



AGENDA

REGULAR MEETING OF
THE FINANCE COMMITTEE
MAY 31, 2022
5:00 PM
COUNCIL CHAMBERS
CITY HALL
200 LINCOLN AVENUE

PROCEDURES FOR FINANCE COMMITTEE MEETING

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

Written Public Comment: Members of the public may submit written comments on legislation by clicking on the comment bubble to the right of the meeting on the public portal at <https://santafe.primegov.com/public/portal> three hours prior to the start of the meeting.

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

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF AGENDA**
4. **APPROVAL OF CONSENT AGENDA**
5. **APPROVAL OF MINUTES**
 - a. Finance Committee – May 16, 2022
6. **ACTION ITEMS: CONSENT**
 - a. Request for the Approval of Amendment #4 to Service Contract 20-0027, Extending the Term and Increasing Compensation in the Amount of \$500,000.00 for HVAC, Mechanical, Plumbing and Electrical Services; B&D Industries, Inc; (Josh Bohlman, Facilities Project Administrator, jbohlman@santafenm.gov, 505-690-9597)

COMMITTEE REVIEW:



AGENDA

Public Works and Utilities Committee: 5/23/2022
Finance Committee: 5/31/2022
Governing Body: 6/8/2022

- b. Request for Approval of Service Contract in the Total Amount of \$1,517,257.50 for Tyler Munis Upgrade Support Services and Payroll Support for the Term of Twelve Months with Ciber Pathway. (Manuel Gonzales, ITT Director: mmgonzales@santafenm.gov, 505-955-5576)

Committee Review:

Finance Committee: 05/31/2022
Public Works and Utilities Committee: 06/06/2022
Governing Body: 06/08/2022

- c. Request for Approval of a Cooperative Purchasing Agreement with Rubicon Global LLC, for On-Board Solid Waste Routing and Ticketing Technology in the Total Amount of \$515,532.80 exclusive of NMGRT. (Shirlene Sitton, Environmental Services Division Director, sesitton@santafenm.gov, 505-955-2209)

Committee Review:

Finance Committee: 05/31/2022
Public Works and Utilities Committee: 06/06/2022
Governing Body: 06/08/2022

- d. Request for Approval of the Collective Bargaining Agreement between the City of Santa Fe and the Santa Fe Police Officers Association for FY23 in the Amount of \$2,251,013.00 for Sworn and Civilian Bargaining Unit Employees. (Ben Valdez, Deputy Chief of Police, bpvaldez@santafenm.gov, 505-955-5040).

Committee Review:

Finance Committee: 5/31/2022
Quality of Life Committee: 6/1/2022
Governing Body: 6/8/2022

7. PRESENTATION

- a. FY21 Audit Status Update (Ricky Bejarano, Interim Assistant Finance Director)



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8. **MATTERS FROM STAFF**
9. **MATTERS FROM THE COMMITTEE**
10. **MATTERS FROM THE CHAIR**
11. **NEXT MEETING: Monday, June 20, 2022**
12. **ADJOURN**

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



MINUTES

REGULAR MEETING OF
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SPECIAL PROCEDURES FOR FINANCE COMMITTEE MEETING

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

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

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

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

1. CALL TO ORDER

Meeting started at 5:09 p.m.

2. ROLL CALL

Members Present:

Voting Member Renee Villarreal
Voting Member Carol Romero-Wirth
Voting Member Signe Lindell
Voting Member Jamie Cassutt
Voting Member Chris Rivera

Members Excused:

Voting Member PrimeGov Admin



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Others Attending:

Fran Dunaway, Attendee
Carolynn Roibal, Attendee

3. APPROVAL OF AGENDA

MOTION: Voting Member Rivera moved, seconded by Voting Member Cassutt, to approve the as presented.

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

For: Voting Member Villarreal, Voting Member Romero-Wirth, Voting Member Lindell, Voting Member Cassutt, Voting Member Rivera

Against: None

Abstain: None

4. APPROVAL OF CONSENT AGENDA

MOTION: Voting Member Rivera moved, seconded by Voting Member Cassutt, to approve the consent agenda as amended. Items a, d, g, h, i pulled for discussion.

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

For: Voting Member Villarreal, Voting Member Romero-Wirth, Voting Member Lindell, Voting Member Cassutt, Voting Member Rivera

Against: None

Abstain: None

5. APPROVAL OF MINUTES

a. Finance Committee – May 2, 2022

MOTION: Voting Member Cassutt moved, seconded by Voting Member Rivera, to approve the minutes as presented.



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

For: Voting Member Villarreal, Voting Member Romero-Wirth, Voting Member Lindell, Voting Member Cassutt, Voting Member Rivera

Against: None

Abstain: None

6. ACTION ITEMS: CONSENT

- a. CONSIDERATION OF BILL NO. 2022- _____. (Councilor Romero-Wirth, Councilor Cassutt, Councilor Chavez)
An Ordinance Relating to the City Of Santa Fe Uniform Traffic Ordinance (“UTO”); Creating a New Section 5 of Schedule B of the UTO to Create the Low-Income Financial Equity (“Life”) Parking Program. (Noel Correia, Parking Division Director: npcorreia@santafenm.gov, 505-955-6611)

Committee Review:

Introduced: 04/13/2022

Governing Body (Public Comment): 04/27/2022

Quality of Life: 05/04/2022

Public Works and Utilities: 05/09/2022

Finance: 05/16/2022

Governing Body (Public Hearing): 05/25/2022

MOTION: Voting Member Lindell moved, seconded by Voting Member Villarreal, to approve the bill as presented.

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

For: Voting Member Villarreal, Voting Member Romero-Wirth, Voting Member Lindell, Voting Member Cassutt, Voting Member Rivera

Against: None

Abstain: None



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MOTION: moved, seconded by , to postpone the bill until.

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

For: None

Against: None

Abstain: None

- b. CONSIDERATION OF RESOLUTION NO. 2022-___. (Councilor Rivera and Councilor L. Garcia)

A Resolution Requesting Approval of Amendment No. 1 to a Municipal Arterial Program Cooperative Grant From the New Mexico Department of Transportation, Identified as Control Number L500429, Granting a Time Extension for the Planning, Design, and Construction of Agua Fria Street and South Meadows Road Intersection Improvements. (Regina Wheeler, Public Works Director, rawheeler@santafenm.gov)

1. Request for Approval Of Amendment No. 1 To A Municipal Arterial Program Cooperative Agreement With The New Mexico Department Of Transportation For The Planning, Design, And Construction Of Cip 853c - Agua Fria And South Meadows Road Intersection Improvements Project. Amendment Is for Extension Of Agreement Term Only And No Additional Funding. (Regina Wheeler, Public Works Director, rawheeler@santafenm.gov). **Committee Review:**

Introduced: 04/27/22

Public Works and Utilities Committee: 05/09/22

Finance Committee: 05/16/22

Governing Body: 05/25/22

MOTION: Voting Member Rivera moved, seconded by Voting Member Cassutt, to approve the resolution as presented.

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

For: Voting Member Villarreal, Voting Member Romero-Wirth, Voting Member Lindell, Voting Member Cassutt, Voting Member Rivera

Against: None

Abstain: None

- c. CONSIDERATION OF RESOLUTION NO. 2022-___. (Councilor Rivera and Councilor L. Garcia)

A Resolution Approving Amendment No. 2 to a Municipal Arterial Program Cooperative Grant From the New Mexico Department of Transportation Identified as Control Number L500383 Granting a Time Extension for the Planning, Design, and Construction of Agua Fria Street and South Meadows Road Intersection Improvements. (Regina Wheeler, Public Works Director, rawheeler@santafenm.gov).

