructure improvements; or

C. The provision of rental units and support services for Low Income renters of up to 50 percent AMI, and Extremely Low Income Renters of up to 30 percent AMI that may include acquisition, conversion, preservation and new construction of tiered income multi-family rental properties; including infrastructure or one-time emergency rental assistance; or

D. Down payment assistance in the form of soft-second mortgage that "buys down" the principal amount of the loan to lower the monthly payment for new homebuyer households below 120 percent AMI; or

E. Acquisition, conversion, preservation and new construction of homeownership housing; or

F. Homeowner rehabilitation programs, energy efficiency upgrades, accessibility retrofits that may include acquisition, conversion, and preservation of affordable housing that accommodates the needs of current homeowners.

2. Compensation

A. The City shall pay to the Contractor in full payment for services satisfactorily performed at the rate of _____ dollars ($_____) per hour, such compensation not to exceed (AMOUNT), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the City to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). 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 **DATE** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150

NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

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

B Termination Management. Immediately upon receipt by either the City or the

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

5. Appropriations.

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

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance,

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

7. 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 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 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.

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. 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.

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. Invalid Term or Condition.

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

24. Enforcement of Agreement.

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

25. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City: [insert name, address and email].

To the Contractor: [insert name, address and email].

26. Authority.

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

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:

_____
CITY MAYOR/MANAGER

DATE:_____

CONTRACTOR:

_____
NAME AND TITLE

DATE:_____

CRS#_____

Registration # _____

ATTEST:

_____
YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:

MPM RFP
CITY ATTORNEY

APPROVED:

_____
FINANCE DIRECTOR

_____
Business Unit Line Item

CITY OF SANTA FE (CSF)
NON-DISCLOSURE AND CONFLICT OF INTEREST STATEMENT

REQUEST FOR PROPOSAL # '

EVALUATOR NAME: _____

CSF policy is to prevent personal or organizational conflict of interest, or the appearance of such conflict of interest, in the award and administration of CSF contracts and Purchase Orders.

I, _____, the undersigned, hereby certify that the following statements are true and correct and that I understand and agree to be bound by commitments contained herein.

I am acting at the request of CSF as a participant in the evaluation of *offers/ proposals* received in response to the *Request for Offers! Request for Proposals,* entitled and/ or numbered. I am acting of my own accord and not acting under duress. I am not currently employed by, nor am I receiving any compensation from, nor have I been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with any *offer/proposal* or involved *Offeror/Proposer* in return for favorable consideration. I have no preconceived position on the relative merits of any of the *offers/proposals* nor have I established a personal preference or position on the worth or standing of any *Offeror/Proposer* participating in this action. CSF policy is to prevent personal or organizational conflict of interest, or the appearance of such conflict of interest, in the award and administration of CSF contracts, including, but not limited to contracts for professional services, agreements with consultants and Purchase Orders.

I hereby certify that to the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to perform an impartial, technically sound, objective review of this proposal(s) or otherwise result in a biased opinion or unfair competitive advantage. I agree not to disclose or otherwise divulge any information pertaining to the contents, status, or ranking of any *offer/proposal* to anyone other than the team leader or other evaluation team members. I understand the terms and "disclose or otherwise divulge" to include, but are not limited to, reproduction of any part or any portion of any *offer/proposal,* or removal of same from designated areas without prior authorization from the evaluation team leader. I agree to perform any and all evaluations of said *offers/proposals* in an unbiased manner, to the best of my ability, and with the best interest of CSF paramount in all decisions.

I agree to return to CSF Purchasing Department all copies of proposals, as well as any abstracts, upon completion of the evaluation.

_____

SIGNATURE AND DATE:

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars ($250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"**Applicable public official**" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"**Campaign Contribution**" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"**Family member**" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

"**Pendency of the procurement process**" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"**Person**" means any corporation, partnership, individual, joint venture, association or any other private legal entity.

"**Prospective contractor**" means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

"**Representative of a prospective contractor**" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made by: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

_____

Amount(s) of Contribution(s) _____

_____

Nature of Contribution(s) _____

_____

Purpose of Contribution(s) _____

_____

(Attach extra pages if necessary)

_____ _____

Signature Date

_____

Title (position)

--OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS ($250) WERE MADE to an applicable public official by me, a family member or representative.

_____ _____

Signature Date

_____

City of Santa Fe Living Wage Ordinance

PURSUANT TO THE CITY OF SANTA FE
LIVING WAGE ORDINANCE, SECTION 28-1 SFCC 1987
EFFECTIVE MARCH 1, 2018 ALL WORKERS WITHIN THE
CITY OF SANTA FE
SHALL BE PAID A LIVING WAGE OF

$11.40
PER HOUR

Santa Fe's Living Wage

- The Santa Fe Living Wage Ordinance establishes minimum hourly wages.
- The March Living Wage increase corresponds to the increase in the Consumer Price Index (CPI).
- All employers required to have a business license or registration from the City of Santa Fe ("City") must pay at least the adjusted Living Wage to employees for all hours worked within the Santa Fe city limits.

Who is Required to Pay the Living Wage?

- The City to all full-time permanent workers employed by the City;
- Contractors for the City, that have a contract requiring the performance of a service but excluding purchases of goods;
- Businesses receiving assistance relating to economic development in the form of grants, subsidies, loan guarantees or industrial revenue bonds in excess of twenty-five thousand dollars ($25,000) for the duration of the City grant or subsidy;
- Businesses required to have a business license or registration from the City; and
- Nonprofit organizations, except for those whose primary source of funds is from Medicaid waivers.
- For workers who customarily receive more than one hundred dollars ($100) per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited towards satisfaction of the Living Wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.

More Information, including the Living Wage Ordinance, is available at
http://www.santafenm.gov
(Click on Hot Topics/Living Wage)

EVALUATION CRITERIA & WEIGHTED VALUES

CITY OF SANTA FE AFFORDABLE HOUSING TRUST FUND SCORE SHEET
Bid Number '19/24/RFP

Name of Applicant/Project: Santa Fe Community Housing Trust Down payment Assistance for moderate Income (under 120 AMI)

Amount Requested: $ 150,000.00

CRITERIA	Weighted Value	Evaluation Points (1-5)	Total Points	Max. Score
Funding • Leverage amounts from other sources • Operating budget shows evidence of sufficient revenue to administer the proposed program • Secured matching resources	**20%**	5	100	**100**
Need/Benefit & Project Feasibility Data driven analysis that shows: • The proposal is responsive to current and future market demand • Income mix, if applicable • Site control • Realistic time frame for completion of funded project/program activities • Strategically improves systemic root challenges in the community	**40%**	5	200	**200**
Affordability • The proposal meets the Affordability Requirements serving households of up to 120% AMI.	**20%**	5	100	**100**
Demonstrated Capability – Organizational Management • Staff • Organizational Experience • Expertise in type(s) of housing or service(s) proposed • Demonstrated Financial Soundness	**20%**	3	75	**100**
TOTAL:	**100%**		450	**500**

EVALUATION POINTS: **1 -- Lowest** **5 – Highest**

Name (printed): CARLA LOPEZ

Signature: [signature]

Date: 2-20-19

EVALUATION CRITERIA & WEIGHTED VALUES

CITY OF SANTA FE AFFORDABLE HOUSING TRUST FUND SCORE SHEET
Bid Number '19/24/RFP

Name of Applicant/Project: Housing Trust Down payment assistance

Amount Requested: $ 150,000

CRITERIA	Weighted Value	Evaluation Points (1-5)	Total Points	Max. Score
Funding • Leverage amounts from other sources • Operating budget shows evidence of sufficient revenue to administer the proposed program • Secured matching resources	**20%**	4	80	**100**
Need/Benefit & Project Feasibility Data driven analysis that shows: • The proposal is responsive to current and future market demand • Income mix, if applicable • Site control • Realistic time frame for completion of funded project/program activities • Strategically improves systemic root challenges in the community	**40%**	4	160	**200**
Affordability • The proposal meets the Affordability Requirements serving households of up to 120% AMI.	**20%**	5	100	**100**
Demonstrated Capability – Organizational Management • Staff • Organizational Experience • Expertise in type(s) of housing or service(s) proposed • Demonstrated Financial Soundness	**20%**	4	80	**100**
TOTAL:	**100%**		420	**500**

260
160
420

EVALUATION POINTS: **1 -- Lowest** **5 – Highest**

Name (printed): Rosario H Torres

Signature: Rosario Torres

Date: 2/20/2019

EVALUATION CRITERIA & WEIGHTED VALUES

CITY OF SANTA FE AFFORDABLE HOUSING TRUST FUND SCORE SHEET
Bid Number '19/24/RFP AHTF

Name of Applicant/Project: The Housing Trust Downpayment Assistance - Moderate Income Workforce

Amount Requested: $ 150,000

CRITERIA	Weighted Value	Evaluation Points (1-5)	Total Points	Max. Score
Funding • Leverage amounts from other sources • Operating budget shows evidence of sufficient revenue to administer the proposed program • Secured matching resources	**20%**	4	80	**100**
Need/Benefit & Project Feasibility Data driven analysis that shows: • The proposal is responsive to current and future market demand • Income mix, if applicable • Site control • Realistic time frame for completion of funded project/program activities • Strategically improves systemic root challenges in the community	**40%**	4	80	**200**
Affordability • The proposal meets the Affordability Requirements serving households of up to 120% AMI. Not sure?	**20%**	4	80	**100**
Demonstrated Capability – Organizational Management • Staff • Organizational Experience • Expertise in type(s) of housing or service(s) proposed • Demonstrated Financial Soundness	**20%**	4	80	**100**
TOTAL:	**100%**	16	320	**500**

What does this mean?

EVALUATION POINTS: **1 -- Lowest** **5 – Highest**

Name (printed): Renee Villarreal

Signature: Renee Villarreal

Date: 2/20/19

80
4
320

EVALUATION CRITERIA & WEIGHTED VALUES

CITY OF SANTA FE AFFORDABLE HOUSING TRUST FUND SCORE SHEET
Bid Number '19/24/RFP

Name of Applicant/Project: The Housing Trust

Amount Requested: $ 150,000

CRITERIA	Weighted Value	Evaluation Points (1-5)	Total Points	Max. Score
Funding • Leverage amounts from other sources • Operating budget shows evidence of sufficient revenue to administer the proposed program • Secured matching resources	**20%**			**100**
Need/Benefit & Project Feasibility Data driven analysis that shows: • The proposal is responsive to current and future market demand • Income mix, if applicable • Site control • Realistic time frame for completion of funded project/program activities • Strategically improves systemic root challenges in the community	**40%**			**200**
Affordability • The proposal meets the Affordability Requirements serving households of up to 120% AMI.	**20%**			**100**
Demonstrated Capability – Organizational Management • Staff • Organizational Experience • Expertise in type(s) of housing or service(s) proposed • Demonstrated Financial Soundness	**20%**			**100**
TOTAL:	**100%**			**500**

EVALUATION POINTS: **1 -- Lowest** **5 – Highest**

Name (printed): _____

Signature: _____

Date: _____

EVALUATION CRITERIA & WEIGHTED VALUES

CITY OF SANTA FE AFFORDABLE HOUSING TRUST FUND SCORE SHEET
Bid Number '19/24/RFP

Name of Applicant/Project: HOUSING TRUST

Amount Requested: $ 150,000

CRITERIA	Weighted Value	Evaluation Points (1-5)	Total Points	Max. Score
Funding • Leverage amounts from other sources • Operating budget shows evidence of sufficient revenue to administer the proposed program • Secured matching resources	**20%**			**100**
Need/Benefit & Project Feasibility Data driven analysis that shows: • The proposal is responsive to current and future market demand • Income mix, if applicable • Site control • Realistic time frame for completion of funded project/program activities • Strategically improves systemic root challenges in the community	**40%**			**200**
Affordability • The proposal meets the Affordability Requirements serving households of up to 120% AMI.	**20%**			**100**
Demonstrated Capability – Organizational Management • Staff • Organizational Experience • Expertise in type(s) of housing or service(s) proposed • Demonstrated Financial Soundness	**20%**			**100**
TOTAL:	**100%**		500	**500**

EVALUATION POINTS: **1 -- Lowest** **5 – Highest**

Name (printed): [illegible]

Signature: [illegible]

Date: [illegible]

EVALUATION CRITERIA & WEIGHTED VALUES

CITY OF SANTA FE AFFORDABLE HOUSING TRUST FUND SCORE SHEET
Bid Number '19/24/RFP

Name of Applicant/Project: Housing Trust / Downpayment

Amount Requested: $ 150,000

CRITERIA	Weighted Value	Evaluation Points (1-5)	Total Points	Max. Score
Funding • Leverage amounts from other sources • Operating budget shows evidence of sufficient revenue to administer the proposed program • Secured matching resources	**20%**	4	80	**100**
Need/Benefit & Project Feasibility Data driven analysis that shows: • The proposal is responsive to current and future market demand • Income mix, if applicable • Site control • Realistic time frame for completion of funded project/program activities • Strategically improves systemic root challenges in the community	**40%**	4	160	**200**
Affordability • The proposal meets the Affordability Requirements serving households of up to 120% AMI.	**20%**	5	100	**100**
Demonstrated Capability – Organizational Management • Staff • Organizational Experience • Expertise in type(s) of housing or service(s) proposed • Demonstrated Financial Soundness	**20%**	5	100	**100**
TOTAL:	**100%**		440	**500**

EVALUATION POINTS: **1 -- Lowest** **5 – Highest**

Name (printed): Ken Hughes

Signature: Ken Hughes

Date: 2-20-19

EVALUATION CRITERIA & WEIGHTED VALUES

CITY OF SANTA FE AFFORDABLE HOUSING TRUST FUND SCORE SHEET
Bid Number '19/24/RFP

Name of Applicant/Project: The Housing Trust / Downpayment Assistance

Amount Requested: $ 150,000.00

CRITERIA	Weighted Value	Evaluation Points (1-5)	Total Points	Max. Score
Funding • Leverage amounts from other sources • Operating budget shows evidence of sufficient revenue to administer the proposed program • Secured matching resources	**20%**	5	100	**100**
Need/Benefit & Project Feasibility Data driven analysis that shows: • The proposal is responsive to current and future market demand • Income mix, if applicable • Site control • Realistic time frame for completion of funded project/program activities • Strategically improves systemic root challenges in the community	**40%**	5	200	**200**
Affordability • The proposal meets the Affordability Requirements serving households of up to 120% AMI.	**20%**	5	100	**100**
Demonstrated Capability – Organizational Management • Staff • Organizational Experience • Expertise in type(s) of housing or service(s) proposed • Demonstrated Financial Soundness	**20%**	5	100	**100**
TOTAL:	**100%**		500	**500**

EVALUATION POINTS: **1 -- Lowest** **5 – Highest**

Name (printed): John D. Parker

Signature:

Date: 02/20/19

CITY OF SANTA FE
AMENDMENT No. 2 TO
PROFESSIONAL SERVICES AGREEMENT
ITEM # 20-0451;21-0131

AMENDMENT No. 2 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated September 8, 2020 (the "Agreement"), between the City of Santa Fe (the "City") and Homewise (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 provide homebuyer assistance for low-moderate income households.

B. Pursuant to Article 18 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION

Article 2, Section A of this Agreement is hereby deleted. Article 2 Section A is then added to increase the compensation by $190,000 so that Article 2, Section A reads in its entirety as follows:

The Total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed three hundred eighty thousand dollars ($380,000). This amount is maximum and not a guarantee that the work assigned to be performed by the 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. TERM

Article 3 of this Agreement is hereby deleted. A new Article 3 is inserted to extend the term so that Article 3 reads in its entirety as follows:

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.

3. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 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 MIHELCIC
CITY CLERK

CONTRACTOR:
HOMEWISE

By: Laura Altomare
Laura Altomare (Jul 12, 2021 16:26 MDT)
LAURA ALTOMARE
ACTING CHIEF EXECUTIVE DIRECTOR

CITY ATTORNEY'S OFFICE:
Marcos Martinez
Marcos Martinez (Jul 12, 2021 15:21 MDT)
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCE:

MARY MCCOY
FINANCE DIRECTOR

1002750.510500 AJH
AJH
ORG/OBJ

Homewise GF Amendment

Final Audit Report 2021-07-12

Created:	2021-07-12
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAANoB6fi4P0nmD7hAtyOEEEtAxk0xGp9hm

"Homewise GF Amendment" History

Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-07-12 - 9:48:31 PM GMT- IP address: 63.232.20.2

Document emailed to Laura Altomare (laltomare@homewise.org) for signature
2021-07-12 - 9:48:56 PM GMT

Email viewed by Laura Altomare (laltomare@homewise.org)
2021-07-12 - 10:26:21 PM GMT- IP address: 98.249.102.236

Document e-signed by Laura Altomare (laltomare@homewise.org)
Signature Date: 2021-07-12 - 10:26:38 PM GMT - Time Source: server- IP address: 98.249.102.236

Agreement completed.
2021-07-12 - 10:26:38 PM GMT

CITY OF SANTA FE
AMENDMENT No. 1 TO
PROFESSIONAL SERVICES AGREEMENT
ITEM # 20-0451

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated September 8, 2020 (the "Agreement"), between the City of Santa Fe (the "City") and Homewise (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 provide homebuyer assistance for low-moderate income households.

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 G of this Agreement is hereby added so that Article G reads in its entirety as follows:

G. In addition to other articles described in this scope of work, Contractor may use the additional compensation provided in this amendment for the purpose of stabilizing the housing situations for income-qualified (earning less than 100% AMI) homeowners in order to prevent foreclosure or eviction. Funds may be used to pay for mortgage expenses and arrears, utility costs, deposits, and insurance. Additionally, funds may be used for rapid rehousing purposes for an income qualified household who is not able to avoid foreclosure.

2. COMPENSATION

Article 2 section A. of this Agreement is hereby deleted. A new Article 2 section A is inserted to increase the compensation by one hundred thirty thousand dollars ($130,000) so that Article 2, Section A, reads in its entirety as follows:

A. The total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed one hundred ninety thousand dollars ($190,000). The 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.

3. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of Santa Fe Professional Services Agreement as of the date signed by the City set forth below.

CITY OF SANTA FE:

Jarel LaPan Hill

Jarel LaPan Hill (Feb 17, 2021 11:24 MST)

JAREL LAPAN HILL
CITY MANAGER

Date: _____

ATTEST:

Kristine Mihelcic (Apr 5, 2021 18:40 MDT)

KRISTINE BUSTOS MIHELCIC, CITY CLERK

XIV
XIV

CONTRACTOR:
HOMEWISE

By: Laura Altomare
Laura Altomare (Feb 17, 2021 15:35 MST)

MIKE LOFTIN
EXECUTIVE DIRECTOR

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Feb 15, 2021 13:47 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCE:

Mary McCoy
Mary McCoy (Apr 1, 2021 22:02 MDT)

MARY MCCOY
FINANCE DIRECTOR

1002750.510400 AL
AL
ORG/OBJ

2021 02 15 PSA - Amendment 1 Homewise

Final Audit Report 2021-02-15

Created:	2021-02-15
By:	Irene Romero (ikromero@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAA7HxlvdTezHfapXlsDB0hAgZUdTNuZTkK

"2021 02 15 PSA - Amendment 1 Homewise" History

Document created by Irene Romero (ikromero@ci.santa-fe.nm.us)
2021-02-15 - 8:37:58 PM GMT- IP address: 63.232.20.2

Document emailed to Marcos Martinez (mdmartinez@santafenm.gov) for signature
2021-02-15 - 8:38:15 PM GMT

Email viewed by Marcos Martinez (mdmartinez@santafenm.gov)
2021-02-15 - 8:45:31 PM GMT- IP address: 174.56.49.116

Document e-signed by Marcos Martinez (mdmartinez@santafenm.gov)
Signature Date: 2021-02-15 - 8:47:20 PM GMT - Time Source: server- IP address: 174.56.49.116

Agreement completed.
2021-02-15 - 8:47:20 PM GMT

Homewise - amendment (Increase)

Final Audit Report 2021-02-17

Created:	2021-02-17
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAmzs5bnXH0txDi1_EturYlVxjcn672JrD

"Homewise - amendment (Increase)" History

Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-02-17 - 6:03:44 PM GMT- IP address: 63.232.20.2

Document emailed to Jarel LaPan Hill (jlapanhill@santafenm.gov) for signature
2021-02-17 - 6:04:11 PM GMT

Email viewed by Jarel LaPan Hill (jlapanhill@santafenm.gov)
2021-02-17 - 6:23:46 PM GMT- IP address: 104.47.64.254

Document e-signed by Jarel LaPan Hill (jlapanhill@santafenm.gov)
Signature Date: 2021-02-17 - 6:24:47 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.
2021-02-17 - 6:24:47 PM GMT

Homewise Amendment (Increase)

Final Audit Report 2021-02-17

Created:	2021-02-17
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAsmNsV3OEMX98BNMZY4Q17rD9RCdTIkKO

"Homewise Amendment (Increase)" History

Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-02-17 - 6:43:45 PM GMT- IP address: 63.232.20.2

Document emailed to Laura Altomare (laltomare@homewise.org) for signature
2021-02-17 - 6:44:11 PM GMT

Email viewed by Laura Altomare (laltomare@homewise.org)
2021-02-17 - 7:01:25 PM GMT- IP address: 98.249.102.236

Document e-signed by Laura Altomare (laltomare@homewise.org)
Signature Date: 2021-02-17 - 10:35:21 PM GMT - Time Source: server- IP address: 98.249.102.236

Agreement completed.
2021-02-17 - 10:35:21 PM GMT

Item #20-0451

CITY OF SANTA FE

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 **Homewise** 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. Provide homebuyer assistance for low-moderate-income households. This includes:

1) Providing comprehensive counseling services to prospective homebuyers from initial application for assistance through loan financings;

2) Offering homebuyer education and training that focuses on assessing financial situations and setting goals; developing workable budgets, understanding credit scoring and ways to repair and/or improve credit; creating a debt-reduction plan; and learning ways to save and evaluate spending in order to meet personal financial goals; ;obtaining a mortgage, understanding the home purchase transaction and post-purchase insights;

3) Assisting clients with developing a financial action plan, improving credit, reducing debt, and understanding strategies for accumulation lifetime wealth through homeownership, including helping homeowners protect the equity in their homes and/or increase the long-term affordability of their housing situations;

4) Marketing these services through all available media outlets.

B. Provide income verification, certification and other marketing services to support the Santa Fe Homes Program (SFHP)/and Low-Priced Dwelling Units (LPDU), pursuant to Sections 26-1.20, 26-1.21, 26-2.3 SFCC; and for homes governed by the Housing Opportunity Program (HOP) agreements that remain in full force and effect. This includes the following:

1) Certifying incomes for SFHP/LPDU homes and upon request by City;

2) Producing a "pipeline report" as requested by the City that lists "mortgage ready" homebuyers who are income qualified, sorted by household size and income ranges that match the pricing schedules established for the SFHP/HOP requirements;

3) Providing documentation that states the policies of the SFHP/HOP program with regard to pricing of SFHP/HOP homes and buyer eligibility;

4) Establishing and maintaining a fair and competitive process for allocating rights to purchase homes in SFHP/HOP developments for which the city expects immediate effective demand to outstrip the supply;

5) Distributing marketing materials and/or information to potential buyers about units that are currently available for sale and/or will be available in the future.

C. Provide assistance with liens required under the Santa Fe Homes Program (SFHP/Low-Priced Dwelling Units (LPDU), pursuant to Sections 26-1.20, 26-1.21, 26-2.3 SFCC; and for homes governed by the Housing Opportunity Program (HOP) agreements that remain in full force and effect.

D. Completing SFHP/LPDU income certification form (upon receipt of appraisal) reviewed and approved by the City, which will be attached to the purchase agreement and ultimately to the closing documents (includes specific SFHP/HOP/LPDU price, market value of home, lien amount, percentage of AMI, family size, other sources of financing in addition to lien);

1) Providing one-on-one counseling services to all SFHP/HOP/LPDU buyers

with regard to the terms and conditions of the SFHP/HOP/LPDU deed of trust and program agreement;

2) Assisting the City of Santa Fe with provision of information and technical assistance regarding the SFHP/HOP/LPDU deed of trsut and program agreement to the SFHP/HOP/LPDU developers, attorneys, title companies, lenders, and realtors that are involved in a SFHP/HOP/LPDU home transaction;

3) Submitting a quarterly report that tracks data for homes built by applicant for which affordability liens are held directly by applicant, including value and terms of liens, income levels of homebuyers, subordination history of liens, and the use of payoffs, including recycling of liens to another qualified homebuyer.

E. Propose additional service opportunities to support the City's efforts to provide affordable housing, including community-wide education and outreach about available affordable housing opportunies.

F. Performance Measures.

Contractor shall substantially perform the following 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 total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed sixty thousand dollars ($60,000). 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: Homewise, Inc
1301 Siler Road, Bldg D
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:

Jarel LaPan Hill
Jarel LaPan Hill (Sep 8, 2020 11:39 MDT)

JAREL LAPAN HILL, CITYMANAGER

DATE: Sep 8, 2020

HOMEWISE:

Mike Loftin
Mike Loftin (Aug 3, 2020 15:07 MDT)

MIKE LOFTIN
EXECUTIVE DIRECTOR

DATE:_____

CRS# 02-062377-00-1
Registration # 223754

ATTEST:

yolanda y. vigil

YOLANDA Y. VIGIL, CITY CLERK

XIV
XIV

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jul 27, 2020 14:04 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Mary McCoy

MARY MCCOY
FINANCE DIRECTOR

1002750.510500
Business Unit/Line Item

AL
AL

2020 07 27 Homewise $60,000

Final Audit Report 2020-07-27

Created:	2020-07-27
By:	Irene Romero (ikromero@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAaX4jMgSXGd0CkC3fXL5ZOHlXwQEsa6G9

"2020 07 27 Homewise $60,000" History

Document created by Irene Romero (ikromero@ci.santa-fe.nm.us)
2020-07-27 - 7:55:19 PM GMT- IP address: 63.232.20.2

Document emailed to Marcos Martinez (mdmartinez@santafenm.gov) for signature
2020-07-27 - 7:55:52 PM GMT

Email viewed by Marcos Martinez (mdmartinez@santafenm.gov)
2020-07-27 - 8:00:46 PM GMT- IP address: 23.103.200.254

Document e-signed by Marcos Martinez (mdmartinez@santafenm.gov)
Signature Date: 2020-07-27 - 8:04:24 PM GMT - Time Source: server- IP address: 75.161.241.164

Signed document emailed to Marcos Martinez (mdmartinez@santafenm.gov), Irene Romero (ikromero@ci.santa-fe.nm.us) and Roberta Catanach (rlcatanach@santafenm.gov)
2020-07-27 - 8:04:24 PM GMT

Homewise - General Fund contract $60,000

Final Audit Report 2020-08-03

Created:	2020-08-03
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAA9u0vE0rev8IL74naMRiwRz89-Bm7d9_D

"Homewise - General Fund contract $60,000" History

Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2020-08-03 - 9:05:24 PM GMT- IP address: 63.232.20.2

Document emailed to Mike Loftin (mloftin@homewise.org) for signature
2020-08-03 - 9:06:15 PM GMT

Email viewed by Mike Loftin (mloftin@homewise.org)
2020-08-03 - 9:06:44 PM GMT- IP address: 50.228.18.226

Document e-signed by Mike Loftin (mloftin@homewise.org)
Signature Date: 2020-08-03 - 9:07:12 PM GMT - Time Source: server- IP address: 50.228.18.226

Signed document emailed to blange@homewise.org, Mike Loftin (mloftin@homewise.org) and Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2020-08-03 - 9:07:12 PM GMT

Signature: Xavier Vigil
Xavier Vigil Sep 3, 2020 11:35 MDT)

Email: xivigil@santafenm.gov

CM AFFD HSG HOMEWISE

Final Audit Report 2020-09-08

Created:	2020-08-31
By:	YODEL CATANACH (yocatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAARNnC_T8b5m5DMXDRq1CXpxZcdbSjyUE-

"CM AFFD HSG HOMEWISE" History

Document created by YODEL CATANACH (yocatanach@ci.santa-fe.nm.us)
2020-08-31 - 6:53:16 PM GMT- IP address: 63.232.20.2

Document emailed to Alexis Lotero (aclotero@santafenm.gov) for signature
2020-08-31 - 6:59:50 PM GMT

Email viewed by Alexis Lotero (aclotero@santafenm.gov)
2020-08-31 - 7:03:41 PM GMT- IP address: 104.47.65.254

Document e-signed by Alexis Lotero (aclotero@santafenm.gov)
Signature Date: 2020-08-31 - 7:06:18 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Fran Dunaway (fadunaway@santafenm.gov) for signature
2020-08-31 - 7:06:20 PM GMT

Email viewed by Fran Dunaway (fadunaway@santafenm.gov)
2020-08-31 - 8:51:41 PM GMT- IP address: 174.237.9.54

Email viewed by Fran Dunaway (fadunaway@santafenm.gov)
2020-09-01 - 7:22:37 PM GMT- IP address: 104.47.65.254

Document e-signed by Fran Dunaway (fadunaway@santafenm.gov)
Signature Date: 2020-09-01 - 7:26:03 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Mary McCoy (mtmccoy@santafenm.gov) for signature
2020-09-01 - 7:26:06 PM GMT

Email viewed by Mary McCoy (mtmccoy@santafenm.gov)
2020-09-01 - 10:06:28 PM GMT- IP address: 104.47.65.254

Document e-signed by Mary McCoy (mtmccoy@santafenm.gov)
Signature Date: 2020-09-01 - 10:12:24 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Xavier Vigil (xivigil@santafenm.gov) for signature
2020-09-01 - 10:12:27 PM GMT

Email viewed by Xavier Vigil (xivigil@santafenm.gov)
2020-09-08 - 5:29:06 PM GMT- IP address: 104.47.65.254

Document e-signed by Xavier Vigil (xivigil@santafenm.gov)
Signature Date: 2020-09-08 - 5:35:41 PM GMT - Time Source: server- IP address: 63.232.20.2

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2020-09-08 - 5:35:44 PM GMT

Email viewed by Jarel LaPan Hill (jlapanhill@santafenm.gov)
2020-09-08 - 5:39:28 PM GMT- IP address: 104.47.65.254

Document e-signed by Jarel LaPan Hill (jlapanhill@santafenm.gov)
Signature Date: 2020-09-08 - 5:39:50 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Yolanda Vigil (yyvigil@santafenm.gov) for signature
2020-09-08 - 5:39:52 PM GMT

Email viewed by Yolanda Vigil (yyvigil@santafenm.gov)
2020-09-08 - 7:16:49 PM GMT- IP address: 104.47.65.254

Document e-signed by Yolanda Vigil (yyvigil@santafenm.gov)
Signature Date: 2020-09-08 - 7:17:25 PM GMT - Time Source: server- IP address: 63.232.20.2

Signed document emailed to Roberta Catanach (rlcatanach@santafenm.gov), Yolanda Vigil (yyvigil@santafenm.gov), Jarel LaPan Hill (jlapanhill@santafenm.gov), YODEL CATANACH (yocatanach@ci.santa-fe.nm.us), and 4 more
2020-09-08 - 7:17:25 PM GMT

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **3202067**

Contractor: **Homewise**

Description: **Home buyer assistance for low-Moderate income households. Providing comprehensive counseling services; homebuyer education and training with developing financial action plan**

Contract ☐ Agreement ☐ Lease / Rent ☐ Amendment ☉

Term Start Date: **07/01/2020** Term End Date: **06/30/2022**

☐ Approved by Council Date: _____

Contract / Lease:

Amendment # **2** to the Original Contract / Lease # **20-0451**

Increase/(Decrease) Amount $ _____

Extend Termination Date to: **June 30, 2022**

☐ Approved by Council Date: _____

Amendment is for:

2. **HISTORY** of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)

Orig Contract: $60,000
Amend #1: Increase by $130,00 (for a total of $190,000)
Amend #2: Extend term to June 30, 2022

3. **Procurement History:** **RFP 18/54/P**

Fran Dunaway (Jul 16, 2021 08:44 MDT) — Jul 16, 2021

Purchasing Officer Review: Date:

Comment & Exceptions: Issuance from RFP #18/54/P

4. **Funding Source:** **General Fund** **Org / Object:** **1002750.510500**

Andy Hopkins (Jul 13, 2021 13:08 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: _____

HOMEINC-05 CEDISON

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 7/1/2021

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 License # 0757776 HUB International Insurance Services (SOW) 2905 Rodeo Park Drive East Building 6, Suite 100 Santa Fe, NM 87505	CONTACT NAME: Michelle Vialpando PHONE (A/C, No, Ext): (505) 992-1873 FAX (A/C, No): (866) 621-0427 E-MAIL ADDRESS: michelle.vialpando@hubinternational.com
INSURED Homewise Inc 1301 Siler Rd Building D Santa Fe, NM 87507	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Central Mutual Insurance Company — 20230 INSURER B : New Mexico Premier Insurance Company — 13675 INSURER C : Evanston Insurance Company — 35378 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	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	[ ] CLAIMS-MADE [X] OCCUR	X		CLP8361218	5/23/2021	5/23/2022	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	[ ] POLICY [X] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	[ ] OTHER:							$
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	[ ] ANY AUTO							
	[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS			CLP8361218	5/23/2021	5/23/2022	BODILY INJURY (Per person)	$
	[X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident)	$
	[ ]						PROPERTY DAMAGE (Per accident)	$
								$
A	[ ] UMBRELLA LIAB [X] OCCUR						EACH OCCURRENCE	$ 2,000,000
	[X] EXCESS LIAB [ ] CLAIMS-MADE			CXS9657964	5/23/2021	5/23/2022	AGGREGATE	$ 2,000,000
	[ ] DED [X] RETENTION $ 0							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						[X] PER STATUTE [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N]	N / A		5950128	12/3/2020	12/3/2021	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
C	FF Excess Liability			MKLV7EUE100459	5/23/2021	5/23/2022	Each Occurrence	3,000,000
C	FF Excess Liability			MKLV7EUE100459	5/23/2021	5/23/2022	Aggregate	3,000,000

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

*COVERAGE: Employee Dishonesty - Policy #CLP8361218 - Limit: $250,000/Deductible: $2,500

**PROFESSIONAL LIABILITY COVERAGE - Policy #MPL222769521 - Eff: 5/23/2021 to 5/23/2022 - Underwriters at Lloyd's London - $1,000,000 Each Claim Limit; $1,000,000 All Claims Aggregate - Deductible: $10,000 Each Claim.