1. Request For Approval of Amendment No. 2 To A Municipal Arterial Program Cooperative Agreement with The New Mexico Department Of Transportation For The Planning, Design, And Construction Of Cip 853c - Agua Fria And South Meadows Road Intersection Improvements Project. Amendment Is for Extension Of Agreement Term Only And No Additional Funding. (Regina Wheeler, Public Works Director, rawheeler@santafenm.gov).

Committee Review:

Introduced: 04/27/22

Public Works and Utilities Committee: 05/09/22

Finance Committee: 05/16/22

Governing Body: 05/25/22

MOTION: Voting Member Rivera moved, seconded by Voting Member Cassutt, to approve the resolution as presented.

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

For: Voting Member Villarreal, Voting Member Romero-Wirth, Voting Member Lindell, Voting Member Cassutt, Voting Member Rivera

Against: None

Abstain: None



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- d. CONSIDERATION OF BILL NO. 2022-___. (Councilwoman Villarreal and Councilor Chris Rivera)
An Ordinance Amending Section 23-5.2 to Permit up to Ten (10) Small Commercial Events on the Plaza. (Melissa McDonald, Parks and Open Spaces Division Director, mamcdonald@santafenm.gov, 505-303-9502)

Committee Review:

Finance Committee (Introduced): 05/02/2022

Governing Body (Public Comment): 05/11/2022

Finance Committee: 05/16/2022

Economic Development Advisory Committee: 06/08/22

Public Works and Utilities Committee: 06/27/2022

Governing Body (Public Hearing): 07/13/22

MOTION: Voting Member Rivera moved, seconded by Voting Member Cassutt, to postpone the bill until 6/8 to go to EDAC and follow the flow of committees: Quality of Life, Public Works, Finance and Governing Body.

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

For: Voting Member Villarreal, Voting Member Romero-Wirth, Voting Member Lindell, Voting Member Cassutt, Voting Member Rivera

Against: None

Abstain: None

- e. CONSIDERATION OF RESOLUTION NO. 2022-___. (Councilor Rivera, Councilor Chavez, Councilor M. Garcia, Councilor Lindell, Councilor Cassutt, and Councilor Romero-Wirth)
A Resolution Allocating Three and a Quarter Acre Feet of Available Water From the City's Existing Water Supply to the Southside Teen Center. (Therese Martinez, Project Administrator: tmartinez@santafenm.gov, 955-5937; John Dillon, Project Administrator: jcdillon@santafenm.gov, 955-5936)

Committee Review:

Introduced: 04/27/22



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Public Works and Utilities Committee: 05/09/22
Finance Committee: 05/16/22
Quality of Life Committee: 05/18/22
Governing Body: 05/25/22

MOTION: Voting Member Rivera moved, seconded by Voting Member Cassutt, to approve the resolution as presented.

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

For: Voting Member Villarreal, Voting Member Romero-Wirth, Voting Member Lindell, Voting Member Cassutt, Voting Member Rivera

Against: None

Abstain: None

- f. Request for Approval of General Services Contract with Econolite Control Products in the Total Amount of \$499,699.80 excluding NMGRT to Furnish and Install New Traffic Signal Controllers using Funds Allocated by Governing Body on March 9, 2022. (Jose Lerma, Traffic Operations Manager, jnlerma@santafenm.gov, 505-955-2431)

Committee Review:

Finance Committee: 05/16/2022
Public Works & Utilities Committee: 05/23/2022
Governing Body: 05/25/2022

MOTION: Voting Member Rivera moved, seconded by Voting Member Cassutt, to approve the contract as presented.

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

For: Voting Member Villarreal, Voting Member Romero-Wirth, Voting Member Lindell, Voting Member Cassutt, Voting Member Rivera

Against: None

Abstain: None



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- g. Request for Approval of Five Year Agreement to Waive Fees between the City of Santa Fe and Bienvenidos (Noel Correia, Parking Division Director, npcorreia@santafenm.gov, 505-955-6611)

Committee Review:

Finance Committee: 05/16/2022

Public Works & Utilities Committee: 05/23/2022

Governing Body: 05/25/2022

MOTION: Voting Member Villarreal moved, seconded by Voting Member Cassutt, to approve the contract as presented.

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

For: Voting Member Villarreal, Voting Member Romero-Wirth, Voting Member Lindell, Voting Member Cassutt, Voting Member Rivera

Against: None

Abstain: None

- h. Request for Approval of a Budget Amendment Resolution (BAR) in the Amount of \$289,205 to Cover Lease Payments due for the LED Streetlights and Solarization Project (Brad Fluetsch, Planning & Investment Officer, bjfluetsch@santafenm.gov, (505) 955- 6885).

Committee Review:

Finance Committee: 5/16/22

Public Works and Utilities Committee: 5/23/22

Governing Body: 5/25/2022

MOTION: Voting Member Cassutt moved, seconded by Voting Member Lindell, to approve the budget adjustment resolution (BAR) as presented.

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



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For: Voting Member Villarreal, Voting Member Romero-Wirth, Voting Member Lindell, Voting Member Cassutt, Voting Member Rivera

Against: None

Abstain: None

- i. Request for Approval of an Agreement with the United States Department of Agriculture (USDA), Forest Service, Santa Fe National Forest (US Forest Service – USFS) with No Fiscal Impact; Increased Capacity of Services Provided to USFS for Forest Service Burns. (Nathan Miller, Wildland Superintendent: nfmiller@santafenm.gov; 505-955-3501)

Committee Review:

Finance Committee: 05/16/2022

Public Works Committee: 05/23/2022

Governing Body: 05/25/2022

MOTION: Voting Member Rivera moved, seconded by Voting Member Cassutt, to approve the memorandum of agreement (MOA) as presented.

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

For: Voting Member Villarreal, Voting Member Romero-Wirth, Voting Member Lindell, Voting Member Cassutt, Voting Member Rivera

Against: None

Abstain: None

- j. ITT Department Request for the Approval of contract in the Total Amount of \$358,111.80 for Three Year Term for Adobe Licensing via CDW-G;(Manuel Gonzales, ITT Director, mmgonzales@santafenm.gov, 505-955-5531)

Committee Review:

Finance Committee: 05/16/22

Public Works Committee: 05/23/22



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Governing Body: 05/25/22

MOTION: Voting Member Rivera moved, seconded by Voting Member Cassutt, to approve the contract as presented.

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

For: Voting Member Villarreal, Voting Member Romero-Wirth, Voting Member Lindell, Voting Member Cassutt, Voting Member Rivera

Against: None

Abstain: None

7. PRESENTATION

- a. Potential Benefits and Limitations of Establishing a Metropolitan Redevelopment Area at the Midtown Property (Erin K. McSherry, City Attorney, ekmcsberry@santafenm.gov, 505-955-6961; Marcos Martinez, Senior Assistant City Attorney, mdmartinez@santafenm.gov, 505-955-6502; and Andrea Salazar, Assistant City Attorney, asalazar@santafenm.gov, 505-995-6303)

Committee Schedule:

Economic Development Advisory Committee: 5/11/2022

Finance Committee: 5/16.2022

Community Development Commission: 5/18/2022

Governing Body: 5/25/2022

Marcos Martinez with the City Attorney's Office presented the Metropolitan Redevelopment Area at the Midtown Property.

Councilor Lindell request a copy of the presentation be emailed by City Attorney staff to all Committee members.

- b. FY21 Audit Status Update (Ricky Bejarano, Interim Assistant Finance Director)



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Ricky Bejarano, Interim Assistant Finance Director presented an update on the FY21 Audit Status and McHard Report improvement updates.

8. **MATTERS FROM STAFF**
9. **MATTERS FROM THE COMMITTEE**
10. **MATTERS FROM THE CHAIR**
11. **NEXT MEETING: May 31 2022**
12. **ADJOURN**

Meeting adjourned at 8:36 p.m.

Liaison

Chair

VOTE SUMMARY



Meeting Name - Public Works and Utilities Committee

Meeting Start Date - 05/23/2022

Meeting Committee - Public Works and Utilities Committee

Item Title - Request for the Approval of Amendment #4 to Service Contract 20-0027, extending the Term and increasing Compensation in the amount of \$500,000.00; for HVAC, Mechanical, Plumbing and Electrical

Services; B&D Industries, Inc; Josh Bohlman, Facilities Project Administrator, jbohlman@santafenm.gov, 505-690-9597

COMMITTEE REVIEW:

Public Works and Utilities Committee 5/23/2022

Finance Committee 5/31/2022

Governing Body 6/8/2022

Item Type - contract amendment

Item Owner - Sam Burnett

Item Sponsor -

Item Tracking Number - 22-14634

Motion Type - Approve

Motion Mover - Michael Garcia

Motion Seconder - Amanda Chavez

Motion Status - approved

Vote For Count - 4

Vote Against Count - 0

Vote Abstain Count - 0

Vote Absent Count - 1

Vote For Names - Michael Garcia, Carol Romero-Wirth, Lee Garcia, Amanda Chavez

Vote Against Names -

Vote Abstain Names -

VOTE SUMMARY



City of Santa Fe

Vote Absent Names - Chris Rivera

User Name - Jamie-Rae Diaz

User Email - jldiaz@santafenm.gov



City of Santa Fe, New Mexico

Memorandum



DATE: May 10, 2022

TO: Public Works & Utilities Committee, Finance Committee, Governing Body

VIA: Regina Wheeler, Public Works Department Director *Regina Wheeler*
Regina Wheeler (May 12, 2022 12:34 MDT)

Sam Burnett, Facilities Division Director *J Samuel Burnett*
J Samuel Burnett (May 10, 2022 16:53 MDT)

FROM: Josh Bohlman, Facilities Division Project Administrator JB

ITEM AND ACTION:

Request for the Approval of Amendment #4 to Service Contract 20-0027, extending the Term and increasing Compensation in the amount of \$500,000.00; for HVAC, Mechanical, Plumbing and Electrical Services; B&D Industries, Inc; Josh Bohlman, Facilities Project Administrator, jbohlman@santafenm.gov, 505-690-9597

BACKGROUND AND SUMMARY:

This On-Call Contract with B&D Industries provides HVAC, Mechanical, Plumbing and Electrical services. This contract is critical to the ability of the Facilities Division to respond quickly to prevent major damage throughout City facilities and to mitigate damage once it has occurred. These services will supplement the capacity and/or expertise of City staff as needed. Notice of the potential use of this contract has been provide to AFSCME.

Amendment #4 to On-Call Contract #20-0027 will increase compensation by \$500,000.00 from the existing \$2,250,000.00 to \$2,750,000.00 plus applicable NMGRT. This will allow for the continued maintenance and repairs at Midtown Santa Fe as well as throughout the other City Facilities serviced by the Public Works Facilities Division. Purchase requisitions requested via this on-call contract will be reviewed and authorized by the Facilities Division Director or the Property Maintenance Manager based upon need (see attached on call contract #20-0027 and previously approved amendments).

B&D Industries has been chosen from the State Price Agreement to provide this service for a number of important reasons. B&D has been assisting the Facilities Division Maintenance Section with work throughout many of the City's facilities and has extensive knowledge of the City's equipment as well as considerable experience working at Midtown. B&D's experience modifier is 0.77, which demonstrates the high quality and safety of their operations.

PROCUREMENT METHOD:

The procurement method is via State Price Agreement #90-000-18-00073 which expires on June 30, 2023.

CONTRACT NUMBER:

The FY22 Munis contract number is 3201686

FUNDING SOURCE:

Fund Name/Number: Various

Munis Org Name/Number: Various

Munis Object Name/Number: Various

**CITY OF SANTA FE
AMENDMENT No. 4 TO
THE CONTRACT
ITEM# #21-0027**

This AMENDMENT No. 4 (the "Amendment") amends the CITY OF SANTA FE CONTRACT, dated December 11, 2019 (the "Agreement"), between the City of Santa Fe (the "City") and B&D Industries, Inc., (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, Contractor has agreed to provide professional HVAC, plumbing and electrical 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 five hundred thousand dollars (\$500,000.00), plus applicable gross receipts taxes and described in Exhibit "A" attached hereto 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 \$2,750,000.00 plus applicable New Mexico Gross Receipts Tax.

Deliverable item:	U/I (unit of issue)	Price
01 On-Call HVAC, Mechanical, Plumbing & Electrical Services		2,750,000.00

The total compensation under this Agreement shall not exceed \$2,750,000.00 plus applicable NMGRT (8.4375%)

2. TERM:

Article 5 of the Agreement is hereby deleted in its entirety and substitute the following Article 5 in its place: THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and shall terminate on June 30, 2023. This City reserves the right to renew the contract on an annual basis by mutual Agreement not to exceed a total of four years in accordance with NMSA 1978 §§ 13-1-150 through 152.

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. 4 to the City of Santa Fe Contract as of the dates set forth below.

CITY OF SANTA FE:

ALAN WEBBER
MAYOR

DATE: _____

CONTRACTOR:



clinton r beall (May 9, 2022 14:30 MDT)
CLINTON BEALL
PRESIDENT, B&D
INDUSTRIES

DATE: _____
CRS #01-716872-004
Registration #224955

ATTEST:

KRISTINE BUSTOS MIHELICIC
CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (May 2, 2022 07:59 MDT) May 2, 2022
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

ALEXIS LOTERO
ACTING FINANCE DIRECTOR

Org/object: VARIOUS











Amendment #4 BD City-Wide On-Call_5 4 2022 Partially Signed

Final Audit Report


2022-05-09

Created:	2022-05-04
By:	DeAlva Calabaza (dxcalabaza@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAA-ZBSR9sPJCIZkSDkN--kloT4YDw0ysn1