.

SEE ATTACHED ACORD 101

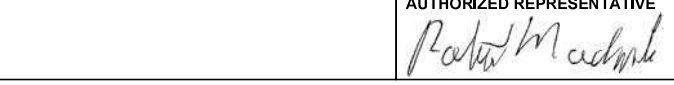
CERTIFICATE HOLDER

City of Santa Fe
PO Box 909
Santa Fe, NM 87504

CANCELLATION

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

AUTHORIZED REPRESENTATIVE



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AGENCY CUSTOMER ID: HOMEINC-05 CEDISON

LOC #: 1

ADDITIONAL REMARKS SCHEDULE

AGENCY	License # 0757776	NAMED INSURED
HUB International Insurance Services (SOW)		Homewise Inc 1301 Siler Rd Building D Santa Fe, NM 87507
POLICY NUMBER		
SEE PAGE 1		
CARRIER	NAIC CODE	EFFECTIVE DATE: SEE PAGE 1
SEE PAGE 1	SEE P 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:
Where required by written contract or agreement, City of Santa Fe is included as additional insured with respects to general liability.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

HOME BUILDERS PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

This endorsement amends the policy by adding the following; please read each section carefully.

ADDITIONAL INSURED - OWNERS, LESSEES, OR CONTRACTORS - AUTOMATIC STATUS
ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES - AUTOMATIC STATUS
ADDITIONAL INSURED - LESSOR OF LEASED EQUIPMENT – AUTOMATIC STATUS
ADDITIONAL INSURED - VENDORS - AUTOMATIC STATUS
AGGREGATE LIMITS OF INSURANCE
EMPLOYEE BENEFITS LIABILITY COVERAGE
FIRE, SPRINKLER LEAKAGE OR EXPLOSION
HOME BUILDERS AMENDMENTS
INCLUDE DIRECTORS OR TRUSTEES ON COMMITTEES AS EMPLOYEES
LIMITED FUNGI OR BACTERIA, SILICA OR SILICA-RELATED DUST AND EXTERIOR INSULATION AND FINISH SYSTEMS
NEWLY FORMED OR ACQUIRED ORGANIZATIONS
NON-OWNED WATERCRAFT AND NON-OWNED AIRCRAFT LIABILITY
NOTICE OF OCCURRENCE, KNOWLEDGE OF OCCURRENCE, UNINTENTIONAL OMISSION
POLLUTION COVERAGE FOR UPSET OF MOBILE EQUIPMENT
REASONABLE FORCE EXPANSION - PROPERTY DAMAGE
SUPPLEMENTARY PAYMENTS - HIGHER LIMITS
VOLUNTARY PROPERTY DAMAGE
WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US
ADDITIONAL COMMERCIAL GENERAL LIABILITY CONDITIONS
LOST KEY COVERAGE

A. Additional Insured - Owners, Lessees, or Contractors - Automatic Status (not applicable to Employee Benefits Liability Coverage)

1. Section **II** - Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy and any other person or organization you are required to add as an additional insured under the contract or agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:

a. Your acts or omissions; or

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

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

Except as provided for in the exception to **2.b.** below, a person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

However, the insurance afforded to such additional insured described above:

a. only applies to the extent permitted by law; and

b. will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

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

This insurance does not apply to:

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

1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

2) Supervisory, inspection, architectural or engineering activities.

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

b. "Bodily injury" or "property damage" occurring after:

1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

However, exclusion **b.** does not apply when in conflict with the requirements of a written contract or agreement.

3. The most we will pay on behalf of the additional insured is the amount of insurance required by the contract or agreement you have entered into with the additional insured or the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or Change Endorsement, whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits of Insurance shown in the Declarations or Change Endorsement.

B. Additional Insured - Managers or Lessors of Premises - Automatic Status (not applicable to Employee Benefits Liability Coverage)

1. Section **II** - Who Is An Insured is amended to include as an insured any person or organization when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

a. Any "occurrence" which takes place after you cease to be a tenant in that premises.

b. Structural alterations, new construction or demolition operations performed by or on behalf of the additional insured.

However, the insurance afforded to such additional insured described above:

a. only applies to the extent permitted by law; and

b. will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

2. The most we will pay on behalf of the additional insured is the amount of insurance required by the contract or agreement you have entered into with the additional insured or the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or Change Endorsement, whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits of Insurance shown in the Declarations or Change Endorsement.

C. Additional Insured – Lessor of Leased Equipment – Automatic Status (not applicable to Employee Benefits Liability Coverage)

1. Section **II –** Who Is An Insured is amended to include as an additional insured any person or organization from whom you lease equipment when you and such a person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

However, the insurance afforded to such additional insured described above:

a. only applies to the extent permitted by law; and

b. will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

2. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

3. The most we will pay on behalf of the additional insured is the amount of insurance required by the contract or agreement you have entered into with the additional insured or the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or Change Endorsement, whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits of Insurance shown in the Declarations or Change Endorsement.

D. Additional Insured - Vendors - Automatic Status (not applicable to Employee Benefits Liability Coverage)

1. Section **II** - Who Is An Insured is amended to include as an insured any person or organization (referred to below as vendor) when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule, Declarations or Change Endorsement which are distributed or sold in the regular course of the vendor's business.

However, the insurance afforded to such additional insured described above:

a. only applies to the extent permitted by law; and

b. will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

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

a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

b. An express warranty unauthorized by you;

c. Any physical or chemical change in the product made intentionally by the vendor;

d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

1) The exceptions contained in Sub-paragraphs **d.** or **f.**; or

2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

3. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

4. The most we will pay on behalf of the vendor is the amount of insurance required by the contract or agreement you have entered into with the additional insured or the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or Change Endorsement, whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits of Insurance shown in the Declarations or Change Endorsement.

E. Aggregate Limits Of Insurance (not applicable to Employee Benefits Liability Coverage)

The General Aggregate Limit under SECTION III - LIMITS OF INSURANCE, Paragraph **2.** applies separately to each of your "location(s)" owned by or rented to you or "project(s)" away from "location(s)" owned by or rented to you.

"Location" and/or "project" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

F. Employee Benefits Liability Coverage

The following is added to SECTION I - COVERAGES:

EMPLOYEE BENEFITS LIABILITY COVERAGE

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any "claim" or "suit" that may result. But:

1) The amount we will pay for damages is limited as described in SECTION III LIMITS OF INSURANCE for Employee Benefits Liability Coverage and

2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

b. This insurance applies to damages only if:

1) The act, error or omission is negligently committed in the "administration" of your "employee benefit program";

2) The act, error or omission is caused by an "occurrence" that takes place in the "coverage territory"; and

3) The act, error or omission occurs during the policy period.

2. Exclusions

This insurance does not apply to:

a. Dishonesty, Fraud Or Criminal Act

Damages arising out of any dishonest, fraudulent, criminal or malicious act or omission, committed by any insured, including the willful or reckless violation of any statute.

b. Bodily Injury, Property Damage, Or Personal And Advertising Injury

"Bodily injury," "property damage" or "personal and advertising injury."

c. Failure To Perform A Contract

Damages arising out of failure of performance of contract by any insurer.

d. Insufficiency Of Funds

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program."

e. Inadequacy Of Performance Of Investment/Advice Given To Participate

Any "claim" or "suit" based upon:

1) Failure of any investment to perform;

2) Errors in providing information on past performance of investment vehicles; or

3) Advice given to any person to participate or not to participate in any plan included in the "employee benefit program."

f. Workers Compensation And Similar Laws

Damages arising out of any "claim" related to any workers compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

g. ERISA

Damages for which the insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or any similar federal, state or local laws.

h. Available Benefits

Any "claim" for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

i. Taxes, Fines Or Penalties

1) Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law; or

2) Loss or damages arising out of the imposition of such taxes, fines or penalties.

j. Employment-Related Practices

Damages arising out of wrongful termination of employment, discrimination, or other employment-related practices.

3. Supplementary Payments - Coverages A and B

For the purposes of the coverage provided by Employee Benefits Liability Coverage, the SUPPLEMENTARY PAYMENTS - COVERAGES **A** AND **B** apply except for Paragraphs **1.b.** and **2.**

SECTION II - WHO IS AN INSURED, Paragraphs **2.** and **3.** are replaced by the following for Employee Benefits Liability Coverage:

2. Each of the following is also an insured:

a. Each of your "employees" who is or was authorized to administer your "employee benefit program."

b. Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.

c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Endorsement.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

b. Coverage under this provision does not apply to any act, error or omission that occurred before you acquired or formed the organization.

SECTION III - LIMITS OF INSURANCE is replaced by the following for the Employee Benefits Liability Coverage:

1) The Limits of Insurance shown below and the rules below fix the most we will pay regardless of the number of:

a) Insureds;

b) "Claims" made or "suits" brought;

c) Persons or organizations making "claims" or bringing "suits";

d) Acts, error or omissions which result in loss; or

e) Benefits included in your "employee benefit program."

2) **$2,000,000** is the most we will pay for all damages because of acts, errors or omissions committed in the "administration" of your "employee benefit program."

3) Subject to the above Limit, **$1,000,000** is the most we will pay for all damages sustained by any one "employee," including damages sustained by such "employee's" dependents and beneficiaries, as a result of:

a) An act, error or omission; or

b) A series of acts, errors or omissions

negligently committed in the "administration" of your "employee benefit program."

However, the amount paid under this endorsement shall not exceed, and will be subject to, the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program."

The Limits of Insurance of this endorsement apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations of the policy to which this endorsement is attached, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

4. Deductible

a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of **$1,000.** The limits of insurance shall not be reduced by the amount of this deductible.

b. The deductible amount applies to all damages sustained by any one "employee," including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

c. The terms of this insurance, including those with respect to:

1) Our right and duty to defend any "suits" seeking those damages; and

2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, "claim" or "suit" apply irrespective of the application of the deductible amount.

d. We may pay any part or all of the deductible amount to effect settlement of any "claim" or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

SECTION IV - CONDITIONS, Paragraphs **2.** and **4.** are replaced by the following for the Employee Benefits Liability Coverage:

2. Duties In The Event Of An Act, Error Or Omission, "Claim" Or "Suit"

a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a "claim." To the extent possible, notice should include:

1) What the act, error or omission was and when it occurred; and

2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

b. If a "claim" is made or "suit" is brought against any insured, you must:

1) Immediately record the specifics of the "claims" or "suit" and the date received; and

2) Notify us as soon as practicable.

You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.

c. You and any other involved insured must:

1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";

2) Authorize us to obtain records and other information;

3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and

4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

d. No insured will, except at the insured's own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this endorsement, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

Any other primary insurance available to you covering acts, errors or omissions for which you have been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit." If no other insurer defends, we may undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

1) The total amount that all such other insurance would pay for the loss in absence of this insurance; and

2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.
If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limits of insurance of all insurers.

SECTION V - DEFINITIONS is amended by adding the following definitions for Employee Benefits Liability Coverage:

1. "Administration" means:

a. Providing information to "employees," including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";

b. Handling records in connection with the "employee benefit program"; or

c. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program."

However, "administration" does not include handling payroll deductions.

2. "Cafeteria plans" means plans authorized by the applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.

3. "Claim" means any demand, or "suit," made by an "employee" or an "employee's" dependents and beneficiaries, for damages as the result of an act, error or omission.

4. "Employee benefit program" means a program providing some or all of the following benefits to "employees," whether provided through a "cafeteria plan" or otherwise.

a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;

b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible for such benefits;

c. Unemployment insurance, social security benefits, workers compensation and disability benefits;

d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

SECTION V - DEFINITIONS - the definition of "employee" and "suit" is replaced for Employee Benefits Liability Coverage by the following:

"Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker." "Employee" does not include a "temporary worker."

"Suit" means a civil proceeding in which damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

G. Fire, Sprinkler Leakage Or Explosion

1. The word "fire" is changed to "fire, sprinkler leakage or explosion" where it appears in:

a. The Limits of Insurance section of the Declaration:

b. Paragraph **6.** of SECTION III - LIMITS OF INSURANCE; and

c. Paragraph **4.b.** of the OTHER INSURANCE condition;

2. Section **9.a.** under SECTION V. - DEFINITIONS is amended to read: a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, sprinkler leakage or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is not an insured contract.

3. The last paragraph of SECTION I - COVERAGE A (after the exclusions) is replaced by the following: Exclusions **c.** through **n.** do not apply to damage by fire, sprinkler leakage or explosion to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in SECTION III - LIMITS OF INSURANCE.

But the Limit of Insurance shown in the Declaration will apply to all damage proximately caused by the same event. Whether such damage results from fire, sprinkler leakage or explosion or any combination of the three.

4. The Damage to Premises Rented To You Limit in Paragraph **6.** of SECTION III - LIMITS OF INSURANCE, is replaced by a new Fire, Sprinkler Leakage or Explosion Limit, which will be subject to all of the terms of SECTION III - LIMITS OF INSURANCE. The new Fire, Sprinkler Leakage or Explosion Limit is **$300,000** unless a higher limit is shown on the Declarations or Change Endorsement.

H. Home Builders Amendments

SECTION I - COVERAGES, Coverage A, Exclusion **j.** Damage to Property, is replaced with the following:

"Property damage" to:

1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

2) Premises you give away or abandon, if the "property damage" arises out of any part of those premises;

3) Property loaned to you;

4) Personal property in the care, custody or control of the insured;

5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

6) Property that you rent or hold for rental which must be restored, repaired, or replaced because of "your work".

Paragraph **(1)** of this exclusion does not apply to property you rent or occupy if that property is "your work" and not owned by you.

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage to Premises Rented to You as described in SECTION III - LIMITS OF INSURANCE.

Paragraphs **(3)**, **(4)**, **(5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph **(6)** of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

SECTION I - COVERAGES, Coverage A, Exclusion **l.** Damage to Your Work, is replaced with the following:

1. Damage to Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

This exclusion only applies to that particular part of "your work" that causes the "property damage."

I. Include Directors Or Trustees On Committees As Employees (not applicable to Employee BenefitsLiability Coverage)

SECTION V - DEFINITIONS is amended by the addition of the following to definition **5.**:

"Employee" also includes any of your directors or trustees acting as a member of any of your elected or appointed committees to perform on your behalf specific, as distinguished from general, directorial acts.

J. Limited Fungi Or Bacteria, Silica Or Silica-Related Dust And Exterior Insulation And Finish Systems Coverage:

1. Coverage provided by this insurance for "bodily injury" or "property damage," arising out of a "fungi" or bacteria, "silica" or "silica-related dust" or an "exterior insulation and finish system" incident, is subject to a **$100,000** Aggregate Limit as described in Paragraph 2. of this section. This provision 1. does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

2. The following are added to SECTION III - LIMITS OF INSURANCE:

A. Subject to Paragraphs **2.** and **3.** of SECTION III - LIMITS OF INSURANCE, as applicable, the Fungi or Bacteria, Silica or Silica-Related Dust, and Exterior Insulation and Finish Systems Liability Aggregate Limit is the most we will pay under Coverage A for all "bodily injury" or "property damage" and Coverage **C.** for Medical Payments arising out of one or more "fungi" or bacteria, "silica" or "silica-related dust" or "exterior insulation and finish system" incidents. This provision **B.1.** does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

B. Paragraph **5.**, the Each Occurrence Limit, Paragraph **6.**, the Damage To Premises Rented To You Limit, and Paragraph **7.**, the Medical Expense Limit, of SECTION III - LIMITS OF INSURANCE continue to apply to "bodily injury" or "property damage" arising out of a "fungi" or bacteria, "silica" or "silica-related dust" or an "exterior insulation and finish system incident" but only if, and to the extent that, limits are available under the Fungi or Bacteria, Silica or Silica-Related Dust and Exterior Insulation and Finish Systems Liability Aggregate Limit.

3. The following exclusion is added to Paragraph **2.**, Exclusions of SECTION I - COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY:

2. Exclusions

This insurance does not apply to:

a. "Personal and Advertising Injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust."

b. "Personal and Advertising Injury" arising out of a "fungi or bacteria incident."

c. "Personal and Advertising Injury" arising out of, caused by, or attributed to, whether in whole or in part, the following:

1) The design, manufacture, construction, fabrication, preparation, distribution and sale, installation, application, maintenance or repair, including remodeling, service, correction or replacement, of any "exterior insulation and finish system" or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system; or

2) "Your product" or "your work" with respect to any exterior component, fixture or feature of any structure if an "exterior insulation and finish system," or any substantially similar system, is used on the part of that structure containing that component, fixture or feature.

d. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of "fungi" or bacteria, "silica" or "silica-related dust," or "exterior insulation and finish system" by any insured or by any other person or entity.

4. The following definitions are added to the Definitions Section:

a. "Exterior insulation and finish system" means a non-load bearing exterior cladding or finish system, and all component parts therein, used on any part of any structure, and consisting of:

1) A rigid or semi-rigid insulation board made of expanded polystyrene and other materials;

2) The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;

3) A reinforced or unreinforced base coat;

4) A finish coat providing surface texture to which color may be added; and

5) Any flashing, caulking or sealant used with the system for any purpose.

b. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

c. "Fungi or bacteria incident" means an incident which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

d. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

e. "Silica-related dust" means a mixture or combination of silica and other dust or particles.

K. Newly Formed Or Acquired Organizations (not applicable to Employee Benefits Liability Coverage)

SECTION II - WHO IS AN INSURED is amended to include any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

1. Coverage under this provision is afforded only until 180 days after you acquire or form the organization or the end of the policy period, whichever is earlier.

2. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

3. Coverage B does not apply to "personal injury and advertising injury" arising out of an offense committed before you acquired or formed the organization.

L. Non-Owned Watercraft And Non-Owned Aircraft Liability

SECTION I - COVERAGE A, exclusion **2.g.** is replaced by the following:

g. "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading." This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

1) A watercraft while ashore on premises you own or rent;

2) A watercraft you do not own that is:

a) Less than 60 feet long; and

b) Not being used to carry persons or property for a charge;

3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

5) "Bodily injury" or "property damage" arising out of:

a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or

b) The operation of any of the machinery or equipment listed in paragraph f.2) or f.3) of the definition of "mobile equipment."

6) An aircraft you do not own provided it is not operated by any insured.

M. Notice Of Occurrence, Knowledge Of Occurrence, Unintentional Omission

The following is added to SECTION IV. - COMMERCIAL GENERAL LIABILITY, CONDITION 2, DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT:

e. Notice of Accident/Occurrence

When you report to your Workers Compensation carrier the occurrence of any accident which later develops into a liability claim covered under this policy, failure to report the accident to us at the time of occurrence is not in violation of the Conditions of this policy. However, as soon as you are definitely made aware of the fact that the particular accident is a liability claim rather than a Workers Compensation claim prompt notification must be given to us.

f. Unintentional Errors and Omissions

The insurance afforded by this policy is not invalidated by any unintentional errors, omissions or improper description of premises or your unintentional failure to disclose all hazards existing at inception date of the policy.

g. Knowledge of Accident/Occurrence

Knowledge of an accident/occurrence by your agent, servant or employee is not knowledge by you unless an executive officer of your Corporation received such notice from its agent, servant or employee.

N. Pollution Coverage For Upset Of Mobile Equipment

The Insuring Agreement for "property damage" liability with respect to your operations is extended as follows:

1. We will pay those sums which you become legally obligated to pay for "property damage" caused directly by immediate, abrupt and accidental upset, overturn or collision of your "mobile equipment" while transporting "pollutants" which are intended for and normally used in your operations. The operations must be in compliance with local, state, and federal ordinances and laws.

2. EXCLUSIONS

a. With regard only to the coverage provided by this extension L., SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, **2.** Exclusions, **f.** is deleted and replaced by the following for this extension only:

f. Pollution

Any loss, cost or expense arising out of any:

1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants."

3) Premises, site or location which is or was at any time owned, rented or loaned to any insured.

O. Reasonable Force Expansion - Property Damage

Exclusion **2.a.** of SECTION I - Coverage A is replaced with the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

P. Supplementary Payments - Higher Limits

Under SECTION I - SUPPLEMENTARY PAYMENTS - COVERAGES A AND B:

Paragraph **1.b.** is replaced by the following:

Up to **$2,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

Paragraph **1.d.** is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to **$400** a day because of time off from work.

Q. Voluntary Property Damage

1. We will pay, at your request, for loss due to "Property Damage" to property of others caused by you, or while in your possession, arising out of your business operations.

2. "Loss" means unintentional damage or destruction but does not include disappearance, theft, or loss of use.

3. Limits of Insurance - The most we will pay for "loss" under the Voluntary Property Damage is **$2,500** for each "occurrence." The most we will pay for the sum of all damages because of "Property Damage" is an annual policy aggregate limit of **$25,000.**

4. Deductible - We will not pay for "loss" in any one "occurrence" until the amount of "loss" exceeds **$250.**

We may pay any part or all of the deductible amount to effect settlement of any "claim" or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

5. The insurance under the Voluntary Property Damage shall not apply:

a. To "loss" of property at premises owned, rented, leased, operated, or used by you;

b. To "loss" of property while in transit;

c. To "loss" of property owned by, rented to, leased to, borrowed by or used by you;

d. To the cost of repairing or replacing (1) any work defectively or incorrectly done, (2) any product manufactured, sold or supplied by you, unless the "Property Damage" is caused directly by you after delivery of the product or completion of the work and resulting from a subsequent undertaking;

e. To "loss" of property included within the "Products/Completed Operations Hazard";

f. To "loss" of property which is an "auto" or "mobile equipment."

g. To "loss" of property caused by "pollutants."

6. In the event of "loss" covered by this endorsement, you shall, if requested by us, replace the property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

R. Waiver Of Transfer Of Rights Of Recovery Against Others To Us

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US, SECTION **IV** CONDITION **8.**, is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because of payments we

make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard." This waiver applies only to the person or organization which, before the loss, you have agreed in writing to waive your right of recovery.

S. Additional Commercial General Liability Conditions

1. Other Insurance

The following is added to SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, Item **4.** OTHER INSURANCE:

When this Home Builders Plus endorsement provides coverage and such coverage is also provided by any other provision of this policy:

a. There shall be no duplication of the Limits of Insurance.

b. Any loss payment made under such other provisions shall reduce by such loss payments the Limits of Insurance available under the Home Builders Plus endorsement.

2. Liberalization

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended by addinng LIBERALIZATION

If we adopt a change in our Commercial General Liability Coverage forms or rules that would broaden the coverage without extra charge, the broader coverage will apply to this Endorsement. It will apply when the change becomes effective in your state.

T. Lost Key Coverage

1. SECTION I - COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

Exclusion **2.j.4)** Personal property in the care, custody or control of the insured is amended to add:

However, coverage for property of others in the care, custody or control of the insured is provided forthe loss of keys which are in the possession of the insured or his "employees" subject to the following additional provisions:

a. The insurance afforded with respect to Lost Key Coverage shall not apply to "property damage" caused by misappropriation, secretion, conversion, infidelity or any dishonest act on the part of any insured or his employees or agents;

b. Our liability for all damages because of "property damage" to which this coverage applies shall be limited to the actual cost of keys, adjustment of locks to accept new keys or, if required, new locks including cost of their installation. Subject to such limitation, our total liability for all damages as the result of any one occurrence shall not exceed $25,000. Each claim is subject to a $250 deductible.

2. SECTION II - WHO IS AN INSURED

The following is added to item **2.a.2)b):**

However, coverage is provided for the loss of keys which are in the possession of the insured or his "employees," subject to the following additional provisions:

a. The insurance afforded with respect to Lost Key Coverage shall not apply to "property damage" caused by misappropriation, secretion, conversion, infidelity or any dishonest act on the part of any insured or his "employees" or agents;

b. Our liability for all damages because of "property damage" to which this coverage applies shall be limited to the actual cost of keys, adjustment of locks to accept new keys or, if required, new locks including cost of their installation. Subject to such limitation, our total liability for all damages as the result of any one occurrence shall not exceed $25,000. Each claim is subject to a $250 deductible.

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Homewise

Procurement Title: RFP 18/54/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

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
Fran Delaney (Jul 16, 2021 08:44 MDT)	Chief Procurement Officer	Jul 16, 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: HOMEWISE
DBA: HOMEWISE

Business Location: 1301 SILER RD D
SANTA FE, NM 87501

CRS Number: 02062377001

Owner: HOMEWISE

License Number: 223754

License Type: Business License - Renewable

Issued Date: December 18, 2020

Classification: Business Registration - Standard

Expiration Date: December 18, 2021

Fees Paid: $35.00

HOMEWISE
1301 SILER RD D
SANTA FE, NM 87505

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT. APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION OR THE INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERRABLE TO OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE

City of Santa Fe, New Mexico

memo

Date: June 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 17:02 MDT)

Re: General Fund Contract Amendments with Homewise and the Housing Trust (RFP 18/54)

ACTION REQUESTED:
Please sign the attached Amendments #2 for fee-for-services contracts with Homewise and the Housing Trust. The amendments extend the term of performance through June 30, 2022 and add compensation as follows:

- Homewise: $190,000 (total contract amount: $380,000)
- Housing Trust: $110,000 (total contract amount: $110,000)

BACKGROUND:
The City of Santa Fe has a long history of contracting with local, nonprofit housing agencies to provide homeownership support services. These services include: homebuyer training and counseling; financial fitness coaching; refinancing; HECM counseling; home repair; and general homeownership support. In 2018, the Office of Affordable Housing (OAH) released RFP 18/44 which called for proposals from affordable housing agencies and partners to provide affordable housing support services. Additionally, the RFP called for assistance with the Santa Fe Homes Program inclusionary zoning requirements, including income-certifying eligible buyers for SFHP Developers. Two respondents, Homewise and the Housing Trust were selected as contractors.

ITEM AND ISSUE:
Each fiscal year since 2018, the contracts have been renewed. These amendments represent year 4 in the above-referenced RFP. Compensation is based on a $15,000/quarter base fee totaling $60,000 per year, with an additional $1,000 per unit fee for each closing that results in home purchase, home repair or a Home Equity Conversion Mortgage (HECM). The funding amounts are roughly proportional to the volume of services provided.

Memo_GenFund_Homeownership_AMEND_7.9.21

Final Audit Report 2021-07-09

Created:	2021-07-09
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAVBnTBPAsAP8cKsdrN8aAzDZhzB8_UEyH

"Memo_GenFund_Homeownership_AMEND_7.9.21" History

Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-07-09 - 10:59:09 PM GMT- IP address: 63.232.20.2

Document emailed to Alexandra Ladd (agladd@santafenm.gov) for signature
2021-07-09 - 10:59:29 PM GMT

Email viewed by Alexandra Ladd (agladd@santafenm.gov)
2021-07-09 - 11:02:24 PM GMT- IP address: 63.232.20.2

Document e-signed by Alexandra Ladd (agladd@santafenm.gov)
Signature Date: 2021-07-09 - 11:02:43 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.
2021-07-09 - 11:02:43 PM GMT

Adobe Sign

Memo - General Fund - Homewise & HT

Final Audit Report 2021-07-12

Created:	2021-07-12
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAX0ZE0JeeCe53mgg-0EFqy6a07vsfleWF

"Memo - General Fund - Homewise & HT" History

Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-07-12 - 3:25:03 PM GMT- IP address: 63.232.20.2

Document emailed to rich brown (rdbrown@santafenm.gov) for signature
2021-07-12 - 3:25:18 PM GMT

Email viewed by rich brown (rdbrown@santafenm.gov)
2021-07-12 - 7:35:36 PM GMT- IP address: 71.228.116.134

Document e-signed by rich brown (rdbrown@santafenm.gov)
Signature Date: 2021-07-12 - 7:36:47 PM GMT - Time Source: server- IP address: 71.228.116.134

Agreement completed.
2021-07-12 - 7:36:47 PM GMT

Adobe Sign

CITY OF SANTA FE
AMENDMENT No. 2 TO
PROFESSIONAL SERVICES AGREEMENT
ITEM # 20-0452; 21-0106

AMENDMENT No. 2 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated September 8, 2020 (the "Agreement"), between the City of Santa Fe (the "City") and Housing Trust (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 provide homebuyer assistance for low-moderate income households.

B. Pursuant to Article 18 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION

Article 2, Section A of this Agreement is hereby deleted. Article 2 Section A is then added to increase the compensation by $110,000 so that Article 2, Section A reads in its entirety as follows:

The Total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed two hundred twenty thousand dollars ($220,000). This amount is maximum and not a guarantee that the work assigned to be performed by the 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. TERM

Article 3 of the Agreement is hereby added so that Article 3 reads in its entirety as follows:

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.

3. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 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 MIHELCIC
CITY CLERK

CONTRACTOR:
HOUSING TRUST

EXECUTIVE DIRECTOR

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jul 12, 2021 10:22 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCE:

MARY MCCOY
FINANCE DIRECTOR

1002750.510500 AJH
AJH
ORG/OBJ

HT Amendment #2

Final Audit Report 2021-07-12

Created:	2021-07-12
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAF3v1Lhy6ovMlu8exNCoaRyvlq1jZn4G5

"HT Amendment #2" History

Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-07-12 - 10:11:46 PM GMT- IP address: 63.232.20.2

Document emailed to Daniel H Werwath (dwerwath@housingtrustonline.org) for signature
2021-07-12 - 10:12:11 PM GMT

Email viewed by Daniel H Werwath (dwerwath@housingtrustonline.org)
2021-07-12 - 10:20:52 PM GMT- IP address: 64.233.172.103

Document e-signed by Daniel H Werwath (dwerwath@housingtrustonline.org)
Signature Date: 2021-07-12 - 10:21:16 PM GMT - Time Source: server- IP address: 65.155.97.210

Agreement completed.
2021-07-12 - 10:21:16 PM GMT

Adobe Sign

CITY OF SANTA FE
AMENDMENT No. 1 TO
PROFESSIONAL SERVICES AGREEMENT
ITEM # 20-0452

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated September 8, 2020 (the "Agreement"), between the City of Santa Fe (the "City") and Housing Trust (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 provide homebuyer assistance for low-moderate income households.

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 G of this Agreement is hereby added so that Article G reads in its entirety as follows:

G. In addition to other articles described in this scope of work, Contractor may use the additional compensation provided in this amendment for the purpose of stabilizing the housing situations for income-qualified (earning less than 100% AMI) homeowners in order to prevent foreclosure or eviction. Funds may be used to pay for mortgage expenses and arrears, utility costs, deposits, and insurance. Additionally, funds may be used for rapid rehousing purposes for an income qualified household who is not able to avoid foreclosure.