"Amendment #4 BD City-Wide On-Call_5 4 2022 Partially Signed" History

-  Document created by DeAlva Calabaza (dxcalabaza@ci.santa-fe.nm.us)
2022-05-04 - 9:38:59 PM GMT- IP address: 63.232.20.2
-  Document emailed to cgiovenco@banddindustries.com for signature
2022-05-04 - 9:39:16 PM GMT
-  Email viewed by cgiovenco@banddindustries.com
2022-05-05 - 1:18:17 PM GMT- IP address: 50.230.108.154
-  Document signing delegated to Don Trujillo (dft@banddindustries.com) by cgiovenco@banddindustries.com
2022-05-05 - 1:18:53 PM GMT- IP address: 50.230.108.154
-  Document emailed to Don Trujillo (dft@banddindustries.com) for signature
2022-05-05 - 1:18:53 PM GMT
-  Email viewed by Don Trujillo (dft@banddindustries.com)
2022-05-05 - 1:59:19 PM GMT- IP address: 174.205.224.230
-  Email viewed by Don Trujillo (dft@banddindustries.com)
2022-05-06 - 9:50:30 PM GMT- IP address: 174.205.161.149
-  Email viewed by Don Trujillo (dft@banddindustries.com)
2022-05-09 - 0:25:36 AM GMT- IP address: 69.254.132.202
-  Document signing delegated to clinton r beall (clinton@banddindustries.com) by cgiovenco@banddindustries.com
2022-05-09 - 8:27:20 PM GMT- IP address: 50.230.108.154
-  Document emailed to clinton r beall (clinton@banddindustries.com) for signature
2022-05-09 - 8:27:21 PM GMT



 Email viewed by clinton r beall (clinton@banddindustries.com)

2022-05-09 - 8:28:13 PM GMT- IP address: 50.230.108.154

 Document e-signed by clinton r beall (clinton@banddindustries.com)

Signature Date: 2022-05-09 - 8:30:20 PM GMT - Time Source: server- IP address: 50.230.108.154

 Agreement completed.

2022-05-09 - 8:30:20 PM GMT

**CITY OF SANTA FE
AMENDMENT No. 3 TO
THE CONTRACT
ITEM# 20-0027**

AMENDMENT No. 3 (the "Amendment") to the CITY OF SANTA FE CONTRACT, dated December 11, 2019, the "Agreement"), between the City of Santa Fe (the "City") and B&D Industries, Inc (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, Contractor has agreed to provide professional HVAC, plumbing and electrical 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 and as described in Exhibit "A" attached hereto 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 \$2,250,000.00 plus applicable New Mexico Gross Receipts Tax.

Deliverable item:	U/I (unit of issue)	Price
01 On-Call HVAC, Mechanical, Plumbing & Electrical Services		\$2,250,000.00

The total compensation under this Agreement shall not exceed \$2,250,000.00 plus applicable NMGRT (8.4375%).

2. TERM:

Article 5 of the Agreement is hereby deleted in its entirety and substitute the following Article 5 in its place:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and shall terminate on June 19, 2022. This 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.

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. 3 to the City of Santa Fe Contract as of the dates set forth below.

CITY OF SANTA FE:



ALAN WEBBER,
MAYOR

DATE: Oct 14, 2021

CONTRACTOR:



CLINTON BEALL
PRESIDENT B&D
INDUSTRIES

DATE: 09.20.2021

CRS#01-716872-004
Registration #224955

ATTEST:



KRISTINE BUSTOS MIHELICIC 
CITY CLERK
GB MTG 10/13/2021

CITY ATTORNEY'S OFFICE:



Marcos Martinez (Aug 23, 2021 10:31 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:



MARY MCCOY
FINANCE DIRECTOR

Business Unit Line Item: VARIOUS

**CITY OF SANTA FE
AMENDMENT No. 2 TO
SERVICE AGREEMENT
ITEM# 20-0027**

AMENDMENT No. 2 (the "Amendment") to the CITY OF SANTA FE SERVICE AGREEMENT, dated January 28, 2020 the "Agreement"), between the City of Santa Fe (the "City") and B&D Industries, Inc (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, Contractor has agreed to provide professional HVAC, plumbing and electrical 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 five hundred thousand dollars (\$500,000.00), plus applicable gross receipts taxes and as described in Exhibit "A" attached hereto 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 \$750,000.00 plus applicable New Mexico Gross Receipts Tax.

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
01 On-Call HVAC, Mechanical, Plumbing & Electrical Services		\$1,250,000.00

The total compensation under this Agreement shall not exceed \$1,250,000.00 plus applicable NMGRT (8.4375%).

2. TERM:

Article 5 of the Agreement is hereby deleted in its entirety and substitute the following Article 5 in its place:

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and shall terminate on June 30, 2022 unless sooner pursuant to Article 7 below.

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 Services Agreement as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:



ALAN WEBBER,
MAYOR

CLINTON BEALL
~~SENIOR VICE~~ PRESIDENT B&D
INDUSTRIES

DATE: May 28, 2021

DATE: 04.20.2021

ATTEST:



Kristine Mihelcic (May 28, 2021 15:36 MDT)

KRISTINE BUSTOS MIHELICIC
CITY CLERK



GB MTG 05/26/2021

CRS#01-716872-004
Registration #20-00110523

CITY ATTORNEY'S OFFICE:

Marcos Martinez

Marcos Martinez (Apr 14, 2021 10:52 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Alexis Lotero, Assistant Finance Director

Alexis Lotero, Assistant Finance Director (May 28, 2021 15:08 MDT)

MARY MCCOY

FINANCE DIRECTOR

Business Unit Line Item: VARIOUS

Item #20-0370

**CITY OF SANTA FE
AMENDMENT No. 1 TO
SERVICE AGREEMENT
ITEM# 20-0027**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE SERVICE AGREEMENT, dated January 28, 2020 the "Agreement"), between the City of Santa Fe (the "City") and B&D Industries, Inc (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, Contractor has agreed to provide professional HVAC, mechanical plumbing and electrical 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 five hundred thousand dollars (\$500,000.00), plus applicable gross receipts taxes and as described in Exhibit "A" attached hereto 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 \$750,000.00 plus applicable New Mexico Gross Receipts Tax.

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
01 On-Call HVAC, Mechanical, Plumbing & Electrical Services		\$750,000.00

The total compensation under this Agreement shall not exceed \$750,000.00 plus applicable NMGRT (8.4375%).

2. TERM:

Article 5 of the Agreement is hereby deleted in its entirety and substitute the following Article 5 in its place:

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and shall terminate on June 30, 2021 unless sooner pursuant to Article 6 below.

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 dates set forth below.

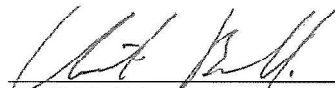
CITY OF SANTA FE:



ALAN WEBBER,
MAYOR

DATE: 8/17/2020

CONTRACTOR:



CLINTON BEALL
SENIOR VICE PRESIDENT B&D
INDUSTRIES

DATE: 7/28/2020

CRS#01-716872-004
Registration #20-00110523

ATTEST:

Yolanda Y. Vigil

YOLANDA Y. VIGIL
CITY CLERK

GC
GC

CC Mtg 07/29/2020

CITY ATTORNEY'S OFFICE:

Marcos Martinez

Marcos Martinez (7/29/2020)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Mary McCoy

MARY MCCOY
FINANCE DIRECTOR

Business Unit Line Item: VARIOUS

AL
AL

City of Santa Fe Contract
HVAC, Mechanical, Plumbing and Electrical On-Call 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 **B&D Industries, 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. "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 **B&D Industries, 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: miscellaneous HVAC, mechanical, plumbing and electrical services for City Facilities via State Price Agreement #90-000-18-00073. See the attached proposal marked "Exhibit A" attached hereto and made a part thereof from **B&D Industries, Inc** 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 on a time and materials basis for work pre-approved by an authorized City of Santa Fe Facilities Division representative in an amount that shall not exceed \$250,000.00 plus applicable New Mexico Gross Receipts Tax.

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
01 On-Call HVAC, Mechanical, Plumbing & Electrical Services		\$250,000.00

The total compensation under this Agreement shall not exceed \$271,093.75 including applicable NMGR (8.4375%).

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 6/30/2021. 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 or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

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

- i. provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or,
- iii. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

38. **Survival**

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

39. Disclosure Regarding Responsibility

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

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

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

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

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

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

40. Suspension, Delay or Interruption of Work

The City may, without cause, order the Contractor, in writing, to suspend, delay or Interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the

jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

41. **Notification**

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

J. Sam Burnett, Property Maintenance Manager
City of Santa Fe Public Works Dept.
2651 Siringo Road, Building E
Santa Fe, New Mexico 87504
jsburnett@santafenm.gov
505-955-5933

To Contractor:
B&D Industries, Inc
9720 Bell Ave SE
Albuquerque, New Mexico 87123
505-299-4464 – Office

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:
B&D Industries, Inc
9720 Bell Ave SE
Albuquerque, New Mexico 87123
505-299-4464 – Office

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 to the City of Santa Fe Professional Services Agreement as of the date set forth below.

CITY OF SANTA FE:

CONTRACTOR:


ALAN WEBBER,
MAYOR

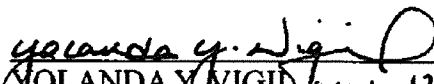
See Attached
CLINTON BEALL
SENIOR VICE PRESIDENT B&D
INDUSTRIES

DATE: 1/28/2020


DATE: _____

CRS#01-716872-004
Registration #19-00110523


ATTEST:


YOLANDA Y. VIGIL *Comtg 12/11/19*
CITY CLERK

APPROVED AS TO FORM:

 *11/4/19*
ERIN K. MCSHERRY
CITY ATTORNEY

APPROVED:

 *mc*
MARY MCCOY
FINANCE DIRECTOR

Business Unit Line Item: VARIOUS

*on-call / citywide
see attached email*

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

CITY OF SANTA FE:

CONTRACTOR:

ALAN WEBBER
MAYOR



JACKSON JOHNS
PRESIDENT NATIONAL ROOFING

DATE: _____

DATE: 12-19-19

CRS#01-851145-007
Registration #19-00123596

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

ERIN K. MCSHERRY
CITY ATTORNEY

APPROVED:

MARY MCCOY
FINANCE DIRECTOR

Business Unit Line Item: MISC



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

BUSINESS REGISTRATION

Business Name: B & D INDUSTRIES, INC.
DBA: B & D INDUSTRIES, INC.

Business Location: 9720 BELL SE
ALBUQUERQUE, NM 87123

Owner: B & D INDUSTRIES INC

License Number: 224955

Issued Date: December 07, 2021

Expiration Date: December 07, 2022

CRS Number: 01-716872-004

License Type: Business License - Renewable

Classification: Out of Jurisdiction Contractor -
General

Fees Paid: \$10.00

B & D INDUSTRIES, INC.
9720 BELL SE
ALBUQUERQUE , NM 87123

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)

11/8/2021

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).

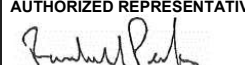
PRODUCER License # 0757776 HUB International Insurance Services (SOW) 6565 Americas Parkway Suite 720 Albuquerque, NM 87110	CONTACT NAME: Carrie Butler PHONE (A/C, No, Ext): (505) 262-9412 9412 E-MAIL ADDRESS: Carrie.Butler@hubinternational.com	FAX (A/C, No): (866) 487-3972	
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED B & D Industries, Inc. 9720 Bell Ave SE Albuquerque, NM 87123	INSURER A : Valley Forge Insurance Company		20508
	INSURER B : National Fire Insurance Company of Hartford		20478
	INSURER C : The Continental Insurance Company		35289
	INSURER D : Builders Trust of New Mexico		
	INSURER E :		
INSURER F :			

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	X	6016149399	11/11/2021	11/11/2022	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ 15,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	6016149371	11/11/2021	11/11/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	X	X	6016149404	11/11/2021	11/11/2022	EACH OCCURRENCE	\$ 5,000,000
							AGGREGATE	\$ 5,000,000
								\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	6 16149385	11/11/2021	11/11/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$ 500,000
							E.L. DISEASE - EA EMPLOYEE	\$ 500,000
							E.L. DISEASE - POLICY LIMIT	\$ 500,000
D	Worker's Comp - NM		X	5672	1/1/2021	1/1/2022	Accid/Empl/Pol Limit	2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Umbrella is Form Following over General Liability, Auto Liability and Employers Liability. Additional Insured, Waiver of Subrogation and Primary Non-Contributory apply per attached policy forms.

CERTIFICATE HOLDER City of Santa Fe 200 Lincoln Ave Santa Fe, NM 87501	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
(AX) 0000046206
Yearout Mechanical LLC
dba Welch's Boiler Service
6060 Isleta Blvd. SW
Albuquerque, NM 87105

Email: welchsboiler@comcast.net
Telephone No. (505) 877-0356

Number: 90-00000-18-00073

Amendment No.: Six

Term: June 20, 2019 – June 19, 2023

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

Procurement Specialist: Mark Lujan

Telephone No.: 505-795-2516

Email: Mark.Lujan@state.nm.us

Invoice:
As Requested

Title: HVAC & Plumbing Services - Statewide

This 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: Vendors (AI) 0000045905 Welch's Boiler Service, Inc. and (AK) 00086970 Yearout Service, LLC are now (AX) 0000046206 Yearout Mechanical LLC dba Welch's Boiler Service.

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
Mark Hayden, New Mexico State Purchasing Agent

Date: *4/21/2022*

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

Certificate Of Completion

Envelope Id: B67F8991C3534F4CB89C79BC70C89CB3	Status: Completed
Subject: Please DocuSign: SPD SPA 90-000-18-00073 A006	
Source Envelope:	
Document Pages: 1	Signatures: 1
Certificate Pages: 5	Initials: 2
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Clarke Fountain
Time Zone: (UTC-07:00) Mountain Time (US & Canada)	13 Bataan Blvd
	Santa Fe, NM 87508
	ClarkeJ.Fountain@state.nm.us
	IP Address: 67.0.205.135

Record Tracking

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4/21/2022 12:07:28 PM	ClarkeJ.Fountain@state.nm.us	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: GSD	Location: DocuSign

Signer Events

Signer Events	Signature	Timestamp
Michael Saavedra michael.saavedra@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None)	<i>MS</i> Signature Adoption: Pre-selected Style Signed by link sent to michael.saavedra@state.nm.us Using IP Address: 67.131.78.31	Sent: 4/21/2022 12:09:56 PM Viewed: 4/21/2022 12:12:22 PM Signed: 4/21/2022 12:12:47 PM

Electronic Record and Signature Disclosure:

Accepted: 6/4/2020 11:04:51 AM
ID: 9cac1b3e-4279-4c8f-b2b4-c607ea9821d8

Clarke Fountain clarkej.fountain@state.nm.us Procurement Specialist New Mexico General Services Security Level: Email, Account Authentication (None)	<i>CF</i> Signature Adoption: Pre-selected Style Signed by link sent to clarkej.fountain@state.nm.us Using IP Address: 67.0.205.135	Sent: 4/21/2022 12:12:48 PM Viewed: 4/21/2022 12:23:42 PM Signed: 4/21/2022 12:23:54 PM
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Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Valerie Paulk Valerie.Paulk@state.nm.us Signed of Behalf of State Purchasing Agent New Mexico General Services Security Level: Email, Account Authentication (None)	<i>Valerie Paulk</i> Signature Adoption: Pre-selected Style Signed by link sent to Valerie.Paulk@state.nm.us Using IP Address: 174.205.160.9 Signed using mobile	Sent: 4/21/2022 12:23:55 PM Viewed: 4/21/2022 12:26:49 PM Signed: 4/21/2022 12:27:36 PM
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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	4/21/2022 12:09:56 PM
Certified Delivered	Security Checked	4/21/2022 12:26:49 PM
Signing Complete	Security Checked	4/21/2022 12:27:36 PM
Completed	Security Checked	4/21/2022 12:27:36 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		