2. COMPENSATION

Article 2, Section A of this Agreement is hereby deleted. Article 2 Section A is then added to increase the compensation by $50,000 so that Article 2, Section A reads in its entirety as follows:

The Total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed one hundred ten thousand dollars ($110,000). This amount is a maximum and not a guarantee that the work assigned to be performed by the 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.

3. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of Santa Fe Professional Services Agreement as of the date signed by the City set forth below.

CITY OF SANTA FE:

Jarel LaPan Hill
Jarel LaPan Hill (Feb 17, 2021 11:04 MST)

JAREL LAPAN HILL
CITY MANAGER

Date: _____

ATTEST:

Kristine Mihelcic (Mar 18, 2021 11:25 MDT)

KRISTINE BUSTOS MIHELCIC, CITY CLERK XIV
XIV

CONTRACTOR:
HOUSING TRUST

By: Justin Robison
Justin Robison (Feb 17, 2021 13:27 MST)

JUSTIN ROBINSON
EXECUTIVE DIRECTOR

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Feb 16, 2021 08:38 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCE:

Mary McCoy

MARY MCCOY
FINANCE DIRECTOR

1002750.510500 AL
AL
ORG/OBJ

2021 02 15 Amendment 1 Housing Trust

Final Audit Report 2021-02-16

Created:	2021-02-16
By:	Irene Romero (ikromero@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAj63hFZHk4GToTgbBjyNqk9WY025yGmaV

"2021 02 15 Amendment 1 Housing Trust" History

Document created by Irene Romero (ikromero@ci.santa-fe.nm.us)
2021-02-16 - 2:52:49 PM GMT- IP address: 63.232.20.2

Document emailed to Marcos Martinez (mdmartinez@santafenm.gov) for signature
2021-02-16 - 2:53:21 PM GMT

Email viewed by Marcos Martinez (mdmartinez@santafenm.gov)
2021-02-16 - 3:38:29 PM GMT- IP address: 174.56.49.116

Document e-signed by Marcos Martinez (mdmartinez@santafenm.gov)
Signature Date: 2021-02-16 - 3:38:55 PM GMT - Time Source: server- IP address: 174.56.49.116

Agreement completed.
2021-02-16 - 3:38:55 PM GMT

Housing Trust Amendment (Increase)

Final Audit Report 2021-02-17

Created:	2021-02-17
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXrfGGEMWDe6b23EKL19OUQjO6kg26J_e

"Housing Trust Amendment (Increase)" History

Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2021-02-17 - 6:02:01 PM GMT- IP address: 63.232.20.2

Document emailed to Jarel LaPan Hill (jlapanhill@santafenm.gov) for signature
2021-02-17 - 6:02:21 PM GMT

Email viewed by Jarel LaPan Hill (jlapanhill@santafenm.gov)
2021-02-17 - 6:03:44 PM GMT- IP address: 104.47.64.254

Document e-signed by Jarel LaPan Hill (jlapanhill@santafenm.gov)
Signature Date: 2021-02-17 - 6:04:37 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.
2021-02-17 - 6:04:37 PM GMT

Item#20-0452

CITY OF SANTA FE

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 **Housing Trust** 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. Provide homebuyer assistance for low-moderate-income households. This includes:

1) Providing comprehensive counseling services to prospective homebuyers from initial application for assistance through loan financings;

2) Offering homebuyer education and training that focuses on assessing financial situations and setting goals; developing workable budgets, understanding credit scoring and ways to repair and/or improve credit; creating a debt-reduction plan; and learning ways to save and evaluate spending in order to meet personal financial goals; ;obtaining a mortgage, understanding the home purchase transaction and post-purchase insights;

3) Assisting clients with developing a financial action plan, improving credit, reducing debt, and understanding strategies for accumulation lifetime wealth through homeownership, including helping homeowners protect the equity in their homes and/or increase the long-term affordability of their housing situations;

4) Marketing these services through all available media outlets.

B. Provide income verification, certification and other marketing services to support the Santa Fe Homes Program (SFHP)/and Low-Priced Dwelling Units (LPDU), pursuant to Sections 26-1.20, 26-1.21, 26-2.3 SFCC; and for homes governed by the Housing Opportunity Program (HOP) agreements that remain in full force and effect. This includes the following:

1) Certifying incomes for SFHP/LPDU homes and upon request by City;

2) Producing a "pipeline report" as requested by the City that lists "mortgage ready" homebuyers who are income qualified, sorted by household size and income ranges that match the pricing schedules established for the SFHP/HOP requirements;

3) Providing documentation that states the policies of the SFHP/HOP program with regard to pricing of SFHP/HOP homes and buyer eligibility;

4) Establishing and maintaining a fair and competitive process for allocating rights to purchase homes in SFHP/HOP developments for which the city expects immediate effective demand to outstrip the supply;

5) Distributing marketing materials and/or information to potential buyers about units that are currently available for sale and/or will be available in the future.

C. Provide assistance with liens required under the Santa Fe Homes Program (SFHP/Low-Priced Dwelling Units (LPDU), pursuant to Sections 26-1.20, 26-1.21, 26-2.3 SFCC; and for homes governed by the Housing Opportunity Program (HOP) agreements that remain in full force and effect.

D. Completing SFHP/LPDU income certification form (upon receipt of appraisal) reviewed and approved by the City, which will be attached to the purchase agreement and ultimately to the closing documents (includes specific SFHP/HOP/LPDU price, market value of home, lien amount, percentage of AMI, family size, other sources of financing in addition to lien);

1) Providing one-on-one counseling services to all SFHP/HOP/LPDU buyers

with regard to the terms and conditions of the SFHP/HOP/LPDU deed of trust and program agreement;

2) Assisting the City of Santa Fe with provision of information and technical assistance regarding the SFHP/HOP/LPDU deed of trsut and program agreement to the SFHP/HOP/LPDU developers, attorneys, title companies, lenders, and realtors that are involved in a SFHP/HOP/LPDU home transaction;

3) Submitting a quarterly report that tracks data for homes built by applicant for which affordability liens are held directly by applicant, including value and terms of liens, income levels of homebuyers, subordination history of liens, and the use of payoffs, including recycling of liens to another qualified homebuyer.

E. Propose additional service opportunities to support the City's efforts to provide affordable housing, including community-wide education and outreach about available affordable housing opportunies.

F. Performance Measures.

Contractor shall substantially perform the following 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 total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed sixty thousand dollars ($60,000). 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: Housing Trust
1111 Agua Fria
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:

Jarel LaPan Hill
Jarel LaPan Hill (Sep 8, 2020 12:53 MDT)

JAREL LAPAN HILL
CITY MANAGER

DATE: Sep 8, 2020

HOUSING TRUST:

Justin Robison (Aug 4, 2020 13:35 MDT)

JUSTIN ROBISON
EXECUTIVE DIRECTOR

DATE:_____

CRS# 02-171649-00-8
Registration # 227214

ATTEST:

yolanda y. vigil

YOLANDA Y. VIGIL, CITY CLERK

CITY ATTORNEY'S OFFICE: XIV
XIV

Marcos Martinez
Marcos Martinez (Jul 27, 2020 14:05 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Mary McCoy

MARY MCCOY
FINANCE DIRECTOR

AL
AL

1002750.510500
Business Unit/Line Item

2020 07 27 Housing Trust $60,000

Final Audit Report 2020-07-27

Created:	2020-07-27
By:	Irene Romero (ikromero@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAst5VuEbtT22dQslnhelGc8Rn5AFhAaK_

"2020 07 27 Housing Trust $60,000" History

Document created by Irene Romero (ikromero@ci.santa-fe.nm.us)
2020-07-27 - 8:02:14 PM GMT- IP address: 63.232.20.2

Document emailed to Marcos Martinez (mdmartinez@santafenm.gov) for signature
2020-07-27 - 8:02:35 PM GMT

Email viewed by Marcos Martinez (mdmartinez@santafenm.gov)
2020-07-27 - 8:04:37 PM GMT- IP address: 23.103.200.254

Document e-signed by Marcos Martinez (mdmartinez@santafenm.gov)
Signature Date: 2020-07-27 - 8:05:08 PM GMT - Time Source: server- IP address: 75.161.241.164

Signed document emailed to Marcos Martinez (mdmartinez@santafenm.gov), Irene Romero (ikromero@ci.santa-fe.nm.us) and Roberta Catanach (rlcatanach@santafenm.gov)
2020-07-27 - 8:05:08 PM GMT

Housing Trut - General Fund Contract $60,000

Final Audit Report 2020-08-04

Created:	2020-08-03
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAT8X-a-RkCazjVL4hH6gpikikFHfZMxie

"Housing Trut - General Fund Contract $60,000" History

Document created by Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
2020-08-03 - 9:08:54 PM GMT- IP address: 63.232.20.2

Document emailed to Justin Robison (jrobison@housingtrustonline.org) for signature
2020-08-03 - 9:09:24 PM GMT

Email viewed by Justin Robison (jrobison@housingtrustonline.org)
2020-08-04 - 7:33:12 PM GMT- IP address: 65.155.97.210

Document e-signed by Justin Robison (jrobison@housingtrustonline.org)
Signature Date: 2020-08-04 - 7:35:00 PM GMT - Time Source: server- IP address: 65.155.97.210

Signed document emailed to Roberta Catanach (rlcatanach@ci.santa-fe.nm.us) and Justin Robison (jrobison@housingtrustonline.org)
2020-08-04 - 7:35:00 PM GMT

Signature: Xavier Vigil
Xavier Vigil, Sep 3, 2020 11:54 MDT)

Email: xivigil@santafenm.gov

CM AFFD HSG SF HSG TRUST 3202077

Final Audit Report 2020-09-08

Created:	2020-08-31
By:	YODEL CATANACH (yocatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAA8V7cuascJLaIMJNNN3NJn2hxqOFa5wOi

"CM AFFD HSG SF HSG TRUST 3202077" History

Document created by YODEL CATANACH (yocatanach@ci.santa-fe.nm.us)
2020-08-31 - 7:02:03 PM GMT- IP address: 63.232.20.2

Document emailed to Alexis Lotero (aclotero@santafenm.gov) for signature
2020-08-31 - 7:31:53 PM GMT

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2020-08-31 - 8:48:00 PM GMT- IP address: 104.47.64.254

Document e-signed by Alexis Lotero (aclotero@santafenm.gov)
Signature Date: 2020-08-31 - 8:50:53 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Fran Dunaway (fadunaway@santafenm.gov) for signature
2020-08-31 - 8:50:55 PM GMT

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2020-08-31 - 8:52:29 PM GMT- IP address: 174.237.9.54

Document e-signed by Fran Dunaway (fadunaway@santafenm.gov)
Signature Date: 2020-08-31 - 8:54:26 PM GMT - Time Source: server- IP address: 174.237.9.54

Document emailed to Mary McCoy (mtmccoy@santafenm.gov) for signature
2020-08-31 - 8:54:28 PM GMT

Email viewed by Mary McCoy (mtmccoy@santafenm.gov)
2020-09-01 - 4:47:03 PM GMT- IP address: 104.47.65.254

Document e-signed by Mary McCoy (mtmccoy@santafenm.gov)
Signature Date: 2020-09-01 - 4:48:24 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Xavier Vigil (xivigil@santafenm.gov) for signature
2020-09-01 - 4:48:27 PM GMT

Email viewed by Xavier Vigil (xivigil@santafenm.gov)
2020-09-01 - 5:47:33 PM GMT- IP address: 104.47.65.254

Email viewed by Xavier Vigil (xivigil@santafenm.gov)
2020-09-08 - 5:37:11 PM GMT- IP address: 104.47.64.254

Document e-signed by Xavier Vigil (xivigil@santafenm.gov)
Signature Date: 2020-09-08 - 5:54:49 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Jarel LaPan Hill (jlapanhill@santafenm.gov) for signature
2020-09-08 - 5:54:51 PM GMT

Email viewed by Jarel LaPan Hill (jlapanhill@santafenm.gov)
2020-09-08 - 6:52:35 PM GMT- IP address: 104.47.64.254

Document e-signed by Jarel LaPan Hill (jlapanhill@santafenm.gov)
Signature Date: 2020-09-08 - 6:53:40 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Yolanda Vigil (yyvigil@santafenm.gov) for signature
2020-09-08 - 6:53:43 PM GMT

Email viewed by Yolanda Vigil (yyvigil@santafenm.gov)
2020-09-08 - 7:21:28 PM GMT- IP address: 104.47.65.254

Document e-signed by Yolanda Vigil (yyvigil@santafenm.gov)
Signature Date: 2020-09-08 - 7:23:01 PM GMT - Time Source: server- IP address: 63.232.20.2

Signed document emailed to Xavier Vigil (xivigil@santafenm.gov), Alexis Lotero (aclotero@santafenm.gov), Roberta Catanach (rlcatanach@santafenm.gov), Yolanda Vigil (yyvigil@santafenm.gov), and 4 more
2020-09-08 - 7:23:01 PM GMT

City of Santa Fe, New Mexico

memo

Date: March 12, 2021

To: Jarel Lapan Hill
City Manager

From: Alexandra Ladd
Director, Office of Affordable Housing

Re: Amendments to General Fund Contracts with Homewise, the Housing Trust to increase compensation and amend the scope of work

---

ACTION REQUESTED:
Please sign the attached Amendments to fee-for-services contracts with Homewise and the Housing Trust to increase compensation and amend the scope of work. Amendments will restore contracts to original awarded contract amount and the scope of work amendment allows funds to be used for direct foreclosure prevention:

- Homewise: $130,000 increase for a total contract amount of $190,000
- Housing Trust: $50,000 increase for a total funding amount of $110,000

BACKGROUND:
In 2018, the Office of Affordable Housing (OAH) released RFP 18/44 which called for proposals from affordable housing agencies and partners to provide affordable housing support services, including assistance with the SFHP inclusionary zoning requirements. Two respondents, Homewise and the Housing Trust responded and were selected as contractors. Each fiscal year the contracts have been renewed. Compensation is based on a $15,000/quarter base fee totaling $60,000 per year, with an additional $1,000 per unit fee for each closing that results in home purchase, home repair or a Home Equity Conversion Mortgage (HECM).

ITEM AND ISSUE:
In the spring of 2020, when the City's budget was greatly affected by the economic shutdown caused by the global pandemic, the Office of Affordable Housing reduced these contracts to the minimum amount feasible to continue basic services. Given that the funding outlook has been modified, staff proposes to restore these contracts to their original funding amounts. Additionally, because of the economic stress inflamed by the pandemic, the scope of work is also amended to allow each provider to use funds as needed for foreclosure prevention. This may take the form of direct assistance to income-eligible homeowners or additional counseling and support services.

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **3202077**

Contractor: **Santa Fe Housing Trust**

Description: **Homebuyer assistance for low-moderate income households. Providing comprehensive councelling services; homebuyer education and assist with developing financial action plan**

Contract ☐ Agreement ☐ Lease / Rent ☐ Amendment ☉

Term Start Date: **07/01/2020** Term End Date: **06/30/2021**

☐ Approved by Council Date:

Contract / Lease: $60,000 Contract

Amendment # **1** to the Original Contract / Lease # **20-0452**

Increase/(Decrease) Amount $ **50,000**

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 amount $60,000
Amendment #1 - Increasing compensation by $50,000 for a total amount of $110,000

3. **Procurement History:** **RFP 18/54/P**

Fran Dunaway (Mar 17, 2021 09:49 MDT) Mar 17, 2021

Purchasing Officer Review: Date:

Comment & Exceptions: Add SOW & increase compensation -EXP 6/30/21 Original Contract

4. **Funding Source:** **100 General Fund** **Org / Object:** **1002750.510500**

Alexis Lotero (Mar 16, 2021 17:51 MDT) Mar 16, 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: The Housing Trust

Procurement Title: RFP 18/54/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

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 | 01/25/2021

Department Rep Printed Name (attesting that all information included) | Title | Date

Fran Dunaway (Mar 17, 2021 09:49 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 contract.

SANTFEC-02 JSANCHEZ3

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 1/7/2021

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 License # 0757776 HUB International Insurance Services (SOW) 2905 Rodeo Park Drive East Building 6, Suite 100 Santa Fe, NM 87505	CONTACT NAME: Johanna Sanchez PHONE (A/C, No, Ext): (505) 992-1849 FAX (A/C, No): (866) 621-0427 E-MAIL ADDRESS: johanna.sanchez@hubinternational.com
INSURED Santa Fe Community Housing Trust and Tierra Contenta P O Box 713 Santa Fe, NM 87504	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Central Mutual Insurance Company — 20230 INSURER B : New Mexico Mutual Casualty Company — 40627 INSURER C : Philadelphia Indemnity Insurance Company — 18058 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	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	[ ] CLAIMS-MADE [X] OCCUR	X		CLP8889277	1/1/2021	1/1/2022	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	X POLICY [ ] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	[ ] OTHER:							$
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	[ ] ANY AUTO			CLP8889277	1/1/2021	1/1/2022	BODILY INJURY (Per person)	$
	[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	[ ] UMBRELLA LIAB [ ] OCCUR						EACH OCCURRENCE	$
	[ ] EXCESS LIAB [ ] CLAIMS-MADE						AGGREGATE	$
	[ ] DED [ ] RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						[ ] PER STATUTE [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] (Mandatory in NH)	N / A		0099999102	6/27/2020	6/27/2021	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
A	Employee Theft			CLP8889277	1/1/2021	1/1/2022	$1,000 Ded/Limit	25,000
C	Directors & Officers			PHSD1596937	1/1/2021	1/1/2022		1,000,000

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

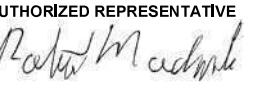
CERTIFICATE HOLDER

City of Santa Fe
PO 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



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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART
This endorsement amends the policy by adding the following; please read each section carefully.

EMPLOYEE BENEFITS LIABILITY COVERAGE
ADDITIONAL INSURED - OWNERS, LESSEES, OR CONTRACTORS – AUTOMATIC STATUS
ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES – AUTOMATIC STATUS
ADDITIONAL INSURED - LESSOR OF LEASED EQUIPMENT - AUTOMATIC STATUS
ADDITIONAL INSURED - VENDORS - AUTOMATIC STATUS
INCLUDE DIRECTORS OR TRUSTEES ON COMMITTEES AS EMPLOYEES
WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHER TO US
NEWLY FORMED OR ACQUIRED ORGANIZATIONS
NOTICE OF OCCURRENCE, KNOWLEDGE OF OCCURRENCE, UNINTENTIONAL OMISSION
VOLUNTARY PROPERTY DAMAGE
NON-OWNED WATERCRAFT AND NON-OWNED AIRCRAFT LIABILITY
FIRE, SPRINKLER LEAKAGE OR EXPLOSION
POLLUTION COVERAGE FOR UPSET OF MOBILE EQUIPMENT
AGGREGATE LIMITS OF INSURANCE AMENDMENT
SUPPLEMENTARY PAYMENTS – HIGHER LIMITS
REASONABLE FORCE EXPANSION - PROPERTY DAMAGE
LOST KEY COVERAGE
PERSONAL AND ADVERTISING INJURY DEFINITION AMENDED

These modifications are subject to the terms and conditions applicable to coverage in the policy except as provided below.

A. Employee Benefits Liability Coverage

The following is added to Section I - Coverages: EMPLOYEE BENEFITS LIABILITY COVERAGE.

1. Insuring Agreement.

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any "claim" or "suit" that may result. But:

1) The amount we will pay for damages is limited as described in SECTION III LIMITS OF INSURANCE for Employee Benefits Liability Coverage and

2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

b. This insurance applies to damages only if:

1) The act, error or omission is negligently committed in the "administration" of your "employee benefit program";

2) The act, error or omission is caused by an "occurrence" that takes place in the

"coverage territory"; and

3) The act, error or omission occurs during the policy period.

2. Exclusions

This insurance does not apply to:

a. Dishonesty, Fraud Or Criminal Act
Damages arising out of any dishonest, fraudulent, criminal or malicious act or omission, committed by any insured, including the willful or reckless violation of any statute.

b. Bodily Injury, Property Damage, Or Personal And Advertising Injury
"Bodily injury," "property damage" or "personal and advertising injury."

c. Failure To Perform A Contract
Damages arising out of failure of performance of contract by any insurer.

d. Insufficiency Of Funds
Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program."

e. Inadequacy Of Performance Of Investment/Advice Given To Participate
Any "claim" or "suit" based upon:

1) Failure of any investment to perform;

2) Errors in providing information on past performance of investment vehicles; or

3) Advice given to any person to participate or not to participate in any plan included in the "employee benefit program."

f. Workers Compensation And Similar Laws
Damages arising out of any "claim" related to any workers compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

g. ERISA
Damages for which the insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or any similar federal, state or local laws.

h. Available Benefits
Any "claim" for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

i. Taxes, Fines Or Penalties

1) Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law; or

2) Loss or damages arising out of the imposition of such taxes, fines or penalties.

j. Employment-Related Practices
Damages arising out of wrongful termination of employment, discrimination, or other employment-related practices.

3. Supplementary Payments - Coverages A and B

For the purposes of the coverage provided by Employee Benefits Liability Coverage, the Supplementary Payments - Coverages A and B apply except for Paragraphs **1.b.** and **2.**

SECTION II - WHO IS AN INSURED, Paragraphs **2.** and **3.** are replaced by the following for Employee Benefits Liability Coverage:

2. Each of the following is also an insured:

a. Each of your "employees" who is or was authorized to administer your "employee benefit program."

b. Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.

c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Endorsement.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

b. Coverage under this provision does not apply to any act, error or omission that occurred before you acquired or formed the organization.

SECTION III - LIMITS OF INSURANCE is replaced by the following for the Employee Benefits Liability Coverage:

1) The Limits of Insurance shown below and the rules below fix the most we will pay regardless of the number of:

a) Insureds;

b) "Claims" made or "suits" brought;

c) Persons or organizations making "claims" or bringing "suits";

d) Acts, error or omissions which result in loss; or

e) Benefits included in your "employee benefit program."

2) $2,000,000 is the most we will pay for all damages because of acts, errors or omissions committed in the "administration" of your "employee benefit program."

3) Subject to the above Limit, $1,000,000 is the most we will pay for all damages sustained by any one "employee," including damages sustained by such "employee's" dependents and beneficiaries, as a result of:

a) An act, error or omission; or

b) A series of acts, errors or omissions

negligently committed in the "administration" of your "employee benefit program."

However, the amount paid under this endorsement shall not exceed, and will be subject to, the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program."

The Limits of Insurance of this endorsement apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations of the policy to which this endorsement is attached, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

4. Deductible

a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of $1,000. The limits of insurance shall not be reduced by the amount of this deductible.

b. The deductible amount applies to all damages sustained by any one "employee," including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

c. The terms of this insurance, including those with respect to:

1) Our right and duty to defend any "suits" seeking those damages; and

2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, "claim" or "suit"

apply irrespective of the application of the deductible amount.

d. We may pay any part or all of the deductible amount to effect settlement of any "claim" or

"suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

SECTION IV - CONDITIONS, Paragraphs **2.** and **4.** are replaced by the following for the Employee Benefits Liability Coverage:

2. Duties In The Event Of An Act, Error Or Omission, "Claim" Or "Suit"

a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a "claim." To the extent possible, notice should include:

1) What the act, error or omission was and when it occurred; and

2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

b. If a "claim" is made or "suit" is brought against any insured, you must:

1) Immediately record the specifics of the "claims" or "suit" and the date received; and

2) Notify us as soon as practicable.

You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.

c. You and any other involved insured must:

1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";

2) Authorize us to obtain records and other information;

3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and

4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

d. No insured will, except at the insured's own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this endorsement, our obligations are limited as follows:

a. Primary Insurance
This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance
Any other primary insurance available to you covering acts, errors or omissions for which you have been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit." If no other insurer defends, we may undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

1) The total amount that all such other insurance would pay for the loss in absence of this insurance; and

2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limits of insurance of all insurers.

SECTION V - DEFINITIONS is amended by adding the following definitions for Employee Benefits Liability Coverage:

1. "Administration" means:
   a. Providing information to "employees," including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
   b. Handling records in connection with the "employee benefit program"; or
   c. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program."

   However, "administration" does not include handling payroll deductions.
2. "Cafeteria plans" means plans authorized by the applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.
3. "Claim" means any demand, or "suit," made by an "employee" or an "employee's" dependents and beneficiaries, for damages as the result of an act, error or omission.
4. "Employee benefit program" means a program providing some or all of the following benefits to "employees," whether provided through a "cafeteria plan" or otherwise.
   a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
   b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible for such benefits;
   c. Unemployment insurance, social security benefits, workers compensation and disability benefits;
   d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

SECTION V - DEFINITIONS - the definition of "employee" and "suit" is replaced for Employee Benefits Liability Coverage by the following:

"Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker." "Employee" does not include a "temporary worker."
"Suit" means a civil proceeding in which damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

B. Additional Insured - Owners, Lessees, or Contractors - Automatic Status (not applicable to Employee Benefits Liability Coverage)

1. Section II - Who Is An Insured is amended to include as an additional insured any person or

organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy and any other person or organization you are required to add as an additional insured under the contract or agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:
   a. Your acts or omissions; or
   b. The acts or omissions of those acting on your behalf;

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

   Except as provided for in the exception to **2.b.** below, a person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

   However, the insurance afforded to such additional insured described above:
   a. only applies to the extent permitted by law; and
   b. will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
2. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

   This insurance does not apply to:
   a. "Bodily injury," "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
      1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
      2) Supervisory, inspection, architectural or engineering activities.

      This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or failure to render, any professional architectural, engineering or surveying services.
   b. "Bodily injury" or "property damage" occurring after:
      1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
      2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

   However, exclusion **b.** does not apply when in conflict with the requirements of a written contract or agreement.
3. The most we will pay on behalf of the additional insured is the amount of insurance required by the contract or agreement you have entered into with the additional insured or the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or Change Endorsement, whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits of Insurance shown in the Declarations or Change Endorsement.

C. Additional Insured - Managers or Lessors of Premises - Automatic Status (not applicable to Employee Benefits Liability Coverage)

1. Section II - Who Is An Insured is amended to include as an insured any person or organization when you and such person or organization have agreed in writing in a contract or agreement that such

person or organization be added as an additional insured on your policy, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

   This insurance does not apply to:
   a. Any "occurrence" which takes place after you cease to be a tenant in that premises.
   b. Structural alterations, new construction or demolition operations performed by or on behalf of the additional insured.

   However, the insurance afforded to such additional insured described above:
   a. only applies to the extent permitted by law; and
   b. will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
2. The most we will pay on behalf of the additional insured is the amount of insurance required by the contract or agreement you have entered into with the additional insured or the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or Change Endorsement, whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits of Insurance shown in the Declarations or Change Endorsement.

D. Additional Insured - Lessor of Leased Equipment - Automatic Status (not applicable to Employee Benefits Liability Coverage)

1. Section II - Who Is An Insured is amended to include as an additional insured any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

   However, the insurance afforded to such additional insured described above:
   a. only applies to the extent permitted by law; and
   b. will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

   A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.
2. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
3. The most we will pay on behalf of the additional insured is the amount of insurance required by the contract or agreement you have entered into with the additional insured or the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or Change Endorsement, whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits of Insurance shown in the Declarations or Change Endorsement.

E. Additional Insured - Vendors - Automatic Status (not applicable to Employee Benefits Liability Coverage)

1. Section II - Who Is An Insured is amended to include as an insured any person or organization (referred to below as vendor) when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule, Declarations or Change Endorsement which are distributed or sold in the regular course of the vendor's business.

   However, the insurance afforded to such additional insured described above:
   a. only applies to the extent permitted by law; and
   b. will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
2. With respect to the insurance afforded to these vendors, the following additional exclusions apply:

   a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
   b. An express warranty unauthorized by you;
   c. Any physical or chemical change in the product made intentionally by the vendor;
   d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
   e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
   f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
   g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
   h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
      1) The exceptions contained in Sub-paragraphs **d.** or **f.**; or
      2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
3. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
4. The most we will pay on behalf of the vendor is the amount of insurance required by the contract or agreement you have entered into with the additional insured or the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or Change Endorsement, whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits of Insurance shown in the Declarations or Change Endorsement.

F. Include Directors Or Trustees On Committees As Employees (not applicable to Employee Benefits Liability Coverage)

SECTION V - DEFINITIONS is amended by the addition of the following to definition **5.**:

"Employee" also includes any of your directors or trustees acting as a member of any of your elected or appointed committees to perform on your behalf specific, as distinguished from general, directorial acts.

G. Waiver Of Transfer Of Rights Of Recovery Against Others To Us

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US, SECTION IV CONDITION 8., is
amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard." This waiver applies only to the person or organization which, before the loss, you have agreed in writing to waive your right of recovery.

H. Newly Formed Or Acquired Organizations (not applicable to Employee Benefits Liability Coverage)

SECTION II - WHO IS AN INSURED is amended to include any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

1. Coverage under this provision is afforded only until 180 days after you acquire or form the organization or the end of the policy period, whichever is earlier.
2. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
3. Coverage B does not apply to "personal injury and advertising injury" arising out of an offense committed before you acquired or formed the organization.

I. Notice Of Occurrence, Knowledge Of Occurrence, Unintentional Omission

The following is added to SECTION IV.2. - DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT:

e. Notice of Accident/Occurrence

When you report to your Workers Compensation carrier the occurrence of any accident which later develops into a liability claim covered under this policy, failure to report the accident to us at the time of occurrence is not in violation of the Conditions of this policy. However, as soon as you are definitely made aware of the fact that the particular accident is a liability claim rather than a Workers Compensation claim prompt notification must be given to us.

f. Unintentional Errors and Omissions

The insurance afforded by this policy is not invalidated by any unintentional errors, omissions or improper description of premises or your unintentional failure to disclose all hazards existing at inception date of the policy.

g. Knowledge of Accident/Occurrence

Knowledge of an accident/occurrence by your agent, servant or employee is not knowledge by you unless an executive officer of your Corporation received such notice from its agent, servant or employee.

J. Voluntary Property Damage

1. We will pay, at your request, for loss due to "Property Damage" to property of others caused by you, or while in your possession, arising out of your business operations.
2. "Loss" means unintentional damage or destruction but does not include disappearance, theft, or loss of use.
3. Limits of Insurance - The most we will pay for "loss" under the Voluntary Property Damage is **$2,500** for each "occurrence." The most we will pay for the sum of all damages because of "Property Damage" is an annual policy aggregate limit of **$25,000.**
4. Deductible - We will not pay for "loss" in any one "occurrence" until the amount of "loss" exceeds **$250.**

We may pay any part or all of the deductible amount to effect settlement of any "claim" or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

5. The insurance under the Voluntary Property Damage shall not apply:
   a. To "loss" of property at premises owned, rented, leased, operated, or used by you;
   b. To "loss" of property while in transit;
   c. To "loss" of property owned by, rented to, leased to, borrowed by or used by you;
   d. To the cost of repairing or replacing (1) any work defectively or incorrectly done, (2) any product manufactured, sold or supplied by you, unless the "Property Damage" is caused directly by you after delivery of the product or completion of the work and resulting from a subsequent undertaking;
   e. To "loss" of property included within the "Products/Completed Operations Hazard";
   f. To "loss" of property which is an "auto" or "mobile equipment."
   g. To "loss" of property caused by "pollutants."
6. In the event of "loss" covered by this endorsement, you shall, if requested by us, replace the property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

K. Non-Owned Watercraft And Non-Owned Aircraft Liability

SECTION I - COVERAGE A, exclusion 2.g. is replaced by the following:

g. "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading." This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

1) A watercraft while ashore on premises you own or rent;
2) A watercraft you do not own that is:
   a) Less than 60 feet long; and
   b) Not being used to carry persons or property for a charge;
3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
5) "Bodily injury" or "property damage" arising out of:
   a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
   b) The operation of any of the machinery or equipment listed in paragraph f.2) or f.3) of the definition of "mobile equipment."
6) An aircraft you do not own provided it is not operated by any insured.

L. Fire, Sprinkler Leakage Or Explosion

1. **SECTION I - GENERAL LIABILITY COVERAGES** is amended as follows:
   a. The last paragraph of **2. Exclusions** under **A. Bodily Injury and Property Damage Liability** is replaced by the following:
   Exclusions c. through q. do not apply to damage by fire, sprinkler leakage or explosion to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.
   But the Limit for Damage to Premises Rented To You shown in the Declaration will apply to all damage proximately caused by the same event, whether such damage results from fire, sprinkler leakage or explosion or any combination of the three.
   b. **Section III - Limits of Insurance** is amended to replace paragraph 6. with the following:
   6. Subject to Paragraph 5. above, the Damage To Premises Rented to You Limit is the most we will pay under Paragraph A. Bodily Injury And Property Damage Liability for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, sprinkler leakage, or explosion, while rented to you or temporarily occupied by you with permission of the owner.
   But the Limit of Insurance shown in the Declaration will apply to all damage proximately caused by the same event whether such damage results from fire, sprinkler leakage or explosion or any combination of the three.
2. The Damage to Premises Rented To You Limit is $300,000 unless a higher limit is shown on the declaration or change endorsement.

3. Paragraph 4.b. of the Other Insurance is amended as follows:
   The term "Fire" in Paragraph B. (1)(a)(i) is replaced by "Fire, Sprinkler Leakage, or Explosion"
4. Section 9.a. under SECTION V - DEFINITIONS is amended as follows:
   The term "fire" is replaced by "fire, sprinkler leakage, or explosion"

M. Pollution Coverage For Upset Of Mobile Equipment

The Insuring Agreement for "property damage" liability with respect to your operations is extended as follows:

1. We will pay those sums which you become legally obligated to pay for "property damage" cause directly by immediate, abrupt and accidental upset, overturn or collision of your "mobile equipment" while transporting "pollutants" which are intended for and normally used in your operations. The operations must be in compliance with local, state, and federal ordinances and laws.
2. **EXCLUSIONS**
   a. With regard only to the coverage provided by this extension K., SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, f. is deleted and replaced by the following for this extension only:
   f. Pollution
   Any loss, cost or expense arising out of any:
   1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
   2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants."
   3) Premises, site or location which is or was at any time owned, rented or loaned to any insured.

N. Aggregate Limits Of Insurance (not applicable to Employee Benefits Liability Coverage)

The General Aggregate Limit under SECTION III - LIMITS OF INSURANCE, Paragraph 2. applies separately to each of your "location(s)" owned by or rented to you or "project(s)" away from "location(s)" owned by or rented to you.

"Location" and/or "project" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

O. Supplementary Payments - Higher Limits

Under SECTION I - SUPPLEMENTARY PAYMENTS - COVERAGES A AND B:

Paragraph **1.b.** is replaced by the following:
Up to $2000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

Paragraph **1.d.** is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to $400 a day because of time off from work.

P. Reasonable Force Expansion - Property Damage

Exclusion 2.a. of Coverage A is replaced with the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This

exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

Q. Lost Key Coverage

1. SECTION I - COVERAGES
   COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY
   Exclusion **2.j.4)** Personal property in the care, custody or control of the insured is amended to add:
   However, coverage for property of others in the care, custody or control of the insured is provided for the loss of keys which are in the possession of the insured or his "employees" subject to the following additional provisions:
   a. The insurance afforded with respect to Lost Key Coverage shall not apply to "property damage" caused by misappropriation, secretion, conversion, infidelity or any dishonest act on the part of any insured or his employees or agents;
   b. Our liability for all damages because of "property damage" to which this coverage applies shall be limited to the actual cost of keys, adjustment of locks to accept new keys or, if required, new locks including cost of their installation. Subject to such limitation, our total liability for all damages as the result of any one occurrence shall not exceed $25,000. Each claim is subject to a $250 deductible.
2. SECTION II - WHO IS AN INSURED
   The following is added to item **2.a.2)b):**
   However, coverage is provided for the loss of keys which are in the possession of the insured or his"employees," subject to the following additional provisions:
   a. The insurance afforded with respect to Lost Key Coverage shall not apply to "property damage" caused by misappropriation, secretion, conversion, infidelity or any dishonest act on the part of any insured or his ¿employees¿ or agents;
   b. Our liability for all damages because of "property damage" to which this coverage applies shall be limited to the actual cost of keys, adjustment of locks to accept new keys or, if required, new locks including cost of their installation. Subject to such limitation, our total liability for all damages as the result of any one occurrence shall not exceed $25,000. Each claim is subject to a $250 deductible.

R. Personal and Advertising Injury Definition

Under SECTION V – DEFINITIONS, 14.c. is replaced with the following:
The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person or organization occupies, committed by or on behalf of its owner, landlord or lessor.

S. The following is added to SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. OTHER INSURANCE:
When this General Liability Plus endorsement provides coverage and such coverage is also provided by any other provision of this policy:
a. There shall be no duplication of the Limits of Insurance.
b. Any loss payment made under such other provisions shall reduce by such loss payments the Limits of Insurance available under the General Liability Plus endorsement.

T. SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended by adding:
LIBERALIZATION
If we adopt a change in our Comprehensive General Liability Coverage forms or rules that would broaden the coverage without extra charge, the broader coverage will apply to this Coverage Form. It will apply when the change becomes effective in your state.

Signature: Xavier Vigil
Xavier Vigil (Mar 16, 2021 11:11 MDT)

Email: xivigil@santafenm.gov

CM AFFD HSG HOUSING TRUST AMENDMENT 1 TO 20-0452 R-1

Final Audit Report 2021-03-18

Created:	2021-03-16
By:	Jimmy Tapia (jptapia@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAj8cz3zy2BP7Q317rl6sZ7Gabo94GjRt-

"CM AFFD HSG HOUSING TRUST AMENDMENT 1 TO 20-0452 R-1" History

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City of Santa Fe
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Signature Date: 2021-03-18 - 5:25:40 PM GMT - Time Source: server- IP address: 76.113.70.149

Agreement completed.
2021-03-18 - 5:25:40 PM GMT

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **3202077**

Contractor: **Housing Trust**

Description: **Home buyer assistance for low-Moderate income households. Providing comprehensive counseling services; homebuyer education and training with developing financial action plan**

Contract ☐ Agreement ☐ Lease / Rent ☐ Amendment ☉

Term Start Date: **07/01/2020** Term End Date: **06/30/2022**

☐ Approved by Council Date: _____

Contract / Lease:

Amendment # **2** to the Original Contract / Lease # **20-0451**

Increase/(Decrease) Amount $ _____

Extend Termination Date to: **June 30, 2022**

☐ Approved by Council Date: _____

Amendment is for:

2. **HISTORY** of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)
Orig Contract: $50,000
Amend #1: Increase by $50,00 (for a total of $110,000)
Amend #2: Extend term to June 30, 2022

3. **Procurement History:** **RFP 18/54/P**

Fran Delaway (Jul 22, 2021 16:37 MDT) Jul 22, 2021

Purchasing Officer Review: Date:

Comment & Exceptions: Amendment 2 to extend term and increase funds

4. **Funding Source:** **General Fund** **Org / Object:** **1002750.510500**

Andy Hopkins (Jul 20, 2021 10:28 MDT) Jul 20, 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: _____

SANTFEC-02 JSANCHEZ3

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 4/23/2021

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 License # 0757776 HUB International Insurance Services (SOW) 2905 Rodeo Park Drive East Building 6, Suite 100 Santa Fe, NM 87505	CONTACT NAME: Johanna Sanchez PHONE (A/C, No, Ext): (505) 992-1849 FAX (A/C, No): (866) 621-0427 E-MAIL ADDRESS: johanna.sanchez@hubinternational.com
INSURED Santa Fe Community Housing Trust and Tierra Contenta P O Box 713 Santa Fe, NM 87504	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Central Mutual Insurance Company — 20230 INSURER B : New Mexico Mutual Casualty Company — 40627 INSURER C : Philadelphia Indemnity Insurance Company — 18058 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	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	[ ] CLAIMS-MADE [X] OCCUR	X		CLP8889277	1/1/2021	1/1/2022	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	X POLICY [ ] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	[ ] OTHER:							$
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	[ ] ANY AUTO			CLP8889277	1/1/2021	1/1/2022	BODILY INJURY (Per person)	$
	[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	[ ] UMBRELLA LIAB [ ] OCCUR						EACH OCCURRENCE	$
	[ ] EXCESS LIAB [ ] CLAIMS-MADE						AGGREGATE	$
	[ ] DED [ ] RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						X PER STATUTE [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N (Mandatory in NH)	N / A		0099999103	6/27/2021	6/27/2022	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
A	Employee Theft			CLP8889277	1/1/2021	1/1/2022	$1,000 Ded/Limit	25,000
C	Directors & Officers			PHSD1596937	1/1/2021	1/1/2022		1,000,000

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

CERTIFICATE HOLDER

City of Santa Fe
PO 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

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART
This endorsement amends the policy by adding the following; please read each section carefully.

EMPLOYEE BENEFITS LIABILITY COVERAGE
ADDITIONAL INSURED - OWNERS, LESSEES, OR CONTRACTORS – AUTOMATIC STATUS
ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES – AUTOMATIC STATUS
ADDITIONAL INSURED - LESSOR OF LEASED EQUIPMENT - AUTOMATIC STATUS
ADDITIONAL INSURED - VENDORS - AUTOMATIC STATUS
INCLUDE DIRECTORS OR TRUSTEES ON COMMITTEES AS EMPLOYEES
WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHER TO US
NEWLY FORMED OR ACQUIRED ORGANIZATIONS
NOTICE OF OCCURRENCE, KNOWLEDGE OF OCCURRENCE, UNINTENTIONAL OMISSION
VOLUNTARY PROPERTY DAMAGE
NON-OWNED WATERCRAFT AND NON-OWNED AIRCRAFT LIABILITY
FIRE, SPRINKLER LEAKAGE OR EXPLOSION
POLLUTION COVERAGE FOR UPSET OF MOBILE EQUIPMENT
AGGREGATE LIMITS OF INSURANCE AMENDMENT
SUPPLEMENTARY PAYMENTS – HIGHER LIMITS
REASONABLE FORCE EXPANSION - PROPERTY DAMAGE
LOST KEY COVERAGE
PERSONAL AND ADVERTISING INJURY DEFINITION AMENDED

These modifications are subject to the terms and conditions applicable to coverage in the policy except as provided below.

A. Employee Benefits Liability Coverage

The following is added to Section I - Coverages: EMPLOYEE BENEFITS LIABILITY COVERAGE.

1. Insuring Agreement.

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any "claim" or "suit" that may result. But:

1) The amount we will pay for damages is limited as described in SECTION III LIMITS OF INSURANCE for Employee Benefits Liability Coverage and

2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

b. This insurance applies to damages only if:

1) The act, error or omission is negligently committed in the "administration" of your "employee benefit program";

2) The act, error or omission is caused by an "occurrence" that takes place in the

"coverage territory"; and

3) The act, error or omission occurs during the policy period.

2. Exclusions

This insurance does not apply to:

a. Dishonesty, Fraud Or Criminal Act
Damages arising out of any dishonest, fraudulent, criminal or malicious act or omission, committed by any insured, including the willful or reckless violation of any statute.

b. Bodily Injury, Property Damage, Or Personal And Advertising Injury
"Bodily injury," "property damage" or "personal and advertising injury."

c. Failure To Perform A Contract
Damages arising out of failure of performance of contract by any insurer.

d. Insufficiency Of Funds
Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program."

e. Inadequacy Of Performance Of Investment/Advice Given To Participate
Any "claim" or "suit" based upon:

1) Failure of any investment to perform;

2) Errors in providing information on past performance of investment vehicles; or

3) Advice given to any person to participate or not to participate in any plan included in the "employee benefit program."

f. Workers Compensation And Similar Laws
Damages arising out of any "claim" related to any workers compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

g. ERISA
Damages for which the insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or any similar federal, state or local laws.

h. Available Benefits
Any "claim" for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

i. Taxes, Fines Or Penalties

1) Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law; or

2) Loss or damages arising out of the imposition of such taxes, fines or penalties.

j. Employment-Related Practices
Damages arising out of wrongful termination of employment, discrimination, or other employment-related practices.

3. Supplementary Payments - Coverages A and B

For the purposes of the coverage provided by Employee Benefits Liability Coverage, the Supplementary Payments - Coverages A and B apply except for Paragraphs **1.b.** and **2.**

SECTION II - WHO IS AN INSURED, Paragraphs **2.** and **3.** are replaced by the following for Employee Benefits Liability Coverage:

2. Each of the following is also an insured:

a. Each of your "employees" who is or was authorized to administer your "employee benefit program."

b. Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.

c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Endorsement.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

b. Coverage under this provision does not apply to any act, error or omission that occurred before you acquired or formed the organization.

SECTION III - LIMITS OF INSURANCE is replaced by the following for the Employee Benefits Liability Coverage:

1) The Limits of Insurance shown below and the rules below fix the most we will pay regardless of the number of:

a) Insureds;

b) "Claims" made or "suits" brought;

c) Persons or organizations making "claims" or bringing "suits";

d) Acts, error or omissions which result in loss; or

e) Benefits included in your "employee benefit program."

2) $2,000,000 is the most we will pay for all damages because of acts, errors or omissions committed in the "administration" of your "employee benefit program."

3) Subject to the above Limit, $1,000,000 is the most we will pay for all damages sustained by any one "employee," including damages sustained by such "employee's" dependents and beneficiaries, as a result of:

a) An act, error or omission; or

b) A series of acts, errors or omissions

negligently committed in the "administration" of your "employee benefit program."

However, the amount paid under this endorsement shall not exceed, and will be subject to, the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program."

The Limits of Insurance of this endorsement apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations of the policy to which this endorsement is attached, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

4. Deductible

a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of $1,000. The limits of insurance shall not be reduced by the amount of this deductible.

b. The deductible amount applies to all damages sustained by any one "employee," including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

c. The terms of this insurance, including those with respect to:

1) Our right and duty to defend any "suits" seeking those damages; and

2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, "claim" or "suit"

apply irrespective of the application of the deductible amount.

d. We may pay any part or all of the deductible amount to effect settlement of any "claim" or

"suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

SECTION IV - CONDITIONS, Paragraphs **2.** and **4.** are replaced by the following for the Employee Benefits Liability Coverage:

2. Duties In The Event Of An Act, Error Or Omission, "Claim" Or "Suit"

a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a "claim." To the extent possible, notice should include:

1) What the act, error or omission was and when it occurred; and

2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

b. If a "claim" is made or "suit" is brought against any insured, you must:

1) Immediately record the specifics of the "claims" or "suit" and the date received; and

2) Notify us as soon as practicable.

You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.

c. You and any other involved insured must:

1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";

2) Authorize us to obtain records and other information;

3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and

4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

d. No insured will, except at the insured's own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this endorsement, our obligations are limited as follows:

a. Primary Insurance
This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance
Any other primary insurance available to you covering acts, errors or omissions for which you have been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit." If no other insurer defends, we may undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

1) The total amount that all such other insurance would pay for the loss in absence of this insurance; and

2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limits of insurance of all insurers.

SECTION V - DEFINITIONS is amended by adding the following definitions for Employee Benefits Liability Coverage:

1. "Administration" means:
   a. Providing information to "employees," including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
   b. Handling records in connection with the "employee benefit program"; or
   c. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program."

   However, "administration" does not include handling payroll deductions.
2. "Cafeteria plans" means plans authorized by the applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.
3. "Claim" means any demand, or "suit," made by an "employee" or an "employee's" dependents and beneficiaries, for damages as the result of an act, error or omission.
4. "Employee benefit program" means a program providing some or all of the following benefits to "employees," whether provided through a "cafeteria plan" or otherwise.
   a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
   b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible for such benefits;
   c. Unemployment insurance, social security benefits, workers compensation and disability benefits;
   d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

SECTION V - DEFINITIONS - the definition of "employee" and "suit" is replaced for Employee Benefits Liability Coverage by the following:

"Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker." "Employee" does not include a "temporary worker."
"Suit" means a civil proceeding in which damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

B. Additional Insured - Owners, Lessees, or Contractors - Automatic Status (not applicable to Employee Benefits Liability Coverage)

1. Section II - Who Is An Insured is amended to include as an additional insured any person or

organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy and any other person or organization you are required to add as an additional insured under the contract or agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:
   a. Your acts or omissions; or
   b. The acts or omissions of those acting on your behalf;

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

   Except as provided for in the exception to **2.b.** below, a person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

   However, the insurance afforded to such additional insured described above:
   a. only applies to the extent permitted by law; and
   b. will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
2. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

   This insurance does not apply to:
   a. "Bodily injury," "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
      1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
      2) Supervisory, inspection, architectural or engineering activities.

      This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or failure to render, any professional architectural, engineering or surveying services.
   b. "Bodily injury" or "property damage" occurring after:
      1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
      2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

   However, exclusion **b.** does not apply when in conflict with the requirements of a written contract or agreement.
3. The most we will pay on behalf of the additional insured is the amount of insurance required by the contract or agreement you have entered into with the additional insured or the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or Change Endorsement, whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits of Insurance shown in the Declarations or Change Endorsement.

C. Additional Insured - Managers or Lessors of Premises - Automatic Status (not applicable to Employee Benefits Liability Coverage)

1. Section II - Who Is An Insured is amended to include as an insured any person or organization when you and such person or organization have agreed in writing in a contract or agreement that such

person or organization be added as an additional insured on your policy, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

   This insurance does not apply to:
   a. Any "occurrence" which takes place after you cease to be a tenant in that premises.
   b. Structural alterations, new construction or demolition operations performed by or on behalf of the additional insured.

   However, the insurance afforded to such additional insured described above:
   a. only applies to the extent permitted by law; and
   b. will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
2. The most we will pay on behalf of the additional insured is the amount of insurance required by the contract or agreement you have entered into with the additional insured or the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or Change Endorsement, whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits of Insurance shown in the Declarations or Change Endorsement.

D. Additional Insured - Lessor of Leased Equipment - Automatic Status (not applicable to Employee Benefits Liability Coverage)

1. Section II - Who Is An Insured is amended to include as an additional insured any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

   However, the insurance afforded to such additional insured described above:
   a. only applies to the extent permitted by law; and
   b. will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

   A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.
2. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
3. The most we will pay on behalf of the additional insured is the amount of insurance required by the contract or agreement you have entered into with the additional insured or the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or Change Endorsement, whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits of Insurance shown in the Declarations or Change Endorsement.

E. Additional Insured - Vendors - Automatic Status (not applicable to Employee Benefits Liability Coverage)

1. Section II - Who Is An Insured is amended to include as an insured any person or organization (referred to below as vendor) when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule, Declarations or Change Endorsement which are distributed or sold in the regular course of the vendor's business.

   However, the insurance afforded to such additional insured described above:
   a. only applies to the extent permitted by law; and
   b. will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
2. With respect to the insurance afforded to these vendors, the following additional exclusions apply:

   a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
   b. An express warranty unauthorized by you;
   c. Any physical or chemical change in the product made intentionally by the vendor;
   d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
   e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
   f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
   g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
   h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
      1) The exceptions contained in Sub-paragraphs **d.** or **f.**; or
      2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
3. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
4. The most we will pay on behalf of the vendor is the amount of insurance required by the contract or agreement you have entered into with the additional insured or the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or Change Endorsement, whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits of Insurance shown in the Declarations or Change Endorsement.

F. Include Directors Or Trustees On Committees As Employees (not applicable to Employee Benefits Liability Coverage)

SECTION V - DEFINITIONS is amended by the addition of the following to definition **5.**:

"Employee" also includes any of your directors or trustees acting as a member of any of your elected or appointed committees to perform on your behalf specific, as distinguished from general, directorial acts.

G. Waiver Of Transfer Of Rights Of Recovery Against Others To Us

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US, SECTION IV CONDITION 8., is
amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard." This waiver applies only to the person or organization which, before the loss, you have agreed in writing to waive your right of recovery.

H. Newly Formed Or Acquired Organizations (not applicable to Employee Benefits Liability Coverage)

SECTION II - WHO IS AN INSURED is amended to include any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

1. Coverage under this provision is afforded only until 180 days after you acquire or form the organization or the end of the policy period, whichever is earlier.
2. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
3. Coverage B does not apply to "personal injury and advertising injury" arising out of an offense committed before you acquired or formed the organization.

I. Notice Of Occurrence, Knowledge Of Occurrence, Unintentional Omission

The following is added to SECTION IV.2. - DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT:

e. Notice of Accident/Occurrence

When you report to your Workers Compensation carrier the occurrence of any accident which later develops into a liability claim covered under this policy, failure to report the accident to us at the time of occurrence is not in violation of the Conditions of this policy. However, as soon as you are definitely made aware of the fact that the particular accident is a liability claim rather than a Workers Compensation claim prompt notification must be given to us.

f. Unintentional Errors and Omissions

The insurance afforded by this policy is not invalidated by any unintentional errors, omissions or improper description of premises or your unintentional failure to disclose all hazards existing at inception date of the policy.

g. Knowledge of Accident/Occurrence

Knowledge of an accident/occurrence by your agent, servant or employee is not knowledge by you unless an executive officer of your Corporation received such notice from its agent, servant or employee.

J. Voluntary Property Damage

1. We will pay, at your request, for loss due to "Property Damage" to property of others caused by you, or while in your possession, arising out of your business operations.
2. "Loss" means unintentional damage or destruction but does not include disappearance, theft, or loss of use.
3. Limits of Insurance - The most we will pay for "loss" under the Voluntary Property Damage is **$2,500** for each "occurrence." The most we will pay for the sum of all damages because of "Property Damage" is an annual policy aggregate limit of **$25,000.**
4. Deductible - We will not pay for "loss" in any one "occurrence" until the amount of "loss" exceeds **$250.**

We may pay any part or all of the deductible amount to effect settlement of any "claim" or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

5. The insurance under the Voluntary Property Damage shall not apply:
   a. To "loss" of property at premises owned, rented, leased, operated, or used by you;
   b. To "loss" of property while in transit;
   c. To "loss" of property owned by, rented to, leased to, borrowed by or used by you;
   d. To the cost of repairing or replacing (1) any work defectively or incorrectly done, (2) any product manufactured, sold or supplied by you, unless the "Property Damage" is caused directly by you after delivery of the product or completion of the work and resulting from a subsequent undertaking;
   e. To "loss" of property included within the "Products/Completed Operations Hazard";
   f. To "loss" of property which is an "auto" or "mobile equipment."
   g. To "loss" of property caused by "pollutants."
6. In the event of "loss" covered by this endorsement, you shall, if requested by us, replace the property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

K. Non-Owned Watercraft And Non-Owned Aircraft Liability

SECTION I - COVERAGE A, exclusion 2.g. is replaced by the following:

g. "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading." This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

1) A watercraft while ashore on premises you own or rent;
2) A watercraft you do not own that is:
   a) Less than 60 feet long; and
   b) Not being used to carry persons or property for a charge;
3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
5) "Bodily injury" or "property damage" arising out of:
   a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
   b) The operation of any of the machinery or equipment listed in paragraph f.2) or f.3) of the definition of "mobile equipment."
6) An aircraft you do not own provided it is not operated by any insured.

L. Fire, Sprinkler Leakage Or Explosion

1. **SECTION I - GENERAL LIABILITY COVERAGES** is amended as follows:
   a. The last paragraph of **2. Exclusions** under **A. Bodily Injury and Property Damage Liability** is replaced by the following:
   Exclusions c. through q. do not apply to damage by fire, sprinkler leakage or explosion to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.
   But the Limit for Damage to Premises Rented To You shown in the Declaration will apply to all damage proximately caused by the same event, whether such damage results from fire, sprinkler leakage or explosion or any combination of the three.
   b. **Section III - Limits of Insurance** is amended to replace paragraph 6. with the following:
   6. Subject to Paragraph 5. above, the Damage To Premises Rented to You Limit is the most we will pay under Paragraph A. Bodily Injury And Property Damage Liability for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, sprinkler leakage, or explosion, while rented to you or temporarily occupied by you with permission of the owner.
   But the Limit of Insurance shown in the Declaration will apply to all damage proximately caused by the same event whether such damage results from fire, sprinkler leakage or explosion or any combination of the three.
2. The Damage to Premises Rented To You Limit is $300,000 unless a higher limit is shown on the declaration or change endorsement.

3. Paragraph 4.b. of the Other Insurance is amended as follows:
   The term "Fire" in Paragraph B. (1)(a)(i) is replaced by "Fire, Sprinkler Leakage, or Explosion"
4. Section 9.a. under SECTION V - DEFINITIONS is amended as follows:
   The term "fire" is replaced by "fire, sprinkler leakage, or explosion"

M. Pollution Coverage For Upset Of Mobile Equipment

The Insuring Agreement for "property damage" liability with respect to your operations is extended as follows:

1. We will pay those sums which you become legally obligated to pay for "property damage" cause directly by immediate, abrupt and accidental upset, overturn or collision of your "mobile equipment" while transporting "pollutants" which are intended for and normally used in your operations. The operations must be in compliance with local, state, and federal ordinances and laws.
2. **EXCLUSIONS**
   a. With regard only to the coverage provided by this extension K., SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, f. is deleted and replaced by the following for this extension only:
   f. Pollution
   Any loss, cost or expense arising out of any:
   1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
   2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants."
   3) Premises, site or location which is or was at any time owned, rented or loaned to any insured.

N. Aggregate Limits Of Insurance (not applicable to Employee Benefits Liability Coverage)

The General Aggregate Limit under SECTION III - LIMITS OF INSURANCE, Paragraph 2. applies separately to each of your "location(s)" owned by or rented to you or "project(s)" away from "location(s)" owned by or rented to you.

"Location" and/or "project" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

O. Supplementary Payments - Higher Limits

Under SECTION I - SUPPLEMENTARY PAYMENTS - COVERAGES A AND B:

Paragraph **1.b.** is replaced by the following:
Up to $2000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

Paragraph **1.d.** is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to $400 a day because of time off from work.

P. Reasonable Force Expansion - Property Damage

Exclusion 2.a. of Coverage A is replaced with the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This

exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

Q. Lost Key Coverage

1. SECTION I - COVERAGES
   COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY
   Exclusion **2.j.4)** Personal property in the care, custody or control of the insured is amended to add:
   However, coverage for property of others in the care, custody or control of the insured is provided for the loss of keys which are in the possession of the insured or his "employees" subject to the following additional provisions:
   a. The insurance afforded with respect to Lost Key Coverage shall not apply to "property damage" caused by misappropriation, secretion, conversion, infidelity or any dishonest act on the part of any insured or his employees or agents;
   b. Our liability for all damages because of "property damage" to which this coverage applies shall be limited to the actual cost of keys, adjustment of locks to accept new keys or, if required, new locks including cost of their installation. Subject to such limitation, our total liability for all damages as the result of any one occurrence shall not exceed $25,000. Each claim is subject to a $250 deductible.
2. SECTION II - WHO IS AN INSURED
   The following is added to item **2.a.2)b):**
   However, coverage is provided for the loss of keys which are in the possession of the insured or his"employees," subject to the following additional provisions:
   a. The insurance afforded with respect to Lost Key Coverage shall not apply to "property damage" caused by misappropriation, secretion, conversion, infidelity or any dishonest act on the part of any insured or his ¿employees¿ or agents;
   b. Our liability for all damages because of "property damage" to which this coverage applies shall be limited to the actual cost of keys, adjustment of locks to accept new keys or, if required, new locks including cost of their installation. Subject to such limitation, our total liability for all damages as the result of any one occurrence shall not exceed $25,000. Each claim is subject to a $250 deductible.

R. Personal and Advertising Injury Definition

Under SECTION V – DEFINITIONS, 14.c. is replaced with the following:
The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person or organization occupies, committed by or on behalf of its owner, landlord or lessor.

S. The following is added to SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. OTHER INSURANCE:
When this General Liability Plus endorsement provides coverage and such coverage is also provided by any other provision of this policy:
a. There shall be no duplication of the Limits of Insurance.
b. Any loss payment made under such other provisions shall reduce by such loss payments the Limits of Insurance available under the General Liability Plus endorsement.

T. SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended by adding:
LIBERALIZATION
If we adopt a change in our Comprehensive General Liability Coverage forms or rules that would broaden the coverage without extra charge, the broader coverage will apply to this Coverage Form. It will apply when the change becomes effective in your state.

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Housing Trust

Procurement Title: RFP 18/54/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

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
Fran Duraway (Jul 22, 2021 16:37 MDT)	Chief Procurement Officer	Jul 22, 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: SANTA FE COMMUNITY HOUSING
DBA: SANTA FE COMMUNITY HOUSING

Business Location: 1111 AGUA FRIA ST
SANTA FE, NM 87501

CRS Number: 02-171649-00-8

Owner: Hollie Hester

License Number: 227214

License Type: Business License - Renewable

Issued Date: March 11, 2021

Classification: Business Registration - Standard

Expiration Date: March 11, 2022

Fees Paid: $35.00

Description: NON-PROFIT

SANTA FE COMMUNITY HOUSING
1111 Agua Fria Street ST
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: June 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 17:02 MDT)

Re: General Fund Contract Amendments with Homewise and the Housing Trust (RFP 18/54)

ACTION REQUESTED:
Please sign the attached Amendments #2 for fee-for-services contracts with Homewise and the Housing Trust. The amendments extend the term of performance through June 30, 2022 and add compensation as follows:

- Homewise: $190,000 (total contract amount: $380,000)
- Housing Trust: $110,000 (total contract amount: $110,000)

BACKGROUND:
The City of Santa Fe has a long history of contracting with local, nonprofit housing agencies to provide homeownership support services. These services include: homebuyer training and counseling; financial fitness coaching; refinancing; HECM counseling; home repair; and general homeownership support. In 2018, the Office of Affordable Housing (OAH) released RFP 18/44 which called for proposals from affordable housing agencies and partners to provide affordable housing support services. Additionally, the RFP called for assistance with the Santa Fe Homes Program inclusionary zoning requirements, including income-certifying eligible buyers for SFHP Developers. Two respondents, Homewise and the Housing Trust were selected as contractors.

ITEM AND ISSUE:
Each fiscal year since 2018, the contracts have been renewed. These amendments represent year 4 in the above-referenced RFP. Compensation is based on a $15,000/quarter base fee totaling $60,000 per year, with an additional $1,000 per unit fee for each closing that results in home purchase, home repair or a Home Equity Conversion Mortgage (HECM). The funding amounts are roughly proportional to the volume of services provided.

Memo_GenFund_Homeownership_AMEND_7.9.21

Final Audit Report 2021-07-09

Created:	2021-07-09
By:	Roberta Catanach (rlcatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAVBnTBPAsAP8cKsdrN8aAzDZhzB8_UEyH

"Memo_GenFund_Homeownership_AMEND_7.9.21" History

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Document e-signed by Alexandra Ladd (agladd@santafenm.gov)
Signature Date: 2021-07-09 - 11:02:43 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.
2021-07-09 - 11:02:43 PM GMT

Adobe Sign

Memo - General Fund - Homewise & HT

Final Audit Report 2021-07-12

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Document e-signed by rich brown (rdbrown@santafenm.gov)
Signature Date: 2021-07-12 - 7:36:47 PM GMT - Time Source: server- IP address: 71.228.116.134

Agreement completed.
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Adobe Sign

Housing Trust GF Amendment #2

Final Audit Report 2021-07-22

Created:	2021-07-20
By:	Lailah Herrera (lrherrera@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAjZIXfHCgf2_yT8gZtj8TK5yDOkoyFF7X

"Housing Trust GF Amendment #2" History

Document created by Lailah Herrera (lrherrera@ci.santa-fe.nm.us)
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Document e-signed by Fran Dunaway (fadunaway@santafenm.gov)
Signature Date: 2021-07-22 - 10:37:25 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.
2021-07-22 - 10:37:25 PM GMT

City of Santa Fe, New Mexico
Memorandum

DATE: **July 21, 2021**

TO: **Governing Body**

VIA: **Jarel LaPan Hill, City Manager**
Shannon Jones, Public Utilities Department Director

FROM: **Jesse Roach, Director, City of Santa Fe Water**
Marcos Martinez, Senior Assistant City Attorney

ITEM AND ISSUE:
Updates to County Partnership in the San Juan Chama Return Flow Project
Jesse Roach, jdroach@santafenm.gov 955-4309
Marcos Martinez, mdmartinez@santafenm.gov 955-6502

BACKGROUND AND SUMMARY:
Please refer to the Memo, also from Jesse Roach and Marcos Martinez in packet material dated June 1, 2021 for an overview of the benefits of the proposed project to the City and County. The current memo builds from that memo and explains only proposed changes to the agreement since it was approved by Public Works and Public Utilities Committee (June 7, 2021), and Finance Committee (June 21, 2021). There are 4 changes explained below in the order in which they appear (as redlined edits) in the updated agreement.