**State of New Mexico
General Services Department
Purchasing Division**

Statewide Price Agreement Amendment

Awarded Vendor:
18 Vendors

Number: **90-00000-18-00073**

Amendment No.: **Five**

Term: **June 20, 2019 – June 19, 2023**

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

Procurement Specialist: **Mark Lujan**

Telephone No.: **505-795-2516**

Email: **Mark.Lujan@state.nm.us**

Invoice:
As Requested

Title: HVAC & Plumbing 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 except (AG) Installation Service & Heating, Inc., (AH) La Mesilla Construction LLC, (AM) Chardans Mechanical, Inc., (AP) G E W Mechanical, Inc., (AT) Johnson Controls Inc., this Price Agreement is extended from June 20, 2022 to June 19, 2023 at the same price, terms and conditions.**
- Remove the following language and requirements of the Price Agreement:**

Compensation Caps:

The total cost of **each project**, including applicable gross receipts tax, shall not exceed One Million Dollars (**\$1,000,000.00**). This cap includes all change orders associated with the project.

The total cap for **this Statewide Price Agreement** is **Ten Million (\$10,000,000) per awarded Contractor** for the whole term of the Statewide Price Agreement.

The Contractor **MUST** to report all work issued under this Price Agreement to State Purchasing Division every quarter so that the cap thresholds can be monitored. A copy of approved POs must be sent as well as a summary spreadsheet for the quarter. The spreadsheet shall contain the following columns:

- Name of entity issuing the PO
- Date of the PO
- PO number
- project name
- dollar amount of the PO

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
Mark Hayden, New Mexico State Purchasing Agent

Date: 3/9/2022

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


Certificate Of Completion

Envelope Id: F7486AE06DD142FF9AF7AECFC2F5C55A	Status: Completed
Subject: Please DocuSign: SPD SPA 90-000-18-00073 A005	
Source Envelope:	
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Certificate Pages: 5	Initials: 2
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Envelope Stamping: Enabled	Clarke Fountain
Time Zone: (UTC-07:00) Mountain Time (US & Canada)	13 Bataan Blvd
	Santa Fe, NM 87508
	ClarkeJ.Fountain@state.nm.us
	IP Address: 75.161.200.67


Record Tracking

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Storage Appliance Status: Connected	Pool: GSD	Location: DocuSign

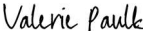
Signer Events

Signer Events	Signature	Timestamp
Michael Saavedra michael.saavedra@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 67.131.78.31	Sent: 3/9/2022 2:57:51 PM Viewed: 3/9/2022 2:58:24 PM Signed: 3/9/2022 2:58:45 PM

Electronic Record and Signature Disclosure:
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ID: 9cac1b3e-4279-4c8f-b2b4-c607ea9821d8

Clarke Fountain clarkej.fountain@state.nm.us Procurement Specialist New Mexico General Services Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 75.161.200.67	Sent: 3/9/2022 2:58:46 PM Viewed: 3/9/2022 3:14:50 PM Signed: 3/9/2022 3:14:59 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Valerie Paulk Valerie.Paulk@state.nm.us Signed of Behalf of State Purchasing Agent New Mexico General Services Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 67.0.251.156 Signed using mobile	Sent: 3/9/2022 3:15:00 PM Viewed: 3/9/2022 3:15:37 PM Signed: 3/9/2022 3:15:56 PM
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Electronic Record and Signature Disclosure:
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ID: f12ca6d0-7cba-4de4-b58f-8180244887ff

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	3/9/2022 3:15:37 PM
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Completed	Security Checked	3/9/2022 3:15:56 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure



State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

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

Number: 90-00000-18-00073
Amendment No.: Four
Term: June 20, 2019 – June 19, 2022

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

Procurement Specialist: Mark Lujan
Telephone No.: 505-469-1610
Email: Mark.Lujan@state.nm.us

Invoice:
As Requested

Title: HVAC & Plumbing 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 June 20, 2021 to June 19, 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 Paulk
MARK LUJAN, New Mexico State Purchasing Agent

Date: 5/17/2021

X This Agreement was signed on behalf of the State Purchasing Agent

Purchasing Division: 1100 St. Francis Drive, Room 2016, Santa Fe, 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472

MS CF

Certificate Of Completion

Envelope Id: 41A0AFFBC19E48A0BBB446AFCD91C155	Status: Completed
Subject: Please DocuSign: SPD SPA	
Source Envelope:	
Document Pages: 1	Signatures: 1
Certificate Pages: 5	Initials: 2
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Clarke Fountain
Time Zone: (UTC-07:00) Mountain Time (US & Canada)	13 Bataan Blvd
	Santa Fe, NM 87508
	ClarkeJ.Fountain@state.nm.us
	IP Address: 174.237.6.163

Record Tracking

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Storage Appliance Status: Connected	Pool: GSD	Location: DocuSign

Signer Events

Signature	Timestamp
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darkej.fountain@state.nm.us	Viewed: 5/17/2021 11:15:29 AM
Procurement Specialist	Signed: 5/17/2021 11:15:37 AM
New Mexico General Services	
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	Using IP Address: 174.237.6.163

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Michael Saavedra		Sent: 5/17/2021 11:15:38 AM
michael.saavedra@state.nm.us	<i>MS</i>	Viewed: 5/17/2021 1:18:39 PM
New Mexico General Services		Signed: 5/17/2021 1:18:53 PM
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Valerie Paulk		Sent: 5/17/2021 1:18:55 PM
valerie.paulk@state.nm.us	<i>Valerie Paulk</i>	Viewed: 5/17/2021 1:21:07 PM
State Purchasing Agent		Signed: 5/17/2021 1:21:32 PM
New Mexico General Services	Signature Adoption: Pre-selected Style	
Security Level: Email, Account Authentication (None)	Using IP Address: 97.123.108.103	
	Signed using mobile	

Electronic Record and Signature Disclosure:
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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
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Carbon Copy Events	Status	Timestamp
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	5/17/2021 1:21:07 PM
Signing Complete	Security Checked	5/17/2021 1:21:32 PM
Completed	Security Checked	5/17/2021 1:21:32 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure



State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
20 Vendors

Number: 90-00000-18-00073

Amendment No.: Three

Term: June 20, 2019 – June 19, 2022

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

Procurement Specialist: Mark Lujan

Telephone No.: 505-469-1610

Email: Mark.Lujan@state.nm.us

Invoice:
As Requested

Title: **HVAC & Plumbing 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 except (AG) Installation Service & Heating, Inc., (AM) Chardans Mechanical, Inc. and (AR) Jack B. Henderson Construction Co., Inc., this Price Agreement is extended from June 20, 2021 to June 19, 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 Paulk

Date: 5/11/2021

MARK LUJAN, New Mexico State Purchasing Agent

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

Purchasing Division: 1100 St. Francis Drive, Room 2016, Santa Fe, 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472