Change #1: Clarification of Water Contributions by City and County to San Juan Chama Return Flow Project. The effort to include the County in the San Juan Chama Return Flow Project (Project) is complicated by the lack of County return flow to the Paseo Real Water Reclamation Facility. Early efforts to include County San Juan Chama (SJC) water in the project partnership were unsuccessful, and the nature of the partnership evolved into one in which the City would bring the SJC water into the system and the County would pay for a portion of the project and receive the same portion of resulting return flows. However, legacy language in the agreement, particularly in the Recitals section didn't make this clear, and some confusion at the City staff level was noted before the June 30th Governing Body meeting. As a result, the item was delayed and changes were made to the Recitals and 1.a to make it clear that only City SJC water will be used in the Project.

Change #2: Explicit definition of Project Supply. The idea of Project Supply is used throughout the agreement and was defined in 1.b to make the agreement more readable. This change is editorial only.

Change #3: Incorporation of Potential Costs to Gather and Treat Effluent into the Agreement. This is the most significant change to the agreement and is designed to recognize that there are costs borne by the City Wastewater Management Division to make effluent available for discharge to the Rio Grande, and that the option should remain open for the Wastewater Management Division to recuperate some portion of these costs from the beneficiaries of the effluent, in this case the City Water Division, and the County should they be a partner in the Project.

Change #4: Specification that the County will lead the Lower Santa Fe River Planning Effort. Clarification that the City will actively participate, but this effort will be County led.

ACTION REQUESTED:
City of Santa Fe Water respectfully requests your review of the updated City – County San Juan – Chama Return Flow Project Agreement, and the following approvals:

1. Approval of the updated agreement if County approval occurs by the end of 2021.
2. Approval to initiate National Environmental Protection Act and Office of the State Engineer permitting, prior to formalization of City - County partnership in the Project.

City of Santa Fe, New Mexico
Memorandum

DATE: **June 1, 2021**

TO: **Governing Body – June 30, 2021**
Finance Committee – June 21, 2021
Public Works and Public Utilities Committee – June 7, 2021

VIA: **Jarel LaPan Hill, City Manager**
Mary McCoy, Finance Department Director
Shannon Jones, Public Utilities Department Director SJ

FROM: **Jesse Roach, Director, City of Santa Fe Water**
Marcos Martinez, Senior Assistant City Attorney

ITEM AND ISSUE:
Request for Approval of County Partnership in the San Juan Chama Return Flow Project
Jesse Roach, jdroach@santafenm.gov 955-4309
Marcos Martinez, mdmartinez@santafenm.gov 955-6502

BACKGROUND AND SUMMARY:
Connected Utilities: The City of Santa Fe and Santa Fe County share ownership in the Buckman Direct Diversion (BDD), and work together to manage water deliveries from this and other sources to customers in and around the City through a connected transmission and distribution network. City of Santa Fe Water provides backup water supply to the County, and we are actively working with the County on several fronts to ensure a resilient shared water future.

The San Juan Chama Return Flow Project (SJCRFP): In 2015, the City and County completed the Santa Fe Basin Study, a collaborative evaluation of the potential impact of climate change and population growth on Santa Fe's water future. This study identified waste-water effluent as a potential key to avoiding water shortages in the Santa Fe area by the middle of the century. Subsequent internal investigation and published studies point firmly to the SJCRFP as the most resource-efficient way to turn waste-water effluent (indirectly) into additional potable supply. This additional surface water supply will add resiliency to the City water resources portfolio, and thus to the County's backup water source.

The Lower Santa Fe River: The SJCRFP will take waste-water effluent out of the Santa Fe River Watershed for delivery to the Rio Grande in exchange for the ability to divert additional water from the Rio Grande. While there will continue to be effluent discharged to the lower Santa Fe River with the SJCRFP in place, unconsumed San Juan Chama water will no longer be part of that discharge. The proposed City County partnership in the SJCRFP includes a stakeholder informed planning process to develop a Lower Santa Fe River Plan for management of the lower river once the SJCRFP is in place.

Benefits of County Partnership in the SJCRFP: The County's participation in the SJCRFP would defray some of the City's costs in this large infrastructure project, would allow the County to directly benefit from a new water resource, and would bring the City and County together to engage in a stakeholder-informed planning process related to potential impacts of the SJCRFP on the lower Santa Fe River.

Proposed terms of City-County Partnership in the SJCRFP: The proposed partnership would allow the County to invest in the SJCRFP up to a 7% interest, and in return receive the same proportion of the wet water benefits from the project. Once built, the County would pay its proportionate share of operation, maintenance, replacement, and repair costs and 50% of costs associated with accounting for wet water project benefits. The County would provide a $140,000 nonrefundable up-front deposit on this investment. The City and County would embark on a stakeholder-informed lower Santa Fe River planning process to be complete within 2 years of the agreement effective date. If a mutually agreeable Lower Santa Fe River Plan is not developed or adopted by the City and the County, the County would have the option to exit the partnership. The County would lose the $140,000 deposit if they chose to exit at that point.

Note for the Public Works and Public Utilities Committee: This agreement with differences in Section 6 (Lower Santa Fe River Planning Process: County Termination Option) was approved by the Public Works and Public Utilities Committee on April 26, 2021. However, the version approved differed from a version approved by the Board of County Commissioners (BCC) on April 27, 2021, and as a result we are starting the process again with a revised agreement that will go to the BCC on June 29, 2021.

ACTION REQUESTED:
City of Santa Fe Water respectfully requests your review and approval of the attached City – County San Juan – Chama Return Flow Project Agreement

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3202765

Contractor: **Santa Fe County**

Description: **County Partnership in the San Juan Chama Return Flow Project**

Contract ☐ Agreement ☉ Lease / Rent ☐ Amendment ☐

Term Start Date: **upon approval** Term End Date: **Continue thereafter**

☑ Approved by Council Date: **Pending**

Contract / Lease: **$140,000 deposit from county to city**

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount $ _____

Extend Termination Date to: _____

☐ Approved by Council Date: _____

Amendment is for: **term extension**

2. **HISTORY** of Contract, Amendments & Lease / Rent - **Please Elaborate** (option: attach spreadsheet if multiple amendments)

3. **Procurement History:** **Exempt - Government Agreement, memo attached**

Fran Delaway (Jun 9, 2021 17:34 MDT) Jun 9, 2021

Purchasing Officer Review: Date:

Comment & Exceptions: _____

4. **Funding Source:** **Water Enterprise** **Org / Object:** **5050381**

Andy Hopkins (Jun 9, 2021 17:14 MDT) Jun 9, 2021

Budget Officer Approval: Date:

Comment & Exceptions: _____

Staff Contact who completed this form: **Maya Martinez** Phone # **4271**

Email: **mfmartinez@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Santa Fe County

Procurement Title: No Procurement / Governmental Agreement

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 Utilities Department / Water Division Staff Name Jesse Roach

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: _____

Jesse Roach, Water Division Director 5/10/21

Department Rep Printed Name (attesting that all information included) Title Date

Fran Dunaway (Jun 9, 2021 17:34 MDT)

Chief Procurement Officer Jun 9, 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 any resulting contract.

*

City of Santa Fe, New Mexico

memo

Date: 5/10/21

To: Fran Dunaway, Purchasing Director

From: Jesse Roach, Water Division Direcotr JR

Via: Shannon W. Jones, Public Utilities Director SJ

RE: Request for Approval of County Partnership in the San Juan Chama Return Flow Project

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ITEM AND ISSUE

The Water Division requests approval of an exempt procurement for a Partnership agreement between the City and Santa Fe County.

Exempt Procurement is being requested under the following:

13-1-98. Exemptions from the Procurement Code.

A. procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

Approved:

_____

Fran Dunaway, Purchasing Director

Signature: *Shannon Jones*

Email: swjones@santafenm.gov

Signature:

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

Signature:

Email: swjones@santafenm.gov

Signature:

Email: jdroach@santafenm.gov

SFC SJC

Final Audit Report 2021-06-03

Created:	2021-06-02
By:	Maya Martinez (mfmartinez@ci.santa-fe.nm.us)
Status:	Canceled / Declined
Transaction ID:	CBJCHBCAABAA37YtUbwbmrNFjiNBi1zPXBdEsqYuEeYg

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2021-06-02 - 4:21:51 PM GMT

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2021-06-02 - 4:27:57 PM GMT- IP address: 63.232.20.2

Maya Martinez (mfmartinez@ci.santa-fe.nm.us) replaced signer Marcos Martinez (mdmartinez@ci.santa-fe.nm.us) with Irene Romero (ikromero@santafenm.gov)
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Document canceled by Maya Martinez (mfmartinez@ci.santa-fe.nm.us)
2021-06-03 - 10:44:56 PM GMT- IP address: 63.232.20.2

Signature: 

Email: jdroach@santafenm.gov

Signature:

Email: swjones@santafenm.gov

SFC SJC

Final Audit Report 2021-06-04

Created:	2021-06-03
By:	Maya Martinez (mfmartinez@ci.santa-fe.nm.us)
Status:	Canceled / Declined
Transaction ID:	CBJCHBCAABAAWgWSiBRL5BBl8m0F73_o5cuuExGLibq3

"SFC SJC" History

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2021-06-03 - 11:45:57 PM GMT- IP address: 174.28.80.214

Document canceled by Maya Martinez (mfmartinez@ci.santa-fe.nm.us)
2021-06-04 - 1:42:09 PM GMT- IP address: 63.232.20.2

Signature: Shannon Jones

Email: swjones@santafenm.gov

Jun~~e 2~~ly 8, 2021

CITY-COUNTY
SAN JUAN – CHAMA RETURN FLOW PROJECT AGREEMENT

This San Juan – Chama Return Flow Project Agreement ("Agreement") is between the City of Santa Fe ("City"), a New Mexico home-rule municipality, and Santa Fe County ("County"), a political subdivision of the State of New Mexico (together the "Parties").

Recitals

A. The United States, Department of Interior, Bureau of Reclamation (Reclamation) and the City are parties to a contract, 05-WC-40-540, for 5,230 acre-feet per year of San Juan-Chama Project ("SJCP") Water. ~~Reclamation and the County are parties to a SJCP contract, 05-WC-40-550 for 375 acre-feet of SJCP Water.~~

B. The City ~~and County are partners in the Buckman Direct Diversion ("BDD"), under a Joint Powers Agreement ("the JPA") executed on March 7, 2005, and~~ can divert SJCP water through the Buckman Direct Diversion (BDD) for use within ~~their~~ its service area~~s~~.

C. Although the ~~Parties have~~City has the right to fully consume all of ~~their~~ its SJCP water, a significant portion of potential reuse water is lost because of lack of infrastructure to put the water to beneficial use.

D. In order to more fully utilize ~~their~~ City SJCP water and to meet growing demands in the face of potentially reduced supplies, the Parties desire to partner in the planning, construction, and operation of the Santa Fe SJCP Return Flow Pipeline Project ("Project"), consisting of a pipeline to move unconsumed SJCP water from the Paseo Real Water Reclamation Facility to 1) the Rio Grande for (a) rediversion and full consumption at the BDD or (b) for delivery to a downstream SJCP water user for subsequent exchange with water stored in upstream reservoirs and, should it become both feasible and preferable, 2) direct reuse, including, but not limited to, delivery of ~~Project supply~~ unconsumed SJCP water directly to the BDD water treatment plant for direct potable reuse ("DPR").

E. This Agreement represents one of four areas of active engagement between the City and County in preparation for a shared water future. The other three areas are in long-term water resources planning, sharing water resources at the ~~Buckman Direct Diversion (~~BDD~~)~~, and a lower Santa Fe River water management planning ~~and mitigation~~ process.

F. This Agreement is consistent with and furthers an overall conjunctive management strategy, with the objectives of improving drought resiliency, protecting ground water resources, mitigating Project impacts, protecting traditional water uses, including in areas such as La Cienega, and providing supplemental supply to areas dependent on groundwater, such as Eldorado.

Agreement

1. Project Partnership; General Cost-Sharing and Other Principles.

a. Except to the extent modified pursuant to Paragraph 2(b) ~~and consistent with their SJCP allocations~~, the Parties' respective interests in the Project shall be 93% to the City and 7% to the County. Subject to Paragraph 2(b) and Paragraph 14, each Party will pay its respective share of capital, operation, maintenance, replacement, and repair (OMR&R) costs associated with the Project; provided, however, that water and financial accounting costs directly attributable to the Project shall be split 50-50 by the Parties.

~~a.~~**b.** Project Supply is defined as unconsumed SJCP water that is, or could be moved through the Project.

~~b.~~**c.** Capital costs are those costs (1) that may be included in the capitalized costs of the Project under generally accepted accounting principles for state and local governments; (2) that are included in the capitalized costs of the Project, as reflected in the City's financial records; and (3) that were incurred since publication of the Santa Fe Water Reuse Feasibility Study by the City and County in April of 2017.

~~c.~~**d.** OMR&R costs consist of the direct costs attributable to the OMR&R of the Project, including costs associated with collecting and treating effluent for discharge to the Rio Grande, and ~~such as~~ electricity, parts, contractor payments, benefits and salary of City Staff attributable to the Project, and accounting services necessary to bill the County for its share of capital and OMR&R costs as well as account for the Parties' respective use of Project ~~supply~~ Supply as required by Paragraph 5.

~~d.~~**e.** In implementing and operating the Project, the Parties shall owe to each other duties of loyalty, care, and good faith and fair dealing.

2. Construction Costs and Management. The City will have the authority and responsibility to direct and manage the planning, permitting, engineering design, and construction of the Project, subject to the following:

a. Once the City has final construction drawings, they shall be shared with the County Utility Director. If the County has any comments on those drawings, the County will provide those comments to the City within 15 working days, and the City will respond within 15 working days of receiving the County's comments. The County Utility Director must approve the final construction drawings for the Project, which approval shall not be unreasonably withheld.

b. The County's total contribution toward the capital costs of the Project shall not exceed the lesser of $2 million or 7% of the total capital costs for the Project and is subject to the following:

i. Prior to procuring the construction of the Project, the City shall deliver to the County a certified engineer's cost estimate for the Project. Procurement of the construction services shall only proceed if (i) the certified engineer's cost estimate will cause the

County's capital contribution to be less than or equal to $2 million; (ii) the County authorizes additional funds to be allocated toward its capital contribution; (iii) the County agrees to having its interest in the Project reduced; (iv) the Project is redesigned to bring the certified engineer's cost estimate within available resources; or (v) the County chooses to end its participation in the Project and terminate the Agreement. If the certified engineer's cost estimate would cause the County's capital contribution to exceed $2 million and the Parties do not agree to have the Project redesigned to bring the certified cost estimate within available resources, then the County shall, within 60 days after the Parties decide not to have the Project redesigned, make its election pursuant to items (ii) and/or (iii) or (v) in the previous sentence; provided, however, that the County shall have the ability to make its additional contributions over a defined time period if doing so does not interfere with the timely delivery of the Project.

ii. Prior to authorizing the selected contractor to proceed with the construction of the Project, the City shall submit the contractor(s)'s bid to the County. Construction shall only proceed if (i) the contractor(s)'s bid will cause the County's capital contribution to be less than or equal to $2 million or, if the County authorized a higher amount pursuant to Paragraph 2(b)(i), that higher amount; (ii) the County authorizes additional funds to be allocated toward its capital contribution; (iii) the County agrees to having its interest in the Project reduced; (iv) the Project is redesigned to bring the contractor(s)'s bid within available resources; or (v) the County chooses to end its participation in the Project and terminate the Agreement. If the contractor(s)'s bid would cause the County's capital contribution to exceed $2 million or, if the County authorized a higher amount pursuant to Paragraph 2(b)(i), that higher amount and the Parties do not agree to have the Project redesigned to bring the contractor(s)'s bid within available resources, then the County shall, within 60 days after the Parties decide not to have the Project redesigned, make its election pursuant to items (ii) and/or (iii) or (v) in the previous sentence; provided, however, that the County shall have the ability to make its additional contributions over a defined time period if doing so does not interfere with the timely delivery of the Project.

c. Except for the payment described in Paragraph 2(d), the County shall reimburse the City for the County's share of the capital costs of the Project incurred by the City after the Project has been tested and accepted by the City or upon expiration of the County's termination option pursuant to Paragraph 6(b), whichever occurs last. For the avoidance of doubt, the Parties recognize and agree that the County may, with the written approval of the Director of City of Santa Fe Water, incur and directly pay for capital costs for the Project, which shall be counted toward its capital contribution under this Paragraph 2.

d. Within thirty (30) days of the execution of this Agreement, the County shall pay the City the sum of $140,000 to be applied toward the County's share of the capital costs of the Project. This payment is non-refundable, even if the County terminates the Agreement pursuant to Paragraphs 2(b) or Paragraph 6.

3. OMR&R.

a. Once constructed, the City will have the authority and responsibility to oversee and conduct Project OMR&R.

~~a.~~b. The City Wastewater Management Division may charge the Parties OMR&R costs associated with gathering and treatment of effluent for discharge to the Rio Grande. These charges would be assessed on total Project Supply, and would not exceed the volumetric wholesale charge that other entities pay the City Wastewater Management Division for effluent. As of 2021, this rate is $3.03 per 1000 gallons of effluent.

~~b.~~c. In January of each year, the Director of City of Santa Fe Water and the County Utility Director shall determine a Project operating plan for the current calendar year. The operating plan shall be designed to ensure that each Party receives its respective share of Project ~~supply~~ Supply during the calendar year.

~~c.~~d. In January of each year, the City shall deliver to the County the proposed OMR&R budget for the Project for the following fiscal year, including the County's share of OMR&R costs as defined in Paragraph 2(d).

~~d.~~e. At the beginning of each fiscal quarter, the City shall bill the County in advance for OMR&R costs it reasonably expects to incur that quarter. Payment shall be tendered to the City within thirty (30) days of the date of invoice. The City may invoice the County electronically. At the end of each fiscal year, or more frequently if requested by the County, the City shall document its actual costs to the County. The City shall credit the unexpended balance (if any) of the County's contributions at fiscal year end toward the County's contributions in the next fiscal year.

4. Future Capital Expenditure. Any capital expenditure beyond the initial capital costs of the Project and ordinary repair and replacement costs included in the annual OMR&R budget shall be the subject of a separate written agreement between the parties.

5. Allocation and Delivery of Water; Accounting. The City is allocated 93% and the County is allocated 7% of Project ~~supply~~Supply. The Parties anticipate that a variety of mechanisms, or combinations thereof, will be available for ~~crediting of Project return flow~~utilizing Project Supply, including the following:

a. Direct Re-Diversion. If the Project is authorized to receive return-flow credit for Project ~~water~~ Supply returned to the Rio Grande and the Parties are permitted to immediately redivert the water at the BDD, then the Parties expect the quantity of rediversion to equal the amount of return-flow credit, without reduction. For example, if in one year the Project returns 4,000 acre-feet to the Rio Grande, and is given return-flow credit for that full amount, and each Party chooses to take all of its Project ~~supply~~ Supply as rediversion, then the City would redivert 3,720 acre-feet of return-flow credit and the County 280 acre-feet.

b. Downstream SJCP Water User Exchange. If the Project is authorized to return Project ~~water~~ Supply to the Rio Grande for delivery to a downstream SJCP water user and the Parties are permitted to receive an exchange credit allowing for transfer to the Parties' SJCP accounts in Heron, El Vado, or Abiquiu Reservoirs, then the Parties expect the transferred amount will be reduced, resulting in a less than 1 to 1 exchange credit. For illustrative purposes only, if in one year the Project returns 4,000 acre-feet to the Rio

Grande for delivery to a downstream SJCP user, and the Parties receive 90% of the delivery (3,600 AF) as a transfer in Heron, then the City's SJCP account in Heron Reservoir would be credited 3,348 acre-feet and the County's SJCP account in Heron Reservoir would be credited 252 acre-feet.

c. Direct Reuse.

i. The City and County analysis in the 2017 Water Reuse Optimization Feasibility Study concluded that return flow credits are currently the best option for expanding potable water supply via utilization of effluent at the Paseo Real Water Reclamation Facility. At this point, there is technical and regulatory uncertainty associated with near term consideration of DPR at the BDD water treatment plant. If at some point in the future, technology, regulatory compliance, hydrology, or other factors change sufficiently to make DPR a preferable water reuse strategy, a Party or the Parties may utilize Project infrastructure to facilitate a transition from return-flow credits to DPR.

ii. Although the Project feasibility and associated permitting is based entirely on return flow of unconsumed SJCP waterof Project Supply to the Rio Grande, the Parties agree that, where it makes sense, the Project should be designed and constructed to be adaptable over time to accommodate additional direct reuse. For example, Project supply Supply could be made available for turf irrigation currently being supplied by BDD raw water, to provide supply to the lower Santa Fe River as part of the mitigation Lower Santa Fe River planning described in Paragraph 6 below, for use at locations made accessible by connection to the return-flow pipeline, and for direct potable reuse at the BDD water treatment plant.

iii. Direct reuse will not require any reduction in the quantity of Project supplySupply. For example, if DPR is mutually implemented at some point in the future, and in one year the Project delivers 4,000 acre-feet for DPR, then the City could use 3,720 acre-feet and the County 280 acre-feet of the DPR.

Accounting of each Party's annual Project supply usage will be maintained.

6. Lower Santa Fe River Planning Process; County Termination Option.

a. Within 180 days of the effective date of this Agreement, the County will lead, and the City and County will actively particate engage in a stakeholder-informed planning process for the Lower Santa Fe River assuming that no San Juan Chama water is available for release into the Santa Fe River. The stakeholder-informed planning process is entirely separate from and in addition to the National Environmental Policy Act (NEPA) review process for the Project. Ideas to be explored during the stakeholder-informed planning process may include developing target flows and hydrographs for the lower Santa Fe River, as well as accounting for sources and uses of non-Project supply. Within two years of the effective date of this Agreement, the Parties will jointly develop and recommend

for approval by their respective governing bodies a Lower Santa Fe River Plan for implementation of any agreed actions.

b. Should the Parties fail to timely develop a Lower Santa Fe River Plan or should the governing bodies fail to adopt a mutually agreeable Lower Santa Fe River Plan , the County may, but shall not be required to, elect to terminate its participation in the Project, effective at the end of the fiscal year or upon 180-days notice, whichever is later. Should the County choose to terminate its participation in the Project, the County shall have no obligation to reimburse the City for, or directly incur, capital costs for the Project. For the avoidance of doubt, the County shall not be reimbursed for its share of OMR&R expenses incurred through the effective date of the termination. The County's termination option expires 2 years and six months after the effective date of this Agreement.

7. Substitution of Treated Effluent to Supply Turf Irrigation. The County and the Club at Las Campanas (The Club) are parties to the Raw Water Supply Agreement dated November 15, 2011, for supply of up to 600 acre-feet per year of raw water derived from the BDD for turf irrigation. The City is party with Las Campanas Limited Partnership to the Settlement Agreement dated September 30, 2003, that provides for delivery by the City to Las Campanas of up to 450 acre-feet per year of treated effluent for turf irrigation through 2027. The Parties agree to work with The Club in good faith to evaluate the existing supply methods and agreements in order to seek potential efficiency improvements that will benefit all parties, including by updating, extending, or changing existing agreements. By substituting treated effluent for raw water for supply of turf irrigation, additional supply from the BDD may be available for potable uses. To this end, the Parties will work to complete terms of agreement with The Club by the end of 2022.

8. Term; Decennial Review of Terms.

a. This Agreement shall be effective on the latest signature date below and shall continue thereafter unless terminated by mutual agreement of the Parties or pursuant to Sections 2(b) or 6(b).

b. As used herein, a "Material Change in Circumstances" means a material change in circumstances that would make continuation of the then-current terms of this Agreement inequitable to a Party or contrary to the public good. On the tenth anniversary of this Agreement and every ten years thereafter, the Parties agree to evaluate whether there has been a Material Change in Circumstances. In the event that the Parties cannot agree (1) whether there has been a Material Change in Circumstances or (2) what should be done in light of the Material Change in Circumstances (e.g., an amendment to the Agreement or termination of the Agreement), either Party may, subject to Paragraph 10, seek a declaration from the First Judicial District Court (1) that there has been a Material Change in Circumstances and (2) that the Agreement should be terminated as a result. The Court may condition termination of the Agreement upon such terms as are necessary to avoid unjust enrichment or undue hardship, such as requiring the Party who would continue to benefit from the Project to reimburse the other Party for its share of capital expenditures, delaying the effective date of termination to allow a Party to secure a replacement supply of water, and requiring the Party who would continue to benefit from the Project to contribute toward the cost of the replacement supply of water.

Nothing herein shall preclude the Parties from amending this Agreement outside of the decennial Material Change in Circumstances review process described herein.

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

10. **Dispute Resolution.** All disputes arising under this Agreement, including those related to OMR&R, annual OMR&R budgets, and payment arising under Paragraph 3, shall be subject to this Paragraph 10. The City and County agree to mediate disputes consistent with the Mediation Procedures Act, NMSA 1978, secs. 44-7B-1 through 44-7B-6 prior to initiating any litigation, to resolve any conflicts arising under this Agreement, the expenses of which shall be shared equally by the City and County. Disputes shall be first discussed by representatives of each party. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within 60 days of the occurrence of the event or circumstances giving rise to the dispute, either party may give notice to the other party that the aggrieved party intends to litigate the dispute. Any dispute requiring notice shall be reported to the next meeting of the respective City and County governing bodies

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

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

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

14. **Non-Appropriations Clause.** So as to comply with NMSA 1978, Section 6-6-11 (1968) and N.M. Const., art. IX, Section 10, the County's and City's obligations in future fiscal years are contingent upon sufficient appropriations and authorizations being made by their respective governing bodies. The City and County are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure.

15. **Notices.**

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

To the City:

Director, City of Santa Fe Water
City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: 955-4309
Fax:

With a copy to:

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

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

To the County:

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

With a copy to:

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

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

b. Notice shall be deemed to have been given based upon the method of delivery, as follows: notices sent by facsimile or hand delivered shall be deemed given on the date of delivery, as evidenced, with respect to facsimile delivery, by a printout showing successful

transmission of all pages included in the notice; notices sent by mail shall be deemed given three business days after the notice is mailed with postage prepaid.

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

16. No Third-Party Beneficiaries. The Parties do not intend this Agreement to confer any benefit on any person or entity that is not a party to this Agreement. Only the Parties may enforce this Agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

CITY OF SANTA FE

Alan Webber, Mayor	Date

ATTEST:

Kristine Bustos-Mihelcic, City of Santa Fe Clerk	Date

APPROVED:

Mary McCoy, City Finance Director	Date

APPROVED AS TO FORM:

Erin K. McSherry, City Attorney	Date

SANTA FE COUNTY

Henry P. Roybal, Chair
Board of County Commissioners

Date

ATTEST:

Katharine E. Clark, County Clerk

Date

APPROVED AS TO FORM:

Gregory S. Shaffer, County Attorney

Date

FINANCE DIVISION APPROVAL

Yvonne S. Herrera, Finance Director

Date

GOVERNING BODY MEETING OF
July 28, 2021
BILLS AND RESOLUTIONS SCHEDULED FOR INTRODUCTION
BY MEMBERS OF THE GOVERNING BODY

Mayor Alan Webber		
Co-Sponsors	**Title***	**Tentative Committee Schedule***
	AN ORDINANCE REPEALING SECTION 20-6 RELATING TO MARIJUANA AND MARIJUANA PARAPHERNALIA POSSESSION.	Quality of Life Committee – 8/421 Governing Body (request to publish) – 8/11/21 Finance Committee – 8/16/21 Public Safety Committee – 9/17/21 Governing Body (public hearing) – 9/8/21
Councilor Roman "Tiger" Abeyta		
Co-Sponsors	**Title***	**Tentative Committee Schedule***
Councilor Jamie Cassutt		
Co-Sponsors	**Title***	**Tentative Committee Schedule***
Lindell	**A RESOLUTION APPROVING THE DESIGN AND INSTALLATION PLAN FOR BANNERS SUPPORTING THE FOOD DEPOT'S TENTH ANNUAL "NEIGHBOR TO NEIGHBOR FUND DRIVE".**	Quality of Life Committee – 8/4/21 Public Works and Utilities Committee – 8/9/21 Governing Body – 8/11/21
	A RESOLUTION FINDING THE BUILDING AND PREMISES LOCATED AT 3003 CALLE CABALLERO TO BE RUINED, DAMAGED, AND DILAPIDATED AND A MENACE TO THE PUBLIC COMFORT, HEALTH, PEACE, AND SAFETY; ORDERING THE OWNER OF RECORD OF 3003 CALLE CABALLERO TO REMOVE THE BUILDNG, RUBBISH, AND DEBRIS FROM THE MUNICIPALITY; PROVIDING THAT IF THE OWNER OF RECORD OF 3003 CALLE CABALLERO DOES NOT REMOVE THE BUILDING RUBBISH, AND DEBRIS, THE CITY OF SANTA FE SHALL REMOVE THE BUILDING, RUBBISH AND DEBRIS AND HAVE A LIEN ON THE PROPERTY.	Finance Committee – 8/2/21 Public Works and Utilities Committee – 8/9/21 Governing Body – 8/11/21

This document is subject to change.

Councilor Michael J. Garcia		
Co-Sponsors	**Title***	**Tentative Committee Schedule***
Romero-Wirth	**AN ORDINANCE AMENDING SECTION 9-3.6 SFCC 1987 TO ALLOW ELECTRONIC SIGNATURE FOR SEED MONEY CONTRIBUTIONS ON THE REQUIRED FORMS; AMENDING SECTION 9-3.7 OF SFCC 1987 TO ALLOW ELECTRONIC SIGNATURES FOR QUALIFYING CONTRIBUTIONS ON THE REQUIRED FORMS; AND AMENDING SECTION 9-3.12 OF SFCC 1987 TO ALLOW ELECTRONIC SIGNATURES FOR QUALIFIED SMALL CONTRIBUTIONS.**	Finance Committee – 8/2/21 Quality of Life Committee - 8/4/21 Governing Body (request to publish) – 8/11/21 Governing Body (public hearing) – 9/8/21
Councilor Signe I. Lindell		
Co-Sponsors	**Title***	**Tentative Committee Schedule***
Councilor Chris Rivera		
Co-Sponsors	**Title***	**Tentative Committee Schedule***
	A RESOLUTION PROCLAIMING SEVERE OR EXTREME DROUGHT CONDITIONS EXIST IN THE CITY OF SANTA FE; IMPOSING FIRE RESTRICTIONS BETWEEN AUGUST 11, 2021 AND SEPTEMBER 9, 2021; RESTRICTING THE SALE OR USE OF FIREWORKS WITHIN THE CITY OF SANTA FE AND PROHIBITING OTHER FIRE HAZARD ACTIVITIES.	Quality of Life Committee – 8/421 Governing Body – 8/11/21
Councilor Carol Romero-Wirth		
Co-Sponsors	**Title***	**Tentative Committee Schedule***
Councilor JoAnne Vigil Coppler		
Co-Sponsors	**Title***	**Tentative Committee Schedule***
Councilor Renee Villarreal		
Co-Sponsors	**Title***	**Tentative Committee Schedule***
	A RESOLUTION AUTHORIZING THE SALE AND CONSUMPTION OF BEER AND WINE AT THE MONTEZUMA POCKET PARK FOR A CELEBRATION OF GEORGE R. R. MARTIN'S BIRTHDAY ON SEPTMBER 18 AND 19, 2021, PURSUANT TO SECTION 23.6.2(C) SFCC 1987.	Governing Body – 8/11/21

* Subject to change

Introduced legislation will be posted on the City Attorney's website, under legislative services. If you would like to review the legislation prior to that time or you would like to be a co-sponsor, please contact Jesse Guillen, 505-955-6518, jbguillen@santafenm.gov or Jeff Norris, 505-955-6692, jtnorris@santafenm.gov.

City of Santa Fe, New Mexico

memo

June 1, 2021

TO: Mayor Webber
FROM: Pauline Kanako Kamiyama, Arts and Culture Department Director
SUBJ: City Historian FY22 Recommendation: Valerie Rangel

The Arts and Culture Department issued a call for City Historian for the fiscal year 2021-22. Five applicants responded and their qualifications reviewed by the selection panel. Three finalists were invited to interview on May 25 and on May 26, 2021. They were asked to present a 15 minute presentation responding the a common prompt: Define "Public history" and describe how it can act as a bridge within/among community and to present their proposed project.

Unanimously, the selection panel ranked **Valerie Rangel the highest** with Oliver Horn as second ranked.

Valerie Rangel:

- Proposed project “Storymaps” focuses on collaboration with the community through the lens of the many layers of intersection: starting with geology/topography, indigenous lands/archeology, trails/trade routes, historical areas of land use, Spanish colonial land grants, Mexican Territorial, Treaty of Guadalupe to Land Use Development to Ethnicity to Monuments and Memorials
- Through the powerful tool of ArcGIS Esri as a visual guide that is interactive, promotes a place and reveals history, culture and/or ecology of place
- Ms. Rangel demonstrated a sensitivity to the issues at hand and brings with her both lived and professional experiences from an inclusive approach as evidenced in both her application and her interview
- Her awareness and belief that healing comes from honesty about slavery, genocide, colonialism and the ways to deal with trauma and violence allows people to be heard, acknowledged, celebrated creating a great opportunity for truth-telling
- She has excellent presentation skills that are both relatable and informative
- She is the highly recommended and would be the City Historian for the time that we are in

Oliver Horn

- The panel ranked him second
- Interesting proposal of Collective Memory
- While highly qualified, his approach and presentation is very academic and if this were any other time, he would be an excellent City Historian
- Panel suggest engaging him with CHART

Panelist recommend Valerie Rangel as the FY22 City Historian:

Alex Hanna, Chair, Arts Commission

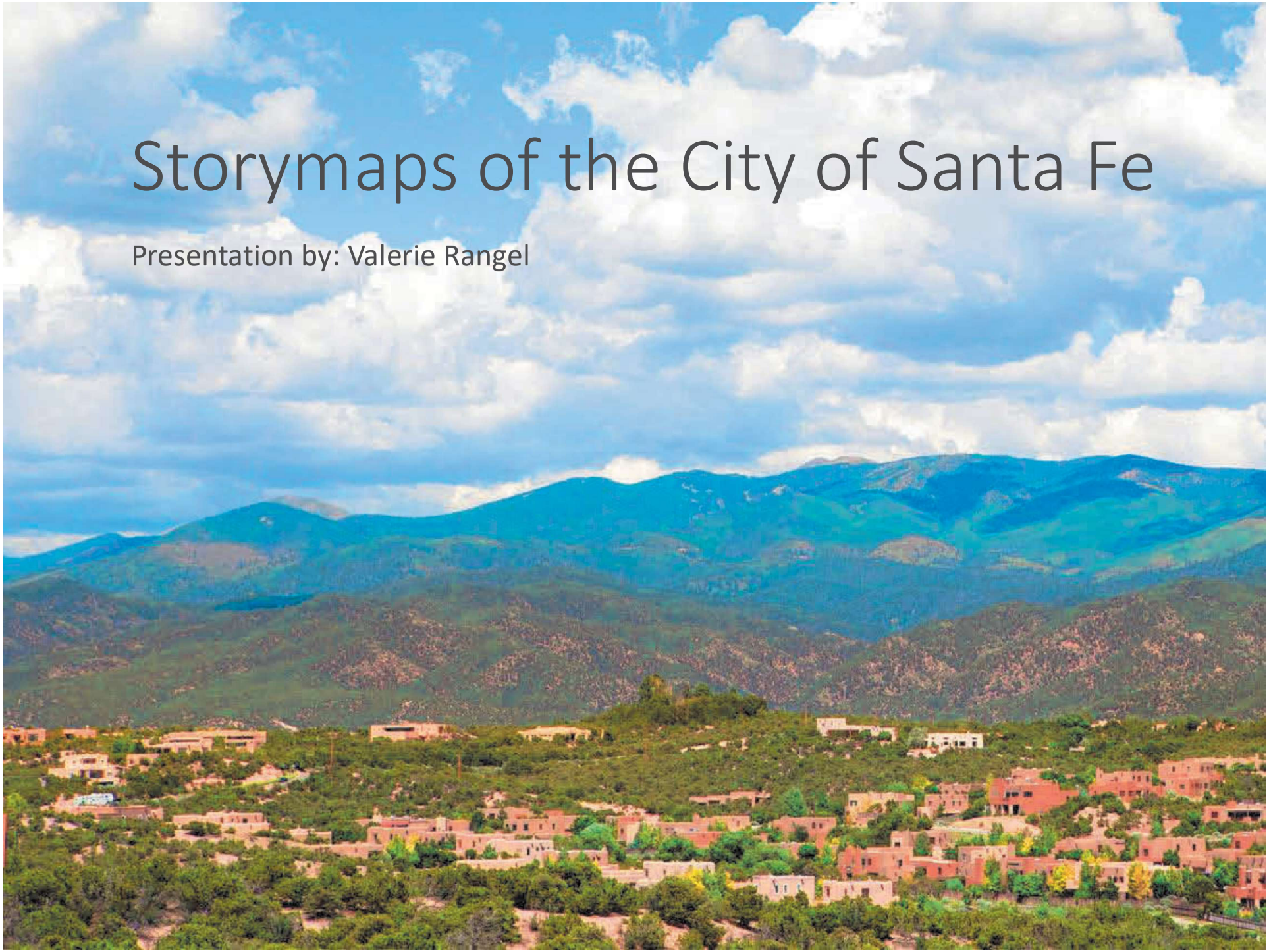
EMartinez
EMartinez (May 31, 2021 10:36 MDT)
Exilda Trujillo de Martinez, Arts Commissioner

Andrew Lovato
Andrew Lovato (May 31, 2021 17:35 MDT)
Andrew Lovato, Former Historian

Sarah Soliz, Director, SAR Press

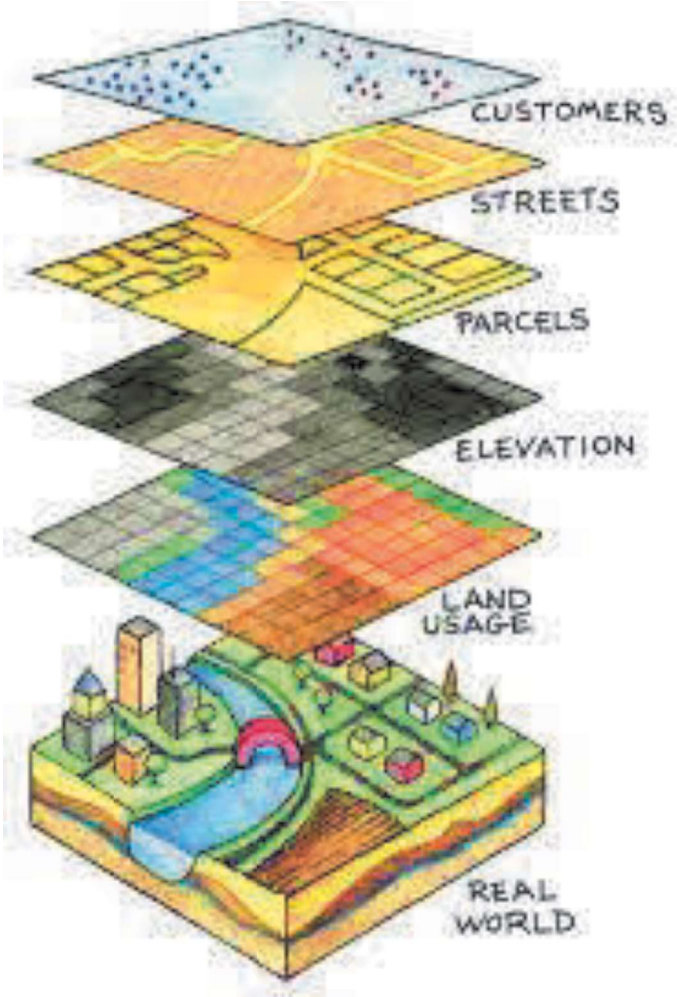
Storymaps of the City of Santa Fe

Presentation by: Valerie Rangel

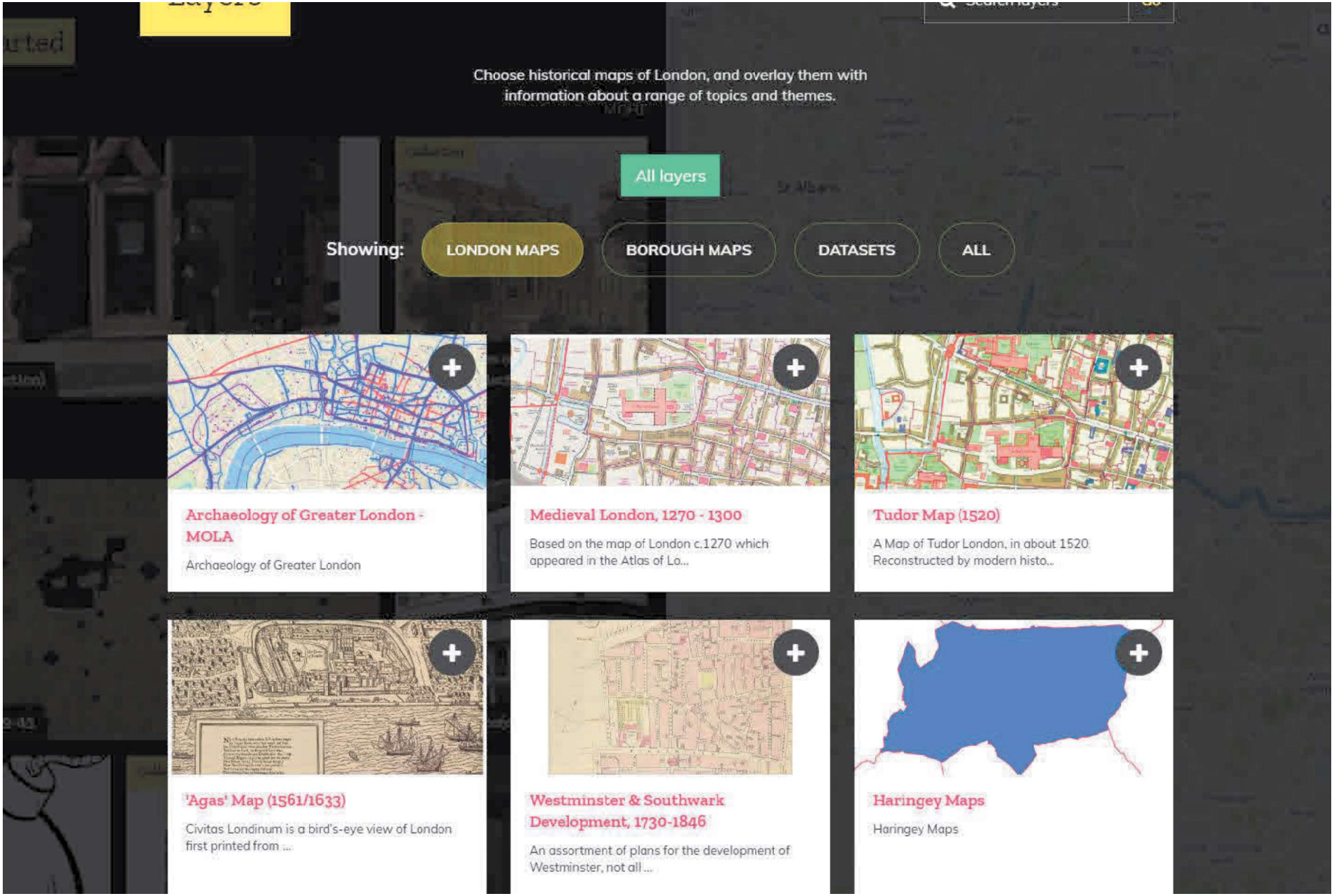


GPS vs. GIS

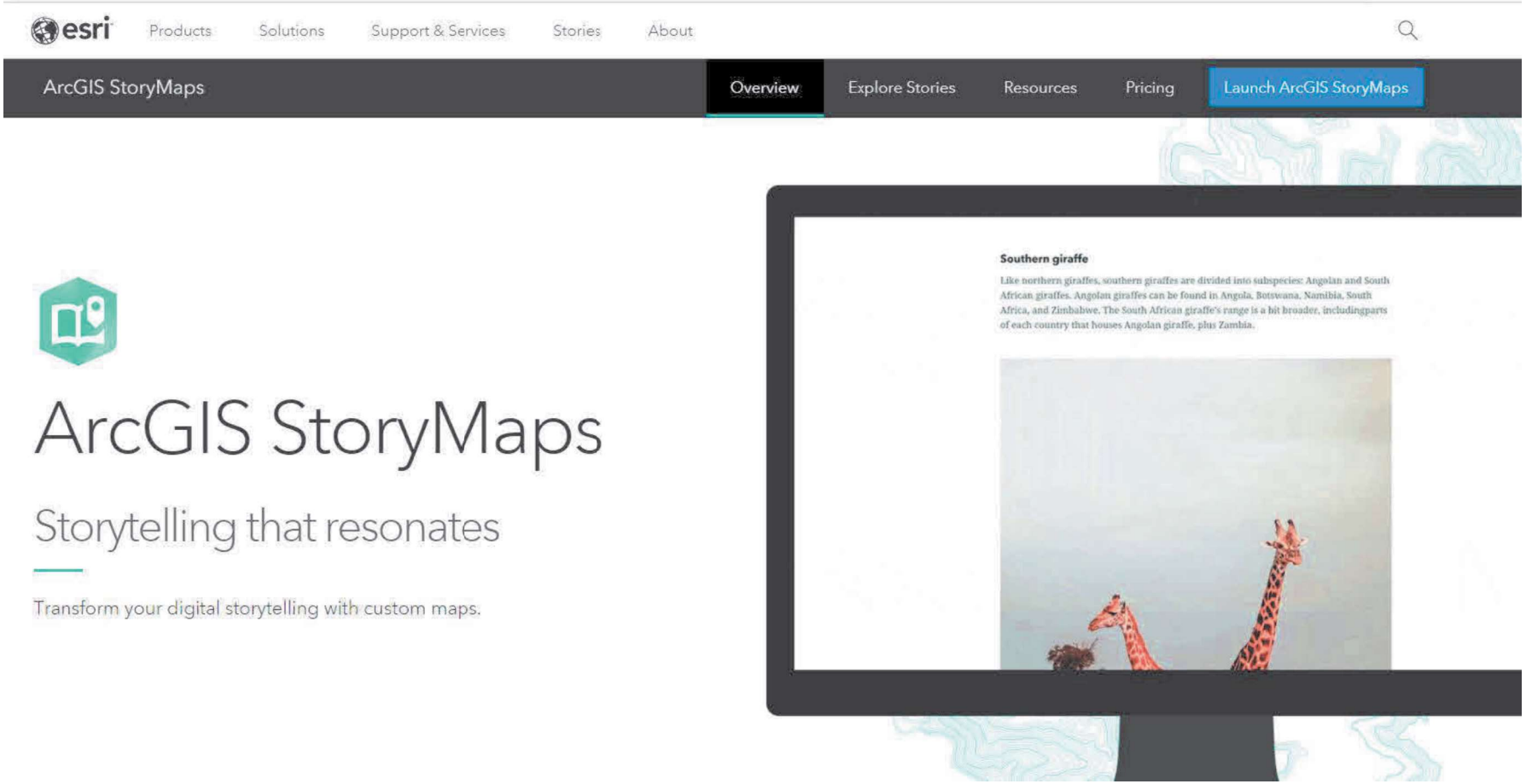

Left on Avery St
Foreland
Arrival
9:00
Menu
Turn in
500!
GARMIN


CUSTOMERS
STREETS
PARCELS
ELEVATION
LAND USAGE
REAL WORLD

[Home | Layers of London | Recording the Layers of London's Rich Heritage]



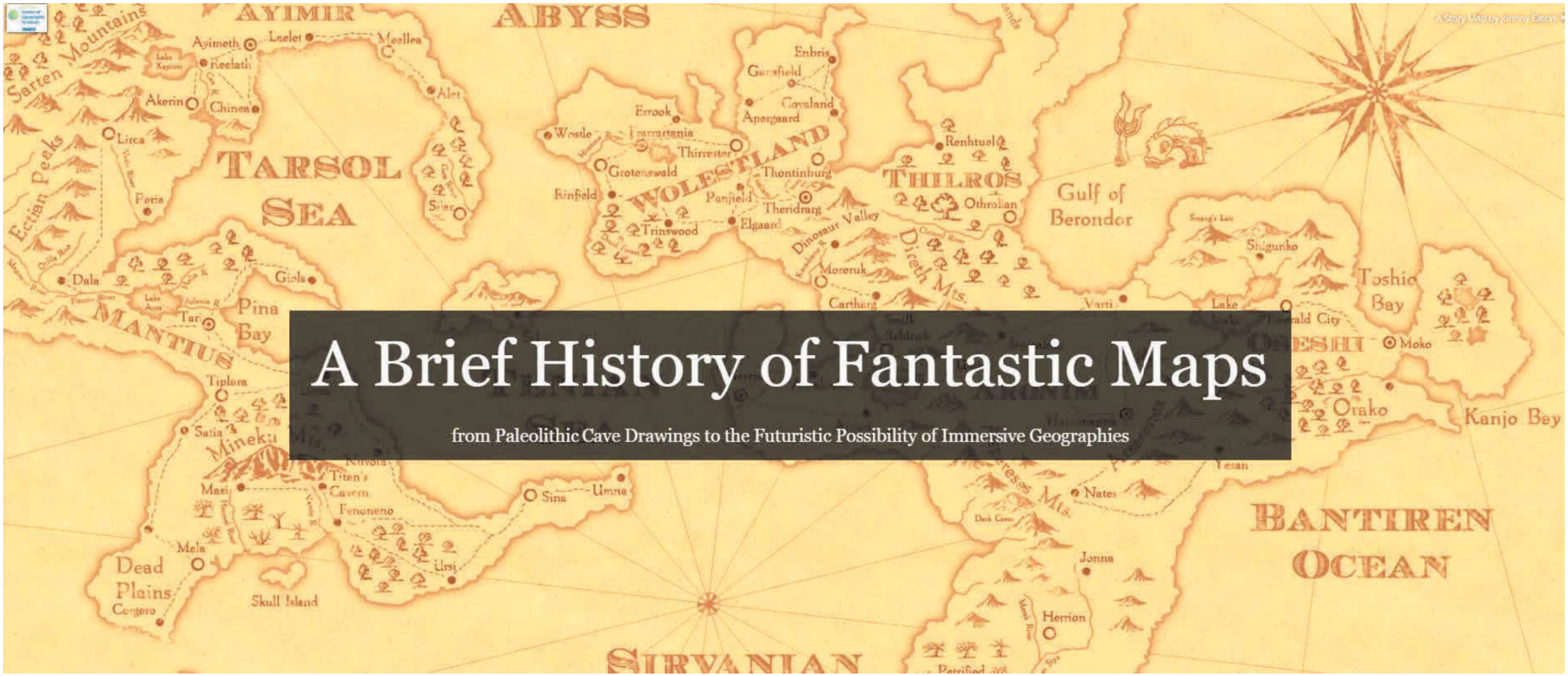
Digital Storytelling with Maps | ArcGIS StoryMaps (esri.com)



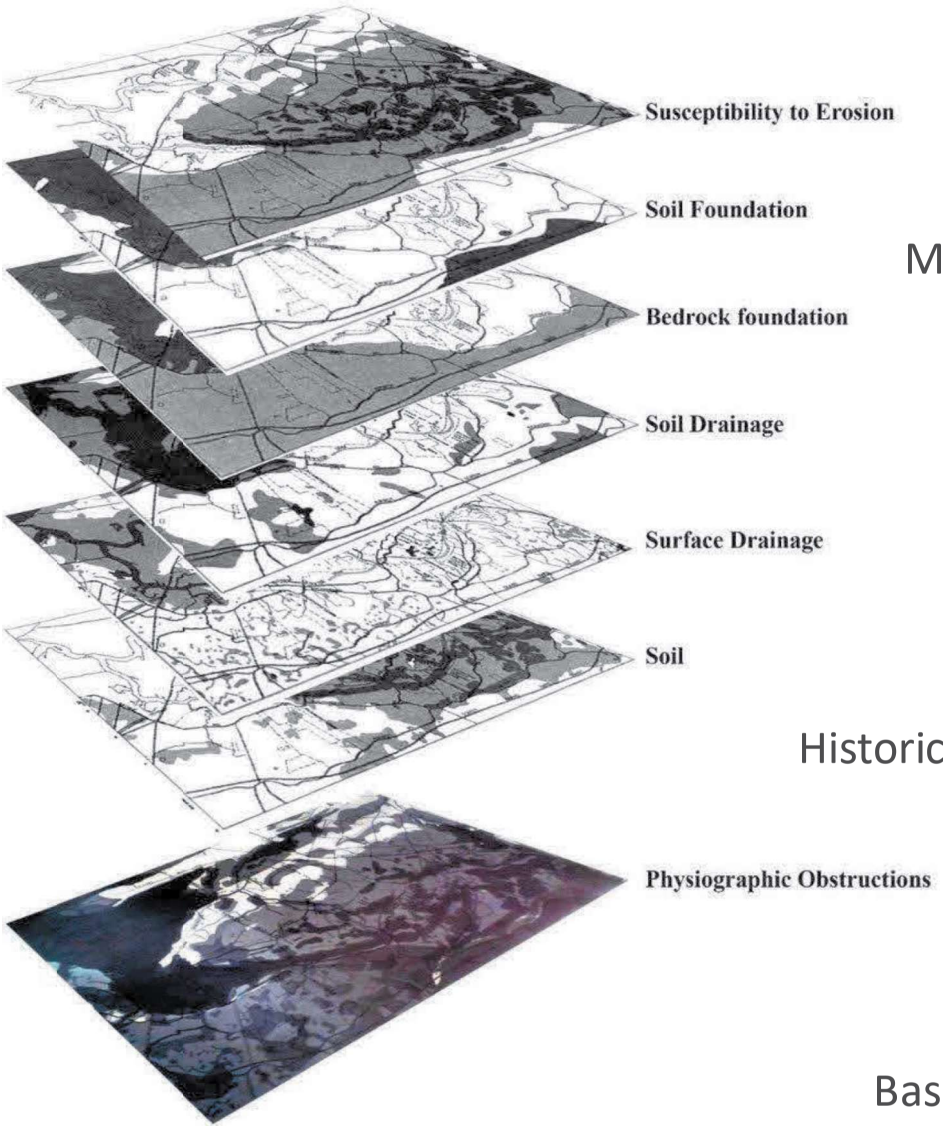
The ESRI Storytelling Map Tour template is designed for presenting geographic information where there is a compelling photographic element to the story you want to tell. Be creative! Here are some potential uses. Click to see an example of each:

- Promote an initiative like sustainability or redevelopment.
- Promote a place and help people find interesting things.
- Reveal the history, culture, or ecology of a place.
- Highlight something distinctive and compelling about your neighborhood, city, or region.
- Educate people about science and geography.
- Illustrate a really great walking tour route.

[A Brief History of Fantastic Maps (arcgis.com)]



Storymaps of the City of Santa Fe



Monuments and Memorials

Ghost Tour

Ethnicity

Modern Satellite map

Maps of Development/Land Use Development

Aerial Photographs

After the Treaty of Guadalupe

Mexican Territorial

Spanish colonial land grant

Historical areas of land use (ag, hunting, recreation)

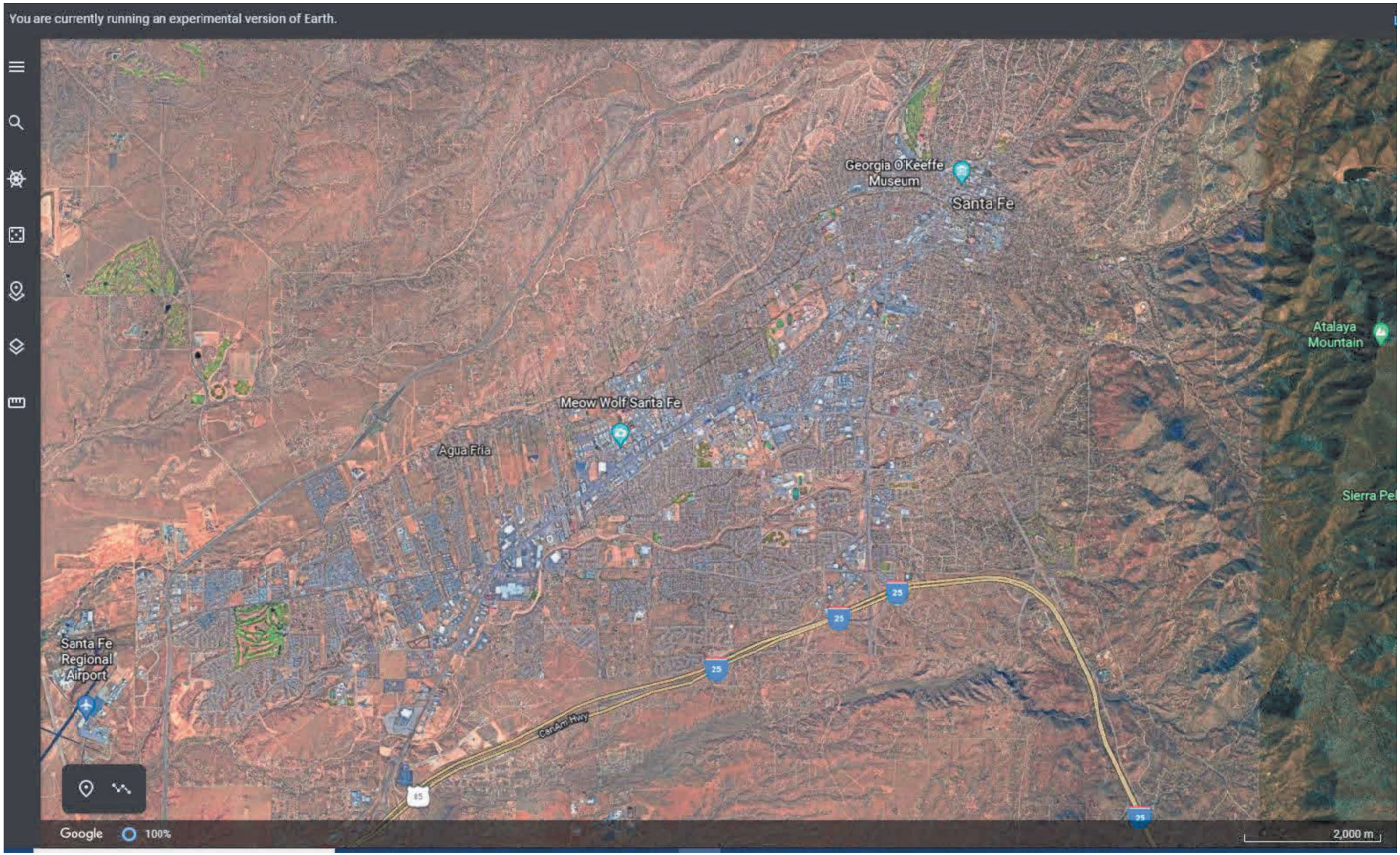
Trails, trade routes

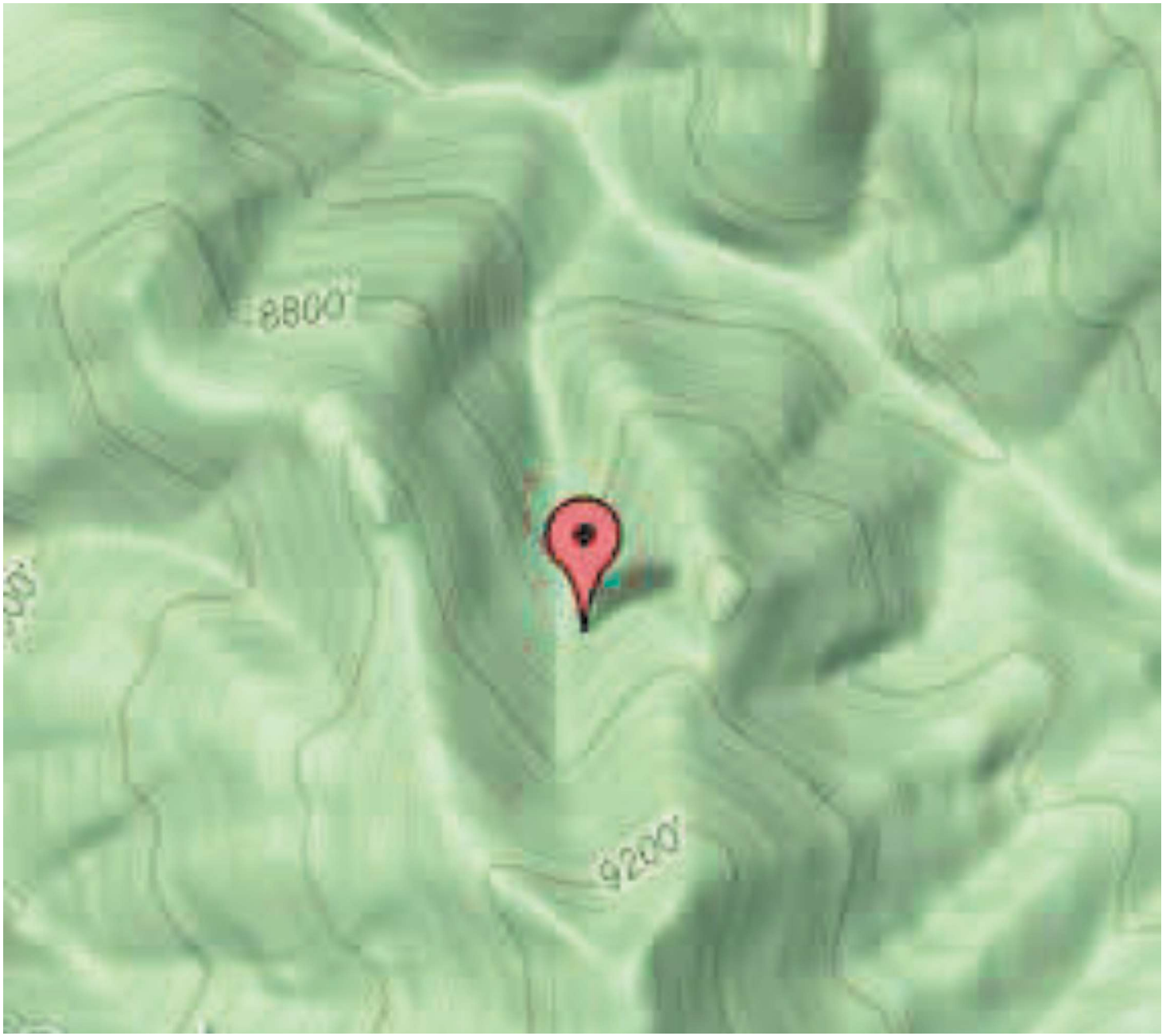
Indigenous lands/archeology

Base map: topography, water ways, geology

Layer Map	Reference Material	Partner Organization
Monuments and Memorials	Map	City of Santa Fe
Ghost Tour, Cemeteries	Map	SantaFe /SANTA FE TOURS ghost or History 505-986-5002/ AL PACHECO (santafeghostandhistorytours.com)
COVID Cases vs. Deaths	Map	NM CDC: COVID Cases vs. Deaths - Overview (arcgis.com)
Housing Issues Including Equity, Rural and Urban Boundaries, 2019	Map	NM CDC: Housing Issues Including Equity, Rural and Urban Boundaries, 2019 (arcgis.com)
Economic Indicators in the New Mexican - African American Community	Map	NM CDC: Economic Indicators in the New Mexican - African American Community - Overview (arcgis.com)
Ethnicity	Map	Census Tract Populations, 2011, by Race and Ethnicity - CTPOPRE2011
Modern Satellite map	Map	Google Earth
Maps of Development/Land Use Development	Map	Santa Fe County
Aerial Photographs	photos	Santa Fe County
Historic Photographs	photos	Photo Archives - New Mexico History Museum (nmhistorymuseum.org)
Treaty of Guadalupe	Map	Milestones: 1830–1860 - Office of the Historian (state.gov)
Mexican Territorial	Map	Counties – New Mexico History.org
Spanish colonial land grant	Map	Land Grants – New Mexico History.org
Historical areas of land use (ag, hunting, recreation	Map	book
Trails, trade routes	Map	Camino Real – New Mexico History.org
Indigenous lands/archeology	Map	Defining the spatial patterns of historical land use associated with the indigenous societies of eastern North America by Samuel E Munoz, David J Mladenoff, Sissel Schroeder, John W Williams
Topography, water ways, geology	GIS Maps	USGS

Google Earth





http://academic.emporia.edu/schulmem/hydro/TERM%20PROJECTS/Ware/571%20TermPaper.htm