MS CF

Certificate Of Completion

Envelope Id: 5AA6653C675B4A2FBAF15B50824C3C7E	Status: Completed
Subject: Please DocuSign: SPD SPA	
Source Envelope:	
Document Pages: 1	Signatures: 1
Certificate Pages: 5	Initials: 2
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Clarke Fountain
Time Zone: (UTC-07:00) Mountain Time (US & Canada)	13 Bataan Blvd
	Santa Fe, NM 87508
	ClarkeJ.Fountain@state.nm.us
	IP Address: 174.237.6.163

Record Tracking

Status: Original	Holder: Clarke Fountain	Location: DocuSign
5/11/2021 9:34:29 AM	ClarkeJ.Fountain@state.nm.us	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: GSD	Location: DocuSign

Signer Events

Signature	Timestamp
Clarke Fountain	Sent: 5/11/2021 9:35:57 AM
darkej.fountain@state.nm.us	Viewed: 5/11/2021 9:36:14 AM
Procurement Specialist	Signed: 5/11/2021 9:36:22 AM
New Mexico General Services	
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style
	Using IP Address: 174.237.6.163

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Michael Saavedra		Sent: 5/11/2021 9:36:24 AM
michael.saavedra@state.nm.us	<i>MS</i>	Viewed: 5/11/2021 9:51:29 AM
New Mexico General Services		Signed: 5/11/2021 9:51:42 AM
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style	
	Using IP Address: 174.237.136.206	

Electronic Record and Signature Disclosure:
Accepted: 6/4/2020 11:04:51 AM
ID: 9cac1b3e-4279-4c8f-b2b4-c607ea9821d8

Valerie Paulk		Sent: 5/11/2021 9:51:43 AM
valerie.paulk@state.nm.us	<i>Valerie Paulk</i>	Viewed: 5/11/2021 10:14:49 AM
State Purchasing Agent		Signed: 5/11/2021 10:15:09 AM
New Mexico General Services	Signature Adoption: Pre-selected Style	
Security Level: Email, Account Authentication (None)	Using IP Address: 164.64.62.10	

Electronic Record and Signature Disclosure:
Accepted: 5/29/2020 9:40:59 AM
ID: f12ca6d0-7cba-4de4-b58f-8180244887ff**In Person Signer Events****Editor Delivery Events****Agent Delivery Events****Intermediary Delivery Events**

Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	5/11/2021 9:35:57 AM
Certified Delivered	Security Checked	5/11/2021 10:14:49 AM
Signing Complete	Security Checked	5/11/2021 10:15:09 AM
Completed	Security Checked	5/11/2021 10:15:09 AM

Payment Events	Status	Timestamps
-----------------------	---------------	-------------------

Electronic Record and Signature Disclosure



State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
23 Vendors

Email:
Telephone No.: _____

Price Agreement Number: **90-000-18-00073**

Price Agreement Amendment No.: **Two**

Term: **June 20, 2019 to June 19, 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: **Mark Lujan**

Telephone No.: **(505) 827- 0564**

Email: **Mark.Lujan@state.nm.us**

Title: HVAC and Plumbing Services - Statewide

This Price Agreement 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 June 20, 2020 to June 19, 2021 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

Mark Hayden, New Mexico State Purchasing Agent

Date: 06/17/2020



State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
(AV) 0000050920
TLC Company, Inc.
DBA: TLC Plumbing & Utility
5000 Edith Blvd. NE
Albuquerque, NM 87107

Email: jpboyd@tleplumbing.com
Telephone No. 505-761-9696

Price Agreement Number: 90-000-18-00073
Price Agreement Amendment No.: One
Term: June 20, 2019 – June 19, 2020

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

Procurement Specialist: Mark Lujan
Telephone No.: (505) 827- 0564
Email: Mark.Lujan@state.nm.us

Invoice:
As Requested at time of order

Title: HVAC and Plumbing 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:

Item Price correction for Vendor (AV) TLC Company, Inc. DBA: TLC Plumbing & Utility on Pg. 26 of SWPA

- Item 4, Zone 3 corrected from \$87,075.00 to \$87.75

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

[Handwritten signature]

New Mexico State Purchasing Agent

Date: 09/12/2019

CMA



State of New Mexico
General Services Department

REVISED Statewide Price Agreement

Awarded Vendor
23 Vendors (See Pages 6 through 9)

Telephone No. _____

Price Agreement Number: 90-000-18-00073

Payment Terms: Net 30

F.O.B.: Destination

Delivery: As Requested

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

Procurement Specialist: Mark Lujan

Telephone No.: (505) 827- 0564

Email: Mark.Lujan@state.nm.us

Invoice:
As Requested

Title: **HVAC and Plumbing Services - Statewide**

Term: **June 20, 2019 to June 19, 2020**

This Statewide Price Agreement is made subject to the "terms and conditions" as indicated on subsequent pages.

Accepted for the State of New Mexico

Mark Hayden, New Mexico State Purchasing Agent

Date: 08/20/2019

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 90-000-18-00073

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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 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,

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 90-000-18-00073

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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.

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: <http://www.insurenwnewmexico.state.nm.us/>.

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 page 1. If vendor is unable to meet stated delivery the State Purchasing Agent or his/her designee must be notified.

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 90-000-18-00073

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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 of 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.

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 90-000-18-00073

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Awarded Vendors:

(AA) 0000054601
AnchorBuilt, Inc.
P.O. Box 27688
Albuquerque, NM 87125
505-342-2452
ray.zamora@anchorbuilt.com

**Delivery: 104 Sin Nombre Court NE, Albuquerque NM
87113**

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

Delivery: F.O.B. Destination

(AC) 0000049957
CAC, Inc.
610 Industrial Ave NE
Albuquerque, NM 87107
505-343-6100
trevorb@cacinc.net

Delivery: F.O.B. Destination

(AD) 0000141802
Caliber Construction Services
2700 Vista Grande Dr. NW #59
Albuquerque, NM 87120
850-218-7546
dmwarren@calibernm.com

Delivery: Included in Bid Costs

(AE) 0000108425
Comfort Systems USA SW
8920 Adams St. NE Ste. A
Albuquerque, NM 87113
505-856-9250
brian.ruffner@comfortsystemsusa.com

Delivery: F.O.B Destination

(AF) 0000086357
Four Winds Mechanical HTC/AC
8915 Adams St. NE Ste. B
Albuquerque, NM 87113
505-899-2939
Lynn@4windsmechanical.com

Delivery: To Be Determined

State of New Mexico
General Services Department
Purchasing Division
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(AG) 0000141856
Installation & Service Heating, Inc.
7500 2nd St. NW
Albuquerque, NM 87107
505-792-5103
serviceishc@ishcnm.com

Delivery: As Requested

(AH) 0000087051
La Mesilla Construction, LLC
98 CR 119
Española, NM 87532
505-927-6513
lamesillaconstruction@gmail.com

Delivery: Per "owners" request

(AI) 0000048657
Welch's Boiler Service, Inc.
6060 Isleta Blvd. SW
Albuquerque, NM 87105
505-877-0356
welchsboiler@comcast.net

Delivery: T.B.D Visually, Immediately

(AJ) 0000052947
Western Mechanical Co.
DBA: Western Mechanical HVAC &
Plumbing
3301 Girard Blvd NE
Albuquerque, NM 87107
505-341-4458
mike.westernmechanical@gmail.com