NOVA MEXICO

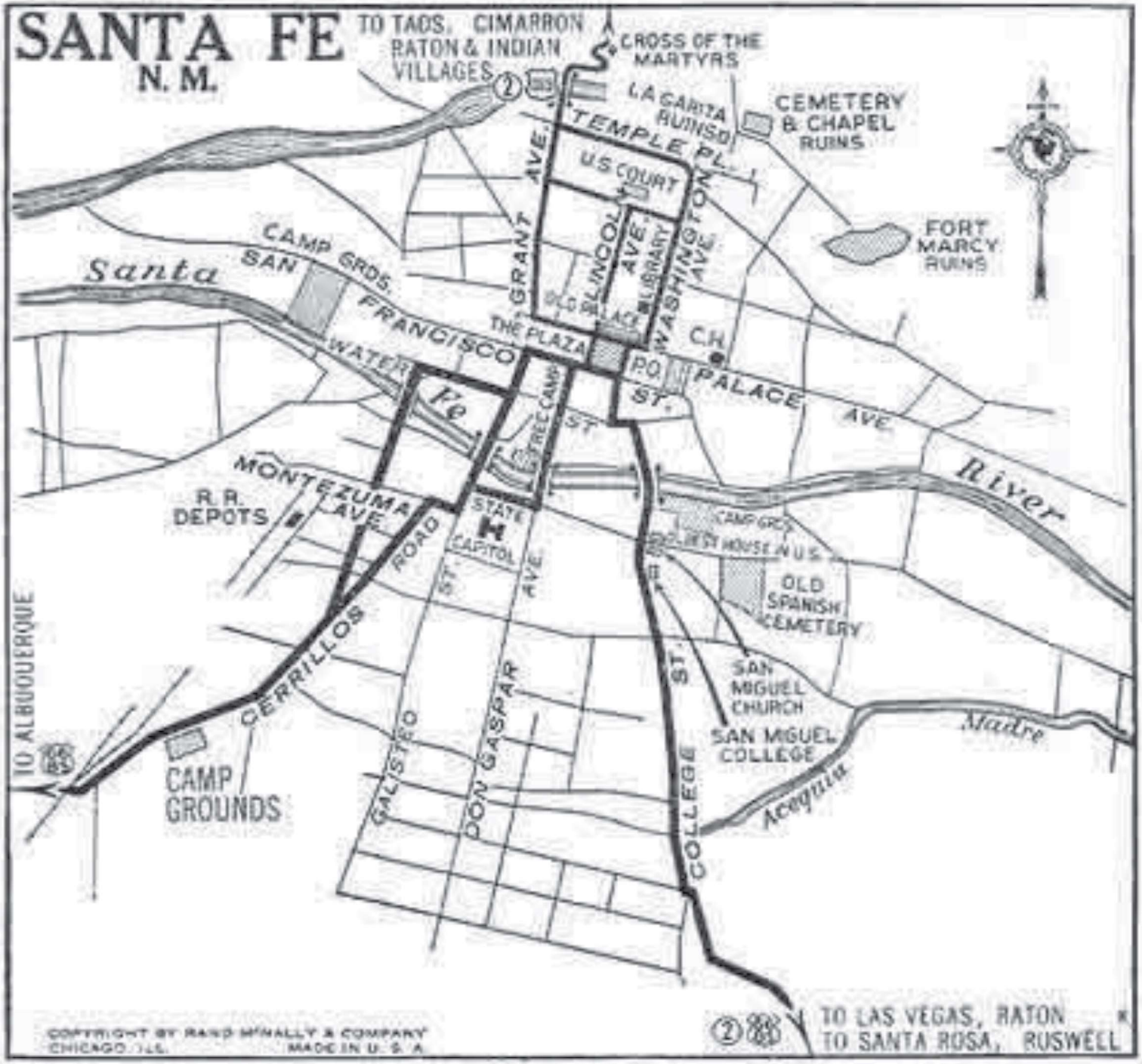



Apaches Xicarillas
Sierra de Taos
Sierra de Chamayon
Sierra de Nambe
Sierra de S.ta Clara
Sierra de Gomes
Rio de Guarnitos
Yunque
S.ta Clara
Villa de S.ta Fee
Apaches Pharaones
Apaches Lemitas
Apaches Pharaones
Pecos
S. Lazaro
S. Marcos
Jubli despoblado
Taxique despoblado
Guiana despoblado
Sierra de Abo
Abo despoblado
Cerro de Thomé
Cierra de Luiz Lopez
Xamanas despoblado
Salinas
Apaches Pharaones
Sierra de Organos
Sierra de S. Xpoval
Tierra de los Apaches Pharaones
Nuevo Mexico
Pueblo de Acoma
Pueblo de Laguna
Pueblo de Zuñi
Apaches Mescaleros
Sebulleta
Valencia
Tome
Puen Clara
Pequeno Rio de Gila
S. Xavier de las Nutrias
Apaches Xilas
Victoria
S. Salvador
Aburio
S.ta Cruz
el Paso
S. Lorenzo
Senecu
Ysleta
Socorro
Laborde
Valverde
Guachi
Janos
Ensinillas
Carrisal
Ojo Caliente
Tierra de los Sumas
Sierra de Sumas
Casas Grandes
Junta de los Rios del Norte y Conchos
S. Buenaventura

THE SANTA FE TRAIL

National Park Service 1963 Historic Sites Survey




SANTA FE
N. M.
TO TAOS, CIMARRON
RATON & INDIAN
VILLAGES
CROSS OF THE
MARTYRS
LA CARITA
RUINS
CEMETERY
& CHAPEL
RUINS
TEMPLE PL.
U.S. COURT
GRANT AVE.
LINCOLN AVE.
LIBRARY
WASHINGTON AVE.
FORT
MARCY
RUINS
CAMP GRDS.
SAN
Santa
FRANCISCO
OLD PALACE
THE PLAZA
C.H.
P.O.
PALACE AVE.
WATER ST.
Fe
TREE CAMP
ST.
River
MONTEZUMA AVE.
R.R.
DEPOTS
STATE
CAPITOL
CAMP GRDS.
OLD GOVERNMENT HOUSE
OLD
SPANISH
CEMETERY
ROAD
CERRILLOS
ST.
DON GASPAR AVE.
GALISTEO
ST.
SAN
MIGUEL
CHURCH
SAN MIGUEL
COLLEGE
Madre
Acequia
COLLEGE
TO ALBUQUERQUE
CAMP
GROUNDS
TO LAS VEGAS, RATON
TO SANTA ROSA, ROSWELL
COPYRIGHT BY RAND McNALLY & COMPANY
CHICAGO, ILL.
MADE IN U. S. A.

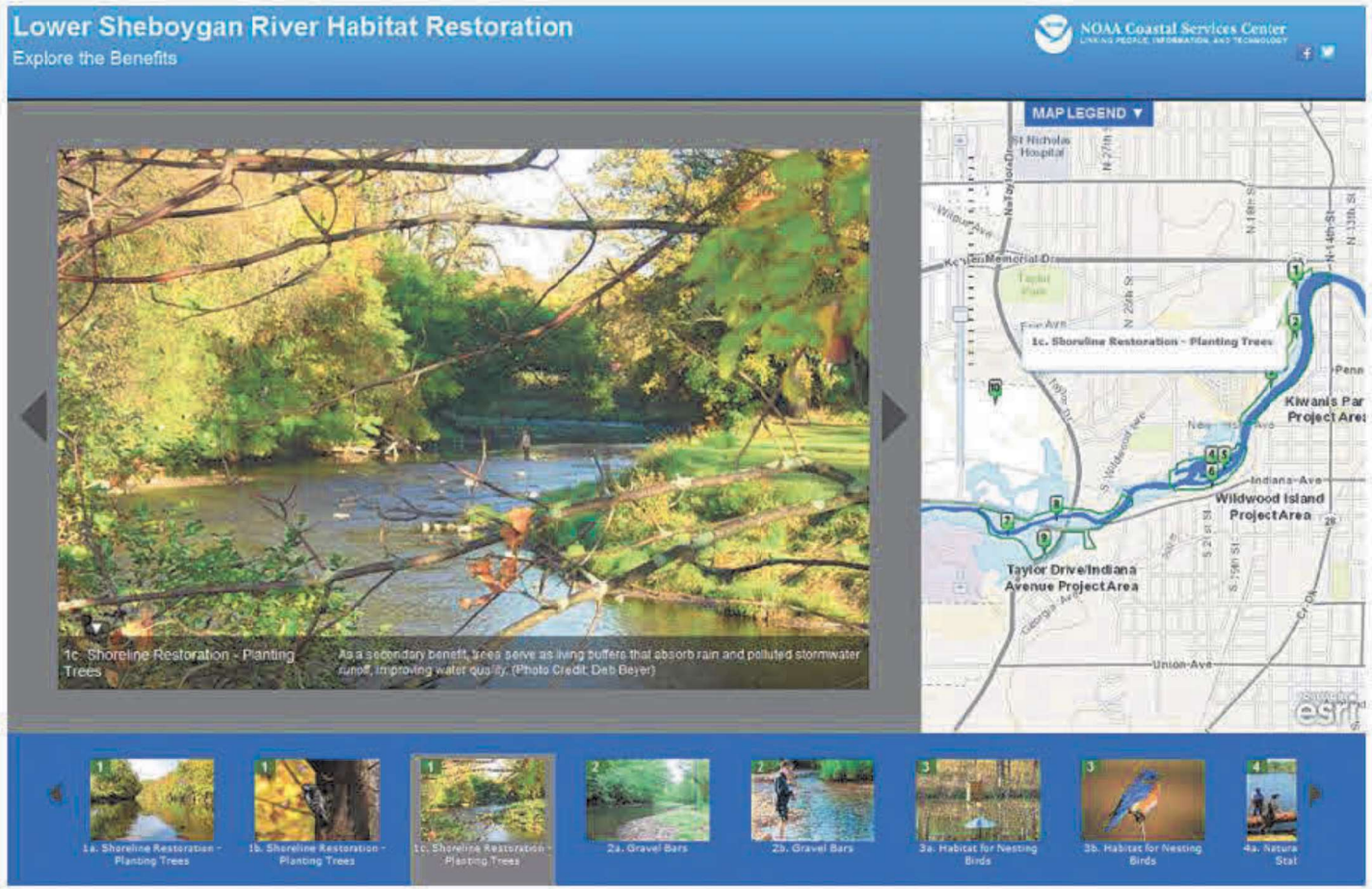

COLORADO
NEW MEXICO
OKLAHOMA
TEXAS
Raton
Des Moines
Grenville
Clayton
Cimarron
Springer
Taos
Wagon Mound
Buena Vista
Watrous
Las Vegas
Pecos
Santa Fe
Española
Santa Fe Trail
Rio Grande Gorge Bridge
Carson National Forest
Cimarron Canyon State Park
Clayton Lake State Park
Kiowa National Grassland
Pecos National Historic Park
Santa Fe National Forest
Las Vegas National Wildlife Refuge
Old Mill Museum
Fort Union National Monument
Capulin Volcano National Monument
Clifton House Ruins
Santa Fe National Historic Trail
Cherokee State Park
To Lamy



[What Can You Do with a Story Map? (esri.com)]

Get the Community Involved

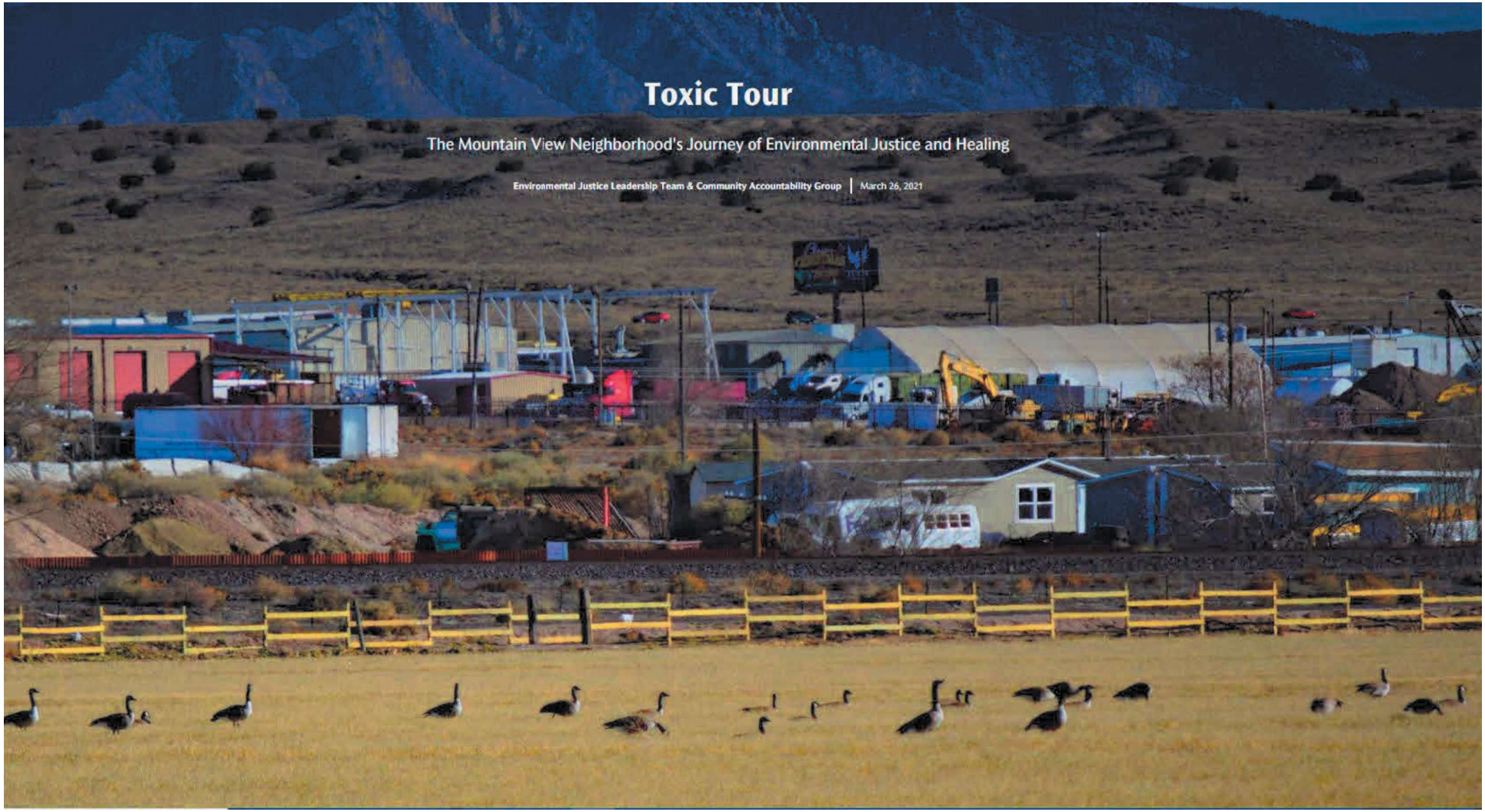
The West Florida Regional Planning Council holds numerous events that promote community involvement. This story map highlights the events the council held in 2012 in a way that makes a connection between the people and places where these events occurred.



This story map was created by the National Oceanic and Atmospheric Administration (NOAA).

[Toxic Tour (arcgis.com)]

The Mountain View Neighborhood's Journey of Environmental Justice and Healing



[Welcome to Palm Springs (arcgis.com)]



Lesson Plan- Walking Tour of the City

Overview:
This lesson compliments lessons in New Mexico History classes by engaging student in the processes of analyzing historical places and creating a walking tour of their community. By participating in these processes, they contemplate the importance of history, how key messaging is shaped and influenced,. Student will analyze places around the City and the changes in land use and society's development over time. Then they will design, plan and create their own Walking Tour of the City that they believe are important places to remember from the historical Storymaps.

Teaching:
Introduce and define the purpose of walking tours, using some examples with which the students are already familiar.
Ask students to identify a historic place in their community (You might ask them to visit one for homework before this lesson).
Ask students to describe in their journals the historic place that they selected. They might also sketch it or photograph it. The description should include answers to the following questions: What it is? What does it look like? Where is it located and what is around it? What does the purpose seem to be?
Lead a brief class discussion in which students share some of their examples, and then focus on the following question: Why might people want to visit these places? List as many reasons as the class can brainstorm. (Use the Think, Pair, Share teaching strategy.)

2. Analyze
Tell students that the City is built upon numerous layers history. In this activity, they will look at some examples of maps and briefly analyze one place.
What is the purpose of this place? Is it different now than the past? When people visit this place what message do you think they understand?
What important information might be missing? How does someone learn about this place?

Materials
Reading: ESRI map link

Handout: "Creating a Tour of the City"
If you were to design a tour of the City of Santa Fe, what events, people, or ideas would you want to represent? Take some time to reflect on what you've learned from the Storymap and what you think is important for you and others to remember.

Create a tour. Your plan should include the following:
Who is this tour designed for?
Mark and number places on a map you want to highlight.
Write a description of each place and the message you want to convey (descriptions and historical information, references of where to learn more).

Materials: Printed map, sticker dots
Reference Map: 3 Self-Guided Walking Tours in Santa Fe, New Mexico + Create Your Own Map (gpsmycity.com)

April 6, 2021

Dear Pauline Kamiyama,

I am writing to express my interest in the ceremonial position of Santa Fe **City Historian**. What drew me to New Mexico twenty years ago, was a quest to find out more about my family history and the events that led to our forced relocation from traditional homelands and cultural ties. As I studied environmental science, I learned the importance of understanding the history of land use, and planning for the future with the understanding that every place has a multitude of layers. These layers encompass historic places associated with human occupation, infrastructure, geology, different types of vegetation, hydrological pathways and natural springs, areas best suited for agriculture, aquifer recharge, ect.

Santa Fe is arguably the oldest city in the United States and stands as a testament of transformative changes by the creativity, tenacity, and resolve of the people who have shaped its history. It is a city that is dynamic, with a diversity of cultural ties, and held in high regard by many indigenous people who continue to reside in and around the area. It is thereby imperative that the City of Santa Fe prioritizes its students learning about the many layers of its history so that they can plan and shape the future they desire, but also accurately and transparently convey historical truths about the City's transformation to visitors.

In order to address the intertwined issues if social and environmental justice of our time, we must reflect on a history that was founded on the principle of the Doctrine of Discovery and acknowledge that the cities and towns that we live in were acquired by the dispossession of indigenous lands, forced removal and attempted erasure of people, their culture, languages and life ways. Each place changes over time and the people that occupy and transform it also evolve in their own consciousness to adapt and shape the society they wish to live in.

My qualifications for the position of City Historian are an educational background that consists of a bachelor's degree in Environmental Science with a minor in Cultural Anthropology that carried a focus on Native American Studies and Diné Bizaad (Linguistic Dept. Navajo language). I also graduated from the University of New Mexico's Master's in Community Regional Planning program where I focused major credits in Natural Resources & Environmental Planning with concentrated coursework in Public Health, and Indigenous Community Planning.

My work experience started as an intern entomologist at the former Texas Natural Resources Conservation Commission's Water Quality- Clean Rivers Program. During the years that I studied at the University of New Mexico I worked at the Center for Southwest Research as an archivist for the Digital Western Waters Digital Library project. Post-graduation, environmental consulting firms gave me experience assisting with stakeholder meetings, strategic planning initiatives, research and writing of environmental impact assessments. I then went on to work as an archivist for the New Mexico Records Center and Archives, preserving fragile documents, physically processing, digital archiving, creating metadata, for the state's collections. I also conducted research, contributed historical essays, and digitally archiving Spanish land grants, oversized maps, and civil war muster rolls or the New Mexico Office of the State Historian. For five year, I taught Earth Science and Southwest History courses as a contributing faculty member at the Santa Fe University of Art and Design. In 2016, I became a research assistant and author of a Santa Fe County Health Impact Assessment, "Indian Health Services Budget and Urban Indian Budgeting Decisions".

In April 2018 I presented selections from the book I published, "Environmental Justice in New Mexico: Counting Coup," at the National Environmental Justice conference in Washington,

D.C. My book presents stories of strife and struggle in the war to protect the integrity of natural systems, rights to religious freedom and the continuation of traditional customs. Research from my master thesis' work was published in Winona LaDuke's book on militarization. Other research work that has been recently published is the "Health Impact Assessment: Indian Health Services Budget and Urban Indian Budgeting Decisions – Examining the Health Effects of IHS Underfunding on the Santa Fe Urban Indian Community".

Recent work experience includes the position of Fiscal Sponsorship & Community Outreach Coordinator for the New Mexico Foundation. Presently, I offer technical support to communities working on Health Impact Assessments through the New Mexico's Health Equity Partnership, and I hold the position of Community Engagement Manager at the New Mexico Environmental Law Center where I assist staff attorneys and frontline communities on legal cases in a fight for environmental justice and human rights.

My interest in New Mexico history, public health, community planning, social and environmental justice related issues has led me to continue volunteer work and advocacy. Currently, I am a board member of the New Mexico Public Health Association focusing on the priority issue of Environmental Justice & Health and also participate in a volunteer Campaign Against Racism (Social Medicine Consortium) Working Group, New Mexico chapter.

It would be an honor to serve New Mexican communities by contributing articles and participating in community conversations about the land use and history of La Villa Real de la Santa Fe de San Francisco de Así. Please accept this letter of interest and attached CV in application for the ceremonial **City Historian** position. If given the opportunity, I would be happy to elaborate on my experience and qualifications in more detail with you at a future time.

Thank you for your consideration.

Sincerely,
Valerie Rangel

Valerie A. Rangel

203 Villa Alegre St., Santa Fe, NM 87501
Cell (505) 449-7498 suqae@yahoo.com

Education

University of New Mexico
Master of Community Regional Planning (MCRP)
Major: Natural Resources & Environmental Management
Minor: Indigenous Community Planning & Public Health
School of Architecture and Planning
Graduation date: May 2006
Total credit hours: 50

University of New Mexico
Bachelor of University Studies
Concentration: Environmental Science & Cultural Anthropology
University College
Graduation date: May 2003
Total credit hours: 130

Work Experience

11/2020 – present
New Mexico Environmental Law Center
Title: Community Engagement Manager
Duties: Assist with communications and environmental education, community planning with clients and partners, advocacy of environmental justice issues and legislative efforts. Support staff attorneys in their work with clients and in preparation of legal cases. Participate and contribute to interagency structure and organizational development.
Supervisor: Virginia Nechochea
Office Phone: (505) 989-9022

03/2018-10/2020
New Mexico Community Foundation
Title: Community Program Manager
Duties: Meet with potential partners and community program directors, attend conferences and community engagement events to organize and plan effective strategies for funding and implementation of community-driven programs. Create and contribute to strategic planning, reports and public information materials.
Supervisor: Linda Milbourn
Office Phone: (505) 820-6860

IAIA

Institute of American Indian Arts – Continuing Education
Native Pathways Youth Development
Title: Experiential Educator
Duties: Organize, plan, coordinate, and execute IAIA's Native Youth Pathways Career and College Readiness curriculum in participating tribal communities. This program curriculum focuses on experiential learning, team building, introspective empowerment activities, critical analysis, and problem solving strategies for life as well as college and career development planning. Students participant in activities that promote mental and physical health and wellness; each activity contains examples and suggested resources.
Supervisor: Joannie Romero
Cell Phone: (505) 424-2308
https://www.linkedin.com/pulse/iaia-native-youth-pathways-development-joannie-suina-romero
03/2016-12/2016

Santa Fe – Health Impact Assessment

University of New Mexico – College of Nursing
Title: Project Coordinator
Duties: Organize, plan, coordinate and execute community events and stakeholder meetings for the Health Impact Assessment. Research background information, gather and analyze qualitative data. Create and contribute to the creation and editing of content for the final report, public presentation and public information materials.
Supervisors: Dr. Emily Haozous Cell Phone: (505) 501-9095; HEP Partners (Jessica Jensen, David Gaussoin)

03/2014-7/2016

Santa Fe Botanical Garden

725 Camino Lejo
Santa Fe, NM 87505
Title: Membership Coordinator
Duties: Database maintenance, processing of renewals and payment information, active participant in committee meetings, generation of statistical information and reports on membership, organization/planning/implementation of special evening and weekend events, as well as general office manager duties.
Supervisor: Cristina Salvador
Cell Phone: (808) 651-1127

08/2010 – 12/2015

Santa Fe University of Art & Design

1200 St. Michaels Drive
Santa Fe, NM 87505
(505) 473-6011
Title: Contributing Faculty Member
Duties: Online Classroom facilitator and classroom instructor of Environmental Science, Classroom Instructor of the following courses: Earth Science, Nutritional Science, Natural Disasters, Intro Geology, Environmental Science, Freshwater Ecology, and Southwest History.
Dean of Creative Writing Division: Dr. Corine Frankland

10/2008-06/2011
NM State Records Center & Archives
1205 Camino Carlos Rey
Santa Fe, NM 87505
(505) 476-7951
Title: Archivist-B
Duties: Physical processing, digital archiving, creation of metadata, and organization of digital files related to the following collections: Spanish land grants, and Civil War Muster rolls.
Supervisors: Melissa Salazar, Samuel Sisneros, Felisha Luijan

06/2009-05/10
New Mexico Office of the State Historian
1205 Camino Carlos Rey
Santa Fe, NM 87505
Title: Researcher/Writer
Duties: Research and writing of historical essays for the New Mexico Digital History Project.
Supervisor: Dr. Dennis Trujillo, Dr. Estevan Rael-Galvez

08/2004 – 05/2006
University of New Mexico Center for Southwest Research
1 University of New Mexico
Albuquerque, NM87131-0001
(505) 277-7172
Title: Aberle Fellowship Recipient
Duties: Digitization of Soil Conservation Service reports and maps, creation of metadata, collection and consolidation of water related educational resources via the Western Waters Digital Library (WWDL) webpage. Other duties included writing, editing, and coordinating the development of promotional and educational materials, training manuals, and web pages, as appropriate to the WWDL project.
Supervisor: Kathlene Ferris

Publications

"Environmental Justice in New Mexico: Counting Coup" by Valerie Rangel (Author), Bob Haozous (Foreword)
Series: Natural History
Paperback: 192 pages
Publisher: The History Press (February 4, 2019)
Language: English
ISBN-10: 146714133X
ISBN-13: 978-1467141338

2017
Three featured papercut works of my art on display in Winona LaDuke's Honor the Earth organization's "Art of Indigenous Resistance" traveling exhibition: http://www.honorearth.org/artofresistanceexhibition

2016
Report: “Health Impact Assessment: Indian Health Services Budget and Urban Indian Budgeting Decisions” http://nmhep.org/resources/hia-reports/ihs/

2013
My master’s thesis, “Finding Beauty in a Shattered Land” Investigation of Environmental, Public Health, and Future Planning of Fort Wingate Depot Activity Area” was cited as a reference with annexed excerpts from my professional project paper in Winona LaDuke’s book, “The Militarization of Indian Country” (Makwa Enewed) Paperback – March 1, 2013.
ISBN-10: 193806500X

2010-2012
Research and essay writer for The New Mexico State Historian’s New Mexico Digital History Project. Published historical essays include:
Biography of Annie Dodge Wauneka: http://newmexicohistory.org/people/biography-of-annie-dodge-wauneka
Petroglyph National Monument: http://newmexicohistory.org/people/petroglyph-national-monument
Alan Houser Biography: http://newmexicohistory.org/people/allan-houser-biography
Church Rock Tailings Spill: 16 July 1979: http://newmexicohistory.org/people/church-rock-tailings-spill-16-july-1979
The Story of Lozen: http://newmexicohistory.org/people/the-story-of-lozen
The Story of Manuelito: http://newmexicohistory.org/people/the-story-of-manuelito
Teatro Flamenco: http://newmexicohistory.org/people/teatro-flamenco

12/2008 – Signed a publishing contract with Salina Bookshelf, Inc. for a children’s book:
“Through the knowledge of the Animal People, the first hooghan was made”
As told by: Valerie A. Rangel
Introduction: In the past, storytellers taught children an important message about survival by means of plants, animals, and oral history. The story of the first hooghan has been passed down through many generations through oral history. It has been said, that long ago, when conditions on the Earth were different, the Navajo were able to communicate with animals.

06//2008 – 3rd Annual New Mexico Tribal Health Research Summit
Sponsored by: UNM Center for Native American Health, Albuquerque Indian Health Board, UNM Center for Participatory Research within the Institute for Public Health
Summit Goal: Bring tribal members, researchers, providers, leaders, and students together to engage in dialogue that guides a research process that honors cultural knowledge and community core values.
Public Health Poster Presenter: “Critical Dialogue: At the Crossroads of Indigenous Knowledge and Research”

11/2006 –American Planning Association Indigenous Planning Conference
Panel Presenter: Native American Collaboration
Location: Sandia Pueblo Casino

2006- Center for Regional Studies and the Center for Southwest Research Fellows
Presentation: Digital Waters NRCS Archival Project: Western Waters Digital Archival Project.

2004-2006- Professional Project Paper
"Finding Beauty in a Shattered Land." Investigation of Environmental, Public Health, and Future Planning of Fort Wingate Depot Activity Area.
MCRP Thesis/Project Committee: Dr. Theodore Jojola, Dr. Michael Brandt, Ric Richardson

2005- Behavioral Theories in Public Health Research
Research/Grant proposal: "Theory Based Interventions to Reduce Pesticide associated Health Problems among Native American Basket makers in the Southwest"
Professor: Bonnie Duran

2005-Public Health Poster
Carbon Monoxide Poisoning Prevention Public Health Initiative
Displayed throughout the Pueblo of Isleta

2004- Environmental Assessment for the potential of residential development in the Town of Lamy, NM
Graduate project group research paper
Contributed portions: Location, Geology, Climate, Vegetation, Soil Classification, Erosion Analysis, Community Water System, Lamy Housing Characteristics, History of, Land Use, Historic Buildings, Land Suitability Analysis, Water Catchment Zones, Areas Suitable for Development, Recommendations

2003- "To'gi dee Nanise' ba tse' bee'i'diiljeehi"
"Navajo plant knowledge for a plant adhesive to remove sediment from water"
Research Project: Plant Derived Coagulants for Water Purification
UNM Biology Dept.
Professor: Dr. Pokman

References

Corine Frankland, Ph.D. Department Chair, Liberal Arts Santa Fe University of Art and Design 160 St. Michael's Drive Santa Fe, NM 87505 (505) 819-8625 corine.frankland@santafeuniversity.edu	**Felisha Lujan, AHS Division Director** NM State Records Center & Archives 1205 Camino Carlos Rey Santa Fe, NM 87505 (505) 476-7954 felicia.lujan@state.nm.us
Dr. Estevan Rael-Galvez, former NM State Historian (505) 231-0773 erael-galvez@creativestratgies360.com www.creativestrategies360.com	**Emily Haozous, Ph.D., RN, FAAN** University of New Mexico College of Nursing (505) 272-8568 ehaozous@salud.unm.edu

City of Santa Fe, New Mexico

memo

June 28, 2021

TO: Mayor Webber
FROM: Robert Lambert, Arts and Culture Department Assistant Director
THROUGH: Pauline Kanako Kamiyama, Arts and Culture Department Director
SUBJ: Poet Laureate Selection FY22 Recommendation: Darryl Wellington

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The Arts and Culture Department issued a call for the selection of the new City of Santa Fe, Poet Laureate on April 28, 2021. Arts & Culture received 7 applications via email by closing date of Monday, May 17th at 5pm.

A panel consisting of Arts Commission Co-Chair, current and past Poet Laureate's, and the previous Youth Poet Laureate were sent all applications as well as a scoresheet to rank applications, those scoresheets were compiled and two finalists were selected for interview; Darryl Wellington and Lauren Camp. The panel was conducted on Monday, June 28th to interview and make a final selection from two top ranking

Unanimously, the selection panel ranked **Daryl Wellington the highest** with Lauren Camp as second ranked.

Daryl Wellington:

- Proposed project is a series of workshops focused on teaching the general public (specifically underserved populations) to identify their own personal "Historic Trauma" and guiding them in writing about it. The project may take the form of a Public Poetry Contest, but will result in a public reading of the results and the possibility of a book featuring the poems that result. Intent to give the general population confidence in writing and sharing their voices.
- Mr. Wellington has proven experience with engaging the voices of the unheard and has done considerable work with Alas de Agua and Earthcare to develop relationships, trust and networks in that community.
- His approach is grassroots focused with an emphasis on addressing powerful issues through the process of the written word.
- He has an informal personality and is affable and approachable and his ability to engage will serve the topical approach of the project.
- This project can start immediately as a result of the networks and relationships Mr. Wellington has developed.

Panel recommends Darryl Wellington as the City's Poet Laureate FY22 serving a two year term.

ADelma Hnasko (Jun 29, 2021 15:05 MDT)
Adelma Aurora Hnasko
Vice Chair Arts Commission

Jon Davis (Jun 29, 2021 15:08 MDT)
Jon Davis
Director MFA Creative Writing, IAIA

Elizabeth Jacobson (Jun 29, 2021 18:29 MDT)
Elizabeth Jacobson
Poet Laureate FY19-20 and FY20-21

Artemisio Romero y Carver (Jun 30, 2021 11:00 EDT)
Artemisio Romero y Carver,
Youth Poet Laureate FY20-21

Darryl Lorenzo Wellington

To:
The Arts Commission and/or Poet Laureate Selection Committee Of Santa Fe, NM

Dear Selection Committee,

My name is Darryl Lorenzo Wellington. I am a poet, playwright, performance artist, essayist, and journalist. I have lived in Santa Fe 10 years, and I make my living writing journalism. You can read the details of my publication history in the resume (which is attached) but I will summarize the highlights here. I have over 20 years of professional experience in the journalism field, writing articles that highlight progressive causes and movements. I have covered poverty exploitation in the plasma industry, the rebuilding of post-Katrina New Orleans, and various social justice issues. I mention this background because you may see its influence in my poetry.

I have simultaneously written poetry and fiction – which has been my side avocation for also some twenty years. I have published my poetry in *Boston Review, Yemassee magazine, Drum Voices, Matter Monthly, Pedestal magazine, ABZ magazine, Santa Fe Literary Review, Radius magazine, Blood Tree Literature magazine, Turtle Island Quarterly, Yellow Medicine Review,* and other places. In 2017, my chapbook, **Life's Prisoners,** received the Turtle Island Quarterly chapbook award, and was published by Flowstone Press. I'm proud to say that my first full-length collection. **Psalms at the Present Time,** will be published by Flowstone Press in late 2021.

The five poems in my packet will be in the forthcoming collection!

I have also published essays in *The Nation, Dissent, and N+1* magazine, and published fiction in *Blood Tree Lit.*, and *Santa Fe Noir.* In keeping with writing on social issues, I am a Communications Fellow at The Center for Community Change, and I write a semi-regular column on racism, prejudice, and progressive issues in the *Santa Fe Reporter.*

I like to think that my humble contributions to the civic dialogue in Santa Fe --- including my article "Black in Santa Fe" in the Santa Fe Reporter, 2013 (which was probably the first detailed look at the local Black presence) my column on racism, my Black History month presentations, and the many poetry readings and monologue performances I have participated in as a part of the *Alas de Agua* collective – will significantly contribute to my value as a potential Poet Laureate.

During my decade here, I have watched Santa Fe grow from a city that struck as being entrenched in silence, unable to mention issues of monuments, memorialization, or historical trauma, to a city engaged in continued self-reflection and debate. I realize that there have been some bumpy roads along the way, but I truly believe that debate and contention are the first manifestations of healing. The need for dialogue on race, ethnicity, culture, and historical trauma was one of the themes of Amanda Gorman's well-received presidential inauguration poem. If I were Poet Laureate, I would use my position in part to further this conversation locally.

More specifically, I would engage in the usual course of readings and workshops at bookstores and schools,, with an emphasis on calling attention to the diversity of the local poetry community. I would also like to sponsor a contest, with poets submitting works on the theme "Historical Trauma" (whatever they personally interpreted this to mean.) The contest could probably be promoted through the Santa Fe Reporter, who would publish the "winners." I use quotation marks because – given the sensitivity of the theme – everyone's thematic point of view is important. If I had my druthers (and if the funds exist) I would subsequently have all the submissions published in limited edition book.

On the lighter side, I have another idea to promote poetry interest and participation. Poetry Tee-shirts! That is, a tee-shirt with a personalized line from a poem inscribed on the front. I will certainly conduct workshops during my hypothetical tenure. I will then invite all the participants to submit a line from a poem to be inscribed on their own poetry T shirt.

I have consulted with people associated with the silkscreen shop adjacent Youthworks. Of course, I can't provide an exact budget because we don't know how many people will want a poetry tee -shirt. 100 poetry tee-shirts, perhaps? They estimate 100 t-shirts would cost about $300. They are used to having people provide the t-shirts themselves. This is fine, but if some people can't I would like the city to fund this too. I roughly estimate the project would cost $500.

I believe this is potentially a remarkably effective way to spread the word that poetry is wonderful! And I would be happy to talk over the details of a budget with the Poet Laureate Selection Committee.

Thank you for considering my application.

Yours,
Darryl Lorenzo Wellington

DARRYL LORENZO WELLINGTON

Darryl Lorenzo Wellington has over twenty years of experience as a freelance journalist and essayist publishing magazine feature articles, political commentary, poetry and book reviews appearing in publications such as *Dissent, The Nation, The Progressive, The Washington Post, The Crisis (The NAACP magazine,) The Christian Science Monitor, The Progressive, The Common Review, Boston Review, ABZ Magazine, Drum Voices, The Journal of Blacks in Higher Education N+1,* and other places. His poetry chapbook ***Life's Prisoners*** received the 2017 Turtle Island Quarterly Chapbook Award. He has been featured on *The Tavis Smiley Radio Show.* He writes a syndicated editorial column for *The Progressive Media Project.* Since 2016, he has been a Writing/ Communications Fellow with Center for Community Change, a Washington DC-based organization that supports low-income people of color.

AWARDS

Turtle Island Quarterly chapbook poetry prize – 2017, prize led to the publication of Life's Prisoners (Flowstone Press)

Buzzfeed Emerging Writers Fellowship – 2015 finalist, one of ten finalists to receive the Emerging Artist Fellowship from Buzzfeed Inc.

Detroit Write-a-House – 2014 finalist to receive a home from the Detroit Write-house project

Economic Hardship Reporting Project Fellow – 2013-14, funding to research article on the plasma industry. The EHR project is headed by writer/journalist Barbara Ehrenreich

Excellence in Urban Journalism Award --- *2007 finalist*

The Edward P Margolis Award in Nonfiction Writing

-- 2004 and 2007 finalist.

South Carolina Arts Commission Individual Artists' Fellowship
-- Playwright Fellow --- 2004/2005

Coastal Community Foundation Expansion Arts Grants
-- Poetry Fellowships -- 2002 and 04

MAGAZINE PUBLICATIONS: *a partial listing*

"Psalm Sequence" -- ten pages of poetry published in *Bloodtree Literature,* Issue 8. Fall 2020

"Blackness in Conflict" -- a examination of the dispute between Cornel West and Michael Eric Dyson, *The Crisis Magazine,* summer 2015

"The Power of Black Lives Matter" --- a study of the Black Lives Matter and Occupy Wall Street movements, *The Crisis Magazine,* winter 2015

"The Twisted Business of Donating Plasma" -- examination of the plasma industry, *The Atlantic Monthly* (Web magazine) May, 2014

"In the Shadow of the Manhattan Project" -- the political history of the nuclear weapons complex, *New Politics,* winter, 2014

"Blacks in Santa Fe" -- a personal narrative and historical account of the African American experience in New Mexico, a cover story in *The Santa Fe Reporter,* October 30 – November 5th, 2013

Numerous Op-Eds for *The Progressive Magazine* -- 7 editorials published in 2014

"A Man of Many Seasons" commentary on the legacy of Malcolm X -- *Dissent,* Summer 2012

"Book on Skip Gates' Arrest Sidesteps the Perils of Profiling" -- a review of The Presumption of Guilt by Charles Ogletree, *The Chronicle Review,* August, 15, 2010

"Sex, Race and Precious" -- a reconsideration of the controversial film, *Precious,* directed by Lee Daniels, *Dissent Magazine,* online edition, March 8, 2010

"Reality Publishing" -- essay on the Amazon Breakthrough Novel Award and Literary Culture, *N+1* magazine, 2009

"Autobiographical Fire and Obama's Creation of Self" -- a examination of President Barack Obama's personality through his published writings, *The Common Review,* summer, 2009

"Barack Obama in the Public Imagination" -- an overview of the Obama primary campaign, *Dissent Magazine,* fall 2008

"Native Son" – an article on the centenary of Richard Wright's birth, *Crisis Magazine,* spring 2008

"A Grassroots Social Forum" -- an article on the first United States Social Forum, held in Atlanta, Ga., June 27-July 1st, 2007, *The Nation,* August, 13, 2007

"Uncle Tom's Shadow" -- a review of *The Annotated Uncle Tom's Cabin*, by Harriet Beecher Stowe, edited by Henry Louis Gates, *The Nation*, December 25, 2006

"A Public Policy Assessment of the Aftermath of Katrina" -- an article on government policy and the Gulf Coast post-Katrina, *The Crisis Magazine*, Sept/Oct 2006

"New Orleans: A Right to Return" -- a first-person narrative reappraisal of the situation in New Orleans on the one year anniversary of Hurricane Katrina, *Dissent Magazine*, fall 2006

"Fighting at Cross-purposes" -- an article on Richard Wright, Ralph Ellison and Irving Howe, *Dissent Magazine*, summer 2005

"Southern Man" -- a review of *Dear Senator* by Essie Mae Washington-Williams, *The Nation*, May 23, 2005

"Ambiguous Legacy: Summerton, South Carolina and the legacy of Briggs vs Eliott" – a look back at Summerton, South Carolina's role in *Brown vs the Board of Education*, *Dissent Magazine*, summer, 2004

"Harriet Tubman: The Road to Freedom" -- a review of *Harriet Tubman* by Catherine Clinton, *The Christian Science Monitor*, February 17, 2004

"Nearing Sleep" and "Joining the Dark" (Poems) --- *Boston Review*, April/May, 2004

"The Poem as History" -- commentary on contemporary black poetry, The Washington Post Book World, September 22, 2002

BOOKS

FORTHCOMING – Psalms at the Present Time: New Poems, Flowstone Press, 2021

Santa Fe Noir – "The Homeless Detective*"* thirty page short story included in this anthology from the Akashic Book Noir-series, edited by Ariel Gore, Akashic Books, 2020

Life's Prisoners – Flowstone press, 2017, recipient of the Turtle Island Quarterly Poetry Chapbook Award.

MFA Vs NYC: The Two Cultures of American Fiction -- an anthology of essays about the publishing industry, edited by Chad Harbach, including an expanded version of my essay "Reality Publishing" Faber & Faber, 2014

The Charleston/Atlanta/ Alaska Challenge -- a sixty page book documenting a year long community art project in Charleston, SC, 2001

EDUCATION

Atlantic Center for the Arts Residency Program, New Smyrna Beach, Fl.
--- residency and tutelage under professional poets and writers, such as Mark Strand, Paula Vogel, and Marie Ponsot. 1999, 2001, 2003, 2004, 2006 and 2007/

Bennington College – BA, 1988

TEACHING EXPERIENCE

(Upcoming) "Writing Fiction and Nonfiction on Racism" July 2021 – a six hour intensive workshop at the upcoming Taos Writers Workshop

"James Baldwin and Perspectives on American Racism" Renesan Institute for Higher Learning, 2021- lecture on the life and career of James Baldwin for adult learners

"Poetry and Memoir" -- a six week writing workshop for adult clients at the Life Link Substance Abuse Center, Santa Fe, NM, 2015

"Writing for Magazines" October 2008
--- a workshop on writing for magazines, sponsored by LILA (Lowcountry Initiative for the Literary Arts)

"Writing Plays" March, 2006
---- a workshop on the craft of writing plays, sponsored by LILA (Lowcountry Initiative for the Literary Arts)

2004 South Carolina Book Festival in Columbia
-- panelist in a discussion on the state of African American fiction and poetry,

Poetry workshops for students at Garrett Academy, McClellanville Middle School , and Charleston Academic Magnet, 2001-2002

PROFESSIONAL MEMBERSHIPS/ OTHER HONORS

The National Book Critics Circle
Premier professional organization of book reviewers and literary critics

American Society of Freelance Journalists and Authors (ASJA)
Professional organization of freelancers

A radio broadcast "Black in Seattle" -- a February 26th 2014 broadcast on **The Tavis Smiley Radio Show**, featuring Tonya Mosley and Darryl Lorenzo Wellington discussing living in cities (Seattle, WA, Santa Fe, NM) with small African American populations

POEMS FROM PSALMS AT THE PRESENT TIME

Days of Protest

We will smash the world
Wildly
We will thunder…

Roses and dreams
Debased by poets
Will unfurl…
-- The 150, 000, 000, Mayakovsky.

We will not disappear
like her birth name
like his dead letters
buried inside a sheaf
after a flash rain…

We will not disappear.

**

Death yawns stately.
Death conjoins us.
-- whether we make music
noise, love, or bourgeoisie war.
Free assembly and funeral
rites, these days, symbiotic, interchangeable.

Siren sounds. We will not disappear

**

we proceed like marionettes
carried along on one string
crowds of selfsame mouths
our tongues chant *now* in unison
the pitch like a cracked accordion
then canticle is cant
and cry.

and the dead also
They will not disappear.

**

Death conjoins us. The streets
indigenously compel us
whether we lay down
and recharge
screaming at planned events
protests marches
and vigils
have become
intermarried, like a sexual transgression

Death conjoins us

**

Death pulls back the curtain.

Public war,
like private mourning,
pulls back the curtain.
An old law is a heavy sigh.
Its retellings, latchkey shibboleth *blood nurses grief,*
grief nurses war,

and what else is changed to soldiers and mourners?

**

We wear hoodies and chains
-- hoodies, sneakers, jerseys, chains;
lining the streets carrying placards,
banners
and loudspeakers
amplifying *Trayvon Breonna*
EricGarnerFreddieGreyPhilandoCastle
like aggravated parlor ghosts
And sound systems reify the abstractions:
let the crowds inspire regardless
belief in eternal succession...

**

– then we seize the streets.

then we seize the streets at noon and night
but dispassionately challenge
standard badges of the numinous state;
officers in bright-dark svelte glasses breaking
past the front lines berate us.

The blue lines aggress.

– but we seize the streets at night

***

We amplify. We reify.

-- we amplify using cost efficient
instruments of bulbs, amps, wattage;
cackle and hum breaks daylight monotony
then we seize the streets at noon and night
like visionary candlewicks afloat on
sea and surge. *But the sea will never*

swallow the candles: burning brightly!

***

And amplify. And reify
flesh of my physical atrophy
death's indigenous people
shortchanged before destruction…
who will not disappear
like her birth name
like his dead letters
after a flash rain…

How to Live with Racism, In Times Like These

... and so...?

Become used to the feeling
at all times, that the flesh,
flagellated, feverish puffiness
in particular the poignant places
where the vertebrae curves
is melting, melting, to *angst* gone to crap.

Study the stool/such daily craps
like a horoscope: synchronized to feelings
how functional systems midway curve
until past internalized bile mulches flesh
pours into the heartfelt places
susceptible to psychosomatic illness (puffiness)

Practice using herbs and lotions/ puffiness
calcifies the skin's breath/ asthma is crap
still psychically undigested. Benign places
where you suffer sudden stress feeling
an atavistic stiffness hammer flesh
to an ancient bone. And a bad back curves.

Negative socialization stymies sleep, curves
sally to cripwalk, toothsomeness to puffiness
self-enfolding lumps of riddled flesh
bulk beneath shy lids/sleep's a crap
-shoot in a puzzled welter/ feelings
stiffen like chess pawns in the wrong places.

Acknowledge the health burdens angst places
in between dolor and the daily curves/
Murphy's law/ throwing sobriety to feeling
– if judgement intervenes – hives, cancer, puffiness,
the apocalypse's four horsemen coming crap
all over a calm façade. Death is inherent in the flesh.

And death's mode in bad times is bruised flesh
softening slowly in the wrong places
listless fatigue leaves shit, crust, crap
putrefying the toilet rim/ meals skipped/ curve
balls self-implode memory/ socks sacrificed/ puffiness
is generic putty: enthusiasm low: no feeling.

___

cut the crap feed the flesh avoid black outs

– because honestly speaking they're sudden relief –

Taking a breather allows/ one-shot self-analysis
less urgent care than homing in on memory lapses:

finish tasks / scrub the tub

walk the dog/ tip the jar round the curves

round the curves
struggle with memory against forgetting to see: eye strain: a
feeling of puffiness in places

beware/ struggle with memory against forgetting

to flush.

Contemplating Homelessness

A man thinking over what he will do the day before he has to leave his house.

tonight, and where to go, where to sleep

These same questions could be tendered to the stars
under the assumption philosophy warrants derision.
Or maybe not. Give me then the stars' dumb luck
in preference to the pointless blank
gaze of other systems: money that can't sweat
skip, run, jump, although it speaks
while pennilessness is rough, tanned, and muscular.
Poverty is pretty *louche*, in fact, and voiceless.
A final undeposited check may be a grand comedian.
Or maybe the awkward matter
is simply related to objects in transition –
things which can be put inside safe storage
things which can be easily disposed, junked, or sublimated
and objects consigned to an accumulated oblivion.
There is a place for mementos in limbo
like a purgatory for the silently depressed
facing streetwise catastrophe with too little
left to value against the cost of breaking even.

Thinking over friends, fear and laughter

Many years ago in a strangled past
which like every past or future under circumstances
when the stars have no other set intentions
and fate resembles vectors scribble-scratched
in a past which resembled *long, long ago*
far-far away – given the layers of past tenses proverbial –
I knew a grey man who owned properties and another
who managed the rentals. They kept long hours
unusually long hours in each other's company
for businessmen weathered by strife and commerce,

I suppose. I couldn't understand
their persistent laments. I was so impressed
simply because they related less
like an old guy speaking to his on-the-job
carpentry-skilled underling than friends, well,
yes, pals. Did that mean masterminds of helplessness?
Did that mean understanding the laws of threat?
Did that mean robber barons upping rents?

I hung out drinking beer and coke
(between friends they never charged a cent) when
the sudden pall of business called. The regular
guy whispered. Knitted his brows;
the old man's blue eyes deepened. I remember
laughter, then the shadows, *contracts, law, leases.*

The mold

My address.
It's unimportant.
The eviction notice read: *Mold remediation at –*
It wasn't the most elegant apartment.
Nothing overstated. Including the rot.
The space was simpler than a threadbare capsule.
The front yard welcomed weeds. And hosted rocks.
Three rooms. And between them less to comment
on than the sum of domestic bric-a-brac
minus visible interstices. The old-timey furnace
flared too brightly. And the gas
ensconced me in welcomed heat midwinter
intermingled with drifts too pungent;
besides which the furnace rods clunked;
I stared into the clunky threat
feeling happier with all of it
than any happiness sustained in transit.
The mold must have arrived in secret
the way thieves, ghouls, or spies infiltrate

[New Stanza]

countries of the living who stubbornly imagine
themselves counting beads on an abacus
of coming days
whether the future is spent in a car
spent in a poverty trap
spent on a thread.

And where and how to sleep

Like a child's Crayola masterpiece
simplified to the point of colorful abstraction
any query presented literally: *where to go,*
where to spend the days and nights;
should I stay in a homeless shelter or my car
parked behind the monster trucks at Walmart?
can be reconfigured metaphysically
and the metaphorical offered to the stars
again: say sleepy-headedly *twinkle, twinkle,*
starlight, star bright, hoping
ruses in rhyme connect the dots.

The interstices between the starry pinnacles
may chart the image of a homeless man
sort of an exhausted yogi
proud how much self-knowledge he attains
testing the smallest spaces he can live inside.
Tonight then I'll drive until I find
shame inside a proper roach motel: humility, too,
between sleeplessness and first dawn light.

Nature Proem

Looking at the vacuum cleaner,
I don’t think about an operational
God: heavens no. But I may think about energy
the bizarre temporality of the objects
containing it. There is a street sweeper
outside distressing the neighborhood
with its chewing gnawing noisiness
and staring into its tumultuous
crescendo would probably be more like the abyss.
The vast tanklike supra-robot threatens
to put an end to this small and green
  planetary life
        an end to the pathetically shriveled
    skin and bone crushed beneath terrible metallurgy
Death to the human race –
                Death to the human race!
Our dishonorable enterprise sucked up like slop.
The vacuum cleaner merely mocks my unplugged lethargy.

Racing Thoughts on Gentrification

If you can imagine
all the *haute couture* / storefronts/
bulging at the seams/
beware the waistline
a suit that can't fit on a Goliathan
nor inhibit his effortless largesse/
Sunday morning crowds besting
Saturday night fevers
strolling into the pithiest *bon mots*
custom painted signs
challenging man's idiomatic inventory
a storefront Renaissance
then you can/painfully/
reimagine in
-glorious Black Sundays
innumerable vacancies
ratcheting up no such sales
inside gritty metal cups
that can't rattle. Downtown's
failed reclamation project.
Charleston's afterthought.
Blighted blocks universalized.
Memory's emotional drought.
No taste. Touch. Tang.
No streetwise purview. Seeds. Spawn.
No *Maxine's Restaurant* church coven.
And divine
from the left unsaid, flickering
socially acceptable memories on, flicking

sentimental neighborhood tall tales on
then off, polarities puzzled, like a light switch.
The sentiments in between
sketching a picturesque light and dark
make a parable. Though no one
inside the centerpiece paradigm
one city/ one coastline/
where the moral is given

and the temperature is taken
will say who is responsible –
nor how the visions possibly
describe one lowcountry/
one love/
one pulse beat wandering the peninsula amicably.

All poems by

Darryl Lorenzo Wellington

City of Santa Fe New Mexico

Public Works Dept. - Aviation Division

MEMO

DATE: JULY 21, 2021

TO: MAYOR ALAN WEBBER

VIA: KRISTINE BUSTOS-MIHELCIC, CITY CLERK

FROM: MARK BACA, C.M., AIRPORT MANAGER MB

ITEM: RECOMMENDATIONS FOR AIRPORT ADVISORY BOARD (AAB) APPOINTMENTS 2021-2024

BACKGROUND AND SUMMARY:

Recently two members of AAB had their membership come up for renewal. At that time, a published announcement was advertised looking for interested parties to fill the vacancies.

After receiving resumes, the Chairman of AAB, Councilor Chris Rivera, would like to recommend the following individuals for a 3-year term (2021-2024) appointed membership:

Kevin Egan – Reappointment

Randal Limbacher – First Term, resume attached.

ACTION REQUESTED:

The Airport Division is respectfully requesting appointment of the above-mentioned individuals to the Airport Advisory Board for a term.

Randal Limbacher

Experience

Managing Director

ALTOUR Full-time

Dates EmployedApr 2019 – Present

Employment Duration2 yrs 1 mo

Responsible for Canyon Creek Travel offices located in Richardson and Tyler Texas and our new ALTOUR of Santa Fe office. Corporate account management and sales support for my team of corporate advisors. I am also a full time corporate/leisure agent specializing in unique luxury travel experiences.

Chief Executive Officer

Canyon Creek Travel Full-time

Dates EmployedAug 1992 – Apr 2019

Employment Duration26 yrs 9 mos

LocationRichardson, Texas, United States

Started Canyon Creek Travel as a family business in 1992 from one million per year in sales to over two hundred million in 2019 and was acquired by ALTOUR. Responsible for operations, sales, and account management.

Group Travel Manager

Park Central Travel / Pavilion Travel Full-time

Dates EmployedAug 1989 – Aug 1992

Employment Duration3 yrs 1 mo

LocationDallas-Fort Worth Metroplex

Corporate travel advisor, group travel manager, and managing partner with Pavilion Travel

Director Yield Management and Revenue Accounting

American Eagle Airlines Full-time

Dates EmployedJan 1982 – Aug 1989

Employment Duration7 yrs 8 mos

LocationRaleigh-Durham-Chapel Hill Area

Began working on the ramp with Metro Airlines in Longview, Texas. Worked as ticketing/gate agent, and station manager in Texarkana. Started Metro Express II as the first American Eagle carrier opening over 15 airports for American Airlines. Promoted to Director of Yield management in Raleigh, NC before moving to the retail agency side after being acquired by American Airlines.

City of Santa Fe New Mexico
Memorandum

Date: June 7, 2021

To: Economic Development Advisory Committee, Quality of Life Committee, Public Works and Utilities Committee, Finance Committee, and Governing Body

From: Jesse Guillen, Legislative Liaison

Via: Erin McSherry, City Attorney EM

RE: Lease length requirement for alcohol service on City property

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EXECUTIVE SUMMARY:

The proposed Bill removes the 6-month minimum lease requirement for the sale and/or consumption of alcohol on City property. The amendments will allow restaurants to continue to use City property for the sale and consumption of alcohol that began as a result of the COVID-19 pandemic.

BACKGROUND:

On June 24th, 2020 the Governing Body adopted Ordinance No. 2020-14 that allowed for the sale and consumption of alcohol on designated City property provided the establishment met certain criteria. The provisions included as part of Ordinance No. 2020-14 were set to expire on October 31, 2020. On October 14th, 2020 the Governing Body adopted Ordinance No. 2020-28 extended the expiration date of this subsection until October 31, 2021.

Restaurants have approached the City about the potential for a more permanent presence on City property, including in parking spaces, streets, and other rights-of-way. The amendment contained in this Bill would allow these restaurants to enter into shorter-term leases with the City for the use of City property.

The establishments would need to receive the necessary approvals from the Alcoholic Beverage Control Division of the New Mexico Regulation and Licensing Department for the expanded alcohol service area prior to commencing service in the leased area.

Structures erected for longer than 90 days will need land use approvals and, for structures located within the Historic District, approval from the Historic Districts Review Board will be required. Any other applicable approvals required by the State or City must be obtained prior to installation of any supplemental structures.

ACTION REQUESTED:

Staff recommends approval of the Bill as presented.

ATTACHMENTS:

Bill
FIR

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2021-14

INTRODUCED BY:

Councilor Signe I. Lindell

Mayor Alan Webber

AN ORDINANCE

AMENDING SECTION 23-6.2 SFCC 1987 TO REMOVE THE SIX-MONTH MINIMUM LEASE DURATION FOR THE SALE AND CONSUMPTION OF ALCOHOL ON CITY PROPERTY.

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

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

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

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

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

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

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

underscored material = new [~~bracketed material~~] = delete

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

(5) On land or buildings owned by the city, located within the Santa Fe Railyard, as described in the Railyard Master Plan, for which the city has entered into a lease with another party for six (6) months or more except for the Railyard park, Plaza and Alameda (as defined in the amended and restated Deed of Conservation Easement dated [~~October 1, 2004~~] May 30, 2018) where alcohol is prohibited, unless specifically permitted under subsection 23-6.2 SFCC 1987;

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

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

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

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

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

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

E. As a response to the May 27, 2020, public health order issued by the New Mexico

department of health allowing limited outdoor dining service for qualified restaurants, and to enhance physical distancing restrictions due to the COVID-19 pandemic, sale and consumption of alcohol on any city sidewalk, street, right-of-way, or other specified property that has been designated and approved for temporary use by a current liquor licensee may occur pursuant to the following limitations:

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

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

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

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

5. Unless extended by ordinance or resolution, any license or permit issued pursuant to this subsection shall expire on October 31, 2021.

APPROVED AS TO FORM:



ERIN K. McSHERRY, CITY ATTORNEY

Legislation/2021/Bills/Alcohol on City Property Amendments

FIR No. 3328

FISCAL IMPACT REPORT

General Information:

(Check) Bill: X Resolution: _____

Short Title(s): Alcohol on City Property Amendments

Sponsor(s): Councilor Lindell and Mayor Webber

Reviewing Department(s): Legislative Services

Staff Completing FIR: Jesse Guillen Date: 5/13/21 Phone: 955-6518

Reviewed by City Attorney: _____ Date: Jun 7, 2021

Reviewed by Finance Director: Alexis Lotero, Assistant Finace Director Date: Jun 14, 2021

Alexis Lotero, Assistant Finace Director (Jun 14, 2021 14:06 MDT)

Summary:
The proposed Bill removes the 6-month minimum lease requirement in order to permit the sale and/or consumption of alcohol on City property. The amendments will allow restaurants to lease City property for the sale and consumption of alcohol that began as a result of the COVID-19 pandemic.

Departments Affected:
Community and Economic Development, Public Works Department, City Clerk's Office.

Consequences of Not Enacting Legislation:
Restaurants will only be able to continue their auxiliary use of City property for the sale and consumption of alcohol by entering into a lease agreement of at least six months.

Conflict, Duplication, Companionship, or Relationship to Other Legislation:
Section 23-6.2(E) currently allows for the sale and consumption of alcohol on city property by establishments that have received the appropriate licenses through the end of October, 2021.

Performance and Administrative Implications:
Staff will need to work with interested establishments to delineate the permitted property for use, create lease agreements that include the rate the establishment will pay for the use of City property.

Fiscal Implications:
Staff time necessary to negotiate and process each lease will be drawn from other City priorities on an ad hoc basis, thereby delaying the delivery dates of competing activites including Land Use plan review and enforcement, Property Manager licensing, appraisals and archiving, and Traffic Division engineering review. The reduction in community benefits caused by such delays are unquantifiable and may not demonstrably be offset by the direct revenue generated from the lease agreements. At this time only one restaurant has reached out to the City about the possibility of leasing City property on a longer-term basis. The rate the restaurant would pay would also have to be negotiated by the two parties. Therefore the total revenue cannot be estimated at this time. The increased space available to restaurants as a result of a lease agreement could increase sales, and therefore increase the GRT remitted to the City. The increasd space available to restaurants as a result of a lease agreement under this change could increase sales, and therefore increase the GRT remitted to the City.

Fiscal Impact

_____ Check here if no fiscal impact

Expenditures

Expenditure Type	FYE __	FYE __	FYE __	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
Personnel and Benefits*	$	$	$				
Capital Outlay	$	$	$				
Contractual/ Professional Services	$	$	$				
Operating	$	$	$				$
Total:	$	$	$				$

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

Expenditure Narrative:

Staff time associated with processing the lease agreements is dependent upon the number of establishments wishing to take advantage of the ability to expand their liquor service area onto City property.

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:

Revenue to the City would be dependent on the location of the number of establishments that wish to participate in the program, the location of the property, and the amount agreed upon in the lease. For space occupying existing parking meters, revenue from the lease of the space would at least equal the expected revenue that would be generated from the normal use of the parking meter.

Signature: 

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

ACTION SHEET
ITEM FROM QUALITY OF LIFE COMMITTEE MEETING OF 06/16/2021
FOR CITY COUNCIL MEETING OF 07/28/2021

ISSUE:

CONSIDERATION OF BILL NO. 2021-__. (Councilor Lindell and Mayor Webber)
An Ordinance Amending Section 23-6.2 SFCC 1987 to Remove the Six-Month Minimum Lease Duration for the Sale and Consumption of Alcohol on City Property. (Randy Randall, TOURISM Santa Fe Executive Director: rrandall@santafenm.gov, 955-6209; Rich Brown, Community and Economic Development Department Director: rdbrown@santafenm.gov, 955-6625; Jesse Guillen, Legislative Liaison: jbguillen@santafenm.gov, 955-6518)

Committee Review:
Introduced: 5/12/21
Quality of Life Committee: 6/16/21
Public Works and Utilities Committee: 06/28/21
Governing Body (request to publish): 06/30/21
Economic Development Advisory Committee: 7/14/21
Governing Body (public hearing): 07/28/21

QUALITY OF LIFE COMMITTEE ACTION: Approved on discussion. Councilor Villarreal moved this item from the consent agenda to the discussion agenda.

SPECIAL CONDITIONS OR AMENDMENTS:

SEND TO:
Finance Committee; Governing Body

VOTE	**FOR**	**AGAINST**	**ABSTAIN**
CHAIRPERSON ROMERO-WIRTH	X		
COUNCILOR VILLARREAL	X		
COUNCILOR RIVERA	X		
COUNCILOR GARCIA	X		
COUNCILOR CASSUTT	X		

ACTION SHEET
PUBLIC WORKS AND UTILITES COMMITTEE MEETING OF 06/28/2021

ISSUSE NO. 8c

CONSIDERATION OF BILL NO. 2021-__. (Councilor Lindell and Mayor Webber)
An Ordinance Amending Section 23-6.2 SFCC 1987 to Remove the Six-Month Minimum Lease Duration for the Sale and Consumption of Alcohol on City Property. (Randy Randall, TOURISM Santa Fe Executive Director: rrandall@santafenm.gov, 955-6209; Rich Brown, Community and Economic Development Department Director: rdbrown@santafenm.gov, 955-6625; Jesse Guillen, Legislative Liaison: jbguillen@santafenm.gov, 955-6518)

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Governing Body (request to publish): 06/30/21
Economic Development Advisory Committee: 7/14/21
Governing Body (public hearing): 07/28/21

PUBLIC WORKS AND UTILITES COMMITTEE ACTION: Approved on consent agenda to forward to 6/30/2021 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		