Delivery: Hand Delivery

(AK) 0000086970
Yearout Service, LLC.
8501 Washington St. NE
Albuquerque, NM 87113
505-314-8226
Dispatch@yearout.com

Delivery: As Requested - With Emergency On-Call

(AL) 0000051142
A-Plus Plumbing & Heating, Inc.
P.O. Box 9719
Santa Fe, NM 87504
505-470-6162
aplusespanola@yahoo.com

Delivery: 502 Calle Ben Vigil, Espanola NM 87532

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 90-000-18-00073

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(AM) 0000046760
Chardans Mechanical, Inc.
4320 Ellison St. NE
Albuquerque, NM 87109
505-345-2581
Chardans@hotmail.com

Delivery: N/A

(AN) 0000046669
Donner Plumbing & Heating
107 Candelaria Rd. NW
Albuquerque, NM 87107
505-884-1017
jgarner@donnerplumbing.com

Delivery: As Requested

(AO) 0000135004
ENGIE Services US
2600 American Rd. SE Ste. 360
Rio Rancho, NM 87124
505-890-2888
david.frederick@engie.com

Delivery: 6-72 Hours

(AP) 0000047364
GEW Mechanical, Inc.
PO Box 10293
Albuquerque, NM 87184-0293
505-345-3033
patrick@gewmechanical.com

Delivery: Net 30

(AQ) 0000051254
J.D. Zentz, Inc.
2006 Southern Blvd. SE Ste. 106
Rio Rancho, NM 87124
505-891-0551
jdzentz@aol.com

Delivery: Upon Award

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

Delivery: 501 Eubank Blvd. SE Albuquerque, NM 87123

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 90-000-18-00073

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(AS) 0000134853
JLC Professional Plumbing &
Heating
1404 Sigma Chi Rd. NE
Albuquerque, NM 87106
505-206-9067
jlc_plumbing@icloud.com

Delivery: As Requested

(AT) 0000014482
Johnson Controls, Inc.
5500 Midway Park Place NE
Albuquerque, NM 87109
505-379-2856
joseph.c.perea@jci.com

Delivery: As Needed

(AU) 0000043952
PC Automated Controls, Inc.
10279 Dyer St
El Paso, TX 79924
6565 Americas Parkway NE
Albuquerque, NM 87110
915-751-0313 505-918-0169
blinzey@pcautomatedcontrols.com

Delivery: 2 Days

(AV) 0000050920
TLC Company, Inc.
DBA: TLC Plumbing & Utility
5000 Edith Blvd. NE
Albuquerque, NM 87107
505-761-9696
jpboyd@tlcplumbing.com

Delivery: Destination

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

Delivery: As Requested



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3201686

Contractor: B&D INDUSTRIES

Description: **Amendment #4 Extending the Term of the Agreement, and Increasing Compensation in the Amount of \$500,000.00 to a Total Amount of \$2,750,000.00 Plus NMGR for HVAC, Mechanical and Plumbing On-Call Services**

Contract Agreement Lease / Rent Amendment

Term Start Date: upon approval Term End Date: June 30, 2023

Approved by Council Date: _____

Contract / Lease: Contract Amendment

Amendment # 4 to the Original Contract / Lease # 20-0027

Increase/(Decrease) Amount \$ 500,000.00

Extend Termination Date to: June 30, 2023

Approved by Council Date: _____

Amendment is for: Increase compensation and extend term

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments) **Original Contract (#20-0027) \$250,000.00, Term Date: 6/30/2021**
Amendment #1 (# 20-0370) increase compensation by \$500,000 extend term to 6/30/2022
Amendment #2 (#21-0246) increase compensation by \$500,000 term 6/30/2022
Amendment #3 (#21-0555) increase compensation by \$1,000,000 term 6/19/2022
Amendment #4 Increase compensation by \$500,000 extend term to 6/30/2023

3. Procurement History: Statewide Price Agreement 90-000-18-00073

 May 12, 2022
Fran Duffaway (May 12, 2022 16:29 MDT) Date:
 Purchasing Officer Review: _____
 Comment & Exceptions: _____

4. Funding Source: Various

 May 12, 2022
 Date:
 Budget Officer Approval: _____
 Comment & Exceptions: _____

Staff Contact who completed this form: Josh Bohlman Phone # 505-690-9597

Email: jbohlman@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: B&D Industries, Inc.

Procurement Title: B&D Industries Inc. – HVAC On-Call Amendment #4

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract Under 200k Contract Over 200k

Department Requesting Public Works/Facilities Division Staff Name Josh Bohlman

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees. .

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memo addressed to City Manager (under 200k) Committees/City Council (over 200k)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	RFP
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Evaluation Committee Report
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ITB
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bid Tab
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Quotes (3 valid current quotes)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cooperative Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sole Source Request and Determination Form
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contractors Exempt Letter
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Purchasing Officers approval for exempt procurement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	BAR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	FIR
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Executed Contract, Agreement or Amendment
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Current Business Registration and CRS numbers on contract or agreement Summary of Contracts and Agreements form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certificate of Insurance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	All documentation presented to Committees
<input type="checkbox"/>	<input type="checkbox"/>	Other: _____

Josh Bohlman Project Administrator April 26,2022

Department Rep Printed Name (attesting that all information included) Title Date

Fran Dunaway May 12, 2022

Purchasing Officer (attesting that all information is reviewed) Title Date

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




City of Santa Fe, New Mexico

Memorandum



DATE: May 25, 2022

TO: Governing Body
Finance Committee
Quality of Life

VIA: John Blair, City Manager
Alexis Lotero, Interim Finance Director
Fran Dunaway, Chief Procurement Officer
Manuel Gonzales, ITT Director 
Manuel Gonzales - May 25, 2022 11:55 AM

FROM: David C. Tapia, Procurement Coordinator

ITEM AND ISSUE:

ITT Request for the Approval of Service Contract in the Total Amount of \$1,517,257.50 for Tyler Munis Upgrade Support Services and Payroll Support for the Term of twelve months. CIBER PATHWAY; (Manuel Gonzales, mmgonzales@santafenm.gov, 505-955-5576)

BACKGROUND AND SUMMARY:

The City of Santa Fe is preparing to upgrade from the current Tyler Munis System version 11.3 to version 19.3. This is a necessary upgrade as the current version 11.3 is preparing to sunset and will no longer be functional for City daily operations. In order to complete, this transition as seamlessly as possible ITT is requesting a support team to assist in the migration process. This team will be available by ITT to assist designated staff with the transition, testing, and training of the new system. This process will allow appropriate time to be designated to the Tyler upgrade and allow staff to perform their daily functions with the least amount of interruption, as it is vital for staff to be engaged in the project.

PROCUREMENT METHOD:

The procurement method is the Sole Source approved with the expiration of June 01, 2023

CONTRACT NUMBER:

The FY22 Munis contract number is 3203383.

FUNDING SOURCE:

The funding source is:

Fund Name/Number: Special Projects/325

Munis Org Name/Number: ERP/3253950

Munis Object Name/Number: Other Consulting/510340

ACTION REQUESTED:

ITT respectfully requests your review and approval.



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Ciber Pathway

Procurement Title: Tyler Munis Upgrade

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 ITT Staff Name David C. Tapia

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees. .

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	RFP
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Evaluation Committee Report
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ITB
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bib Tab
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Quotes (3 valid current quotes)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cooperative Agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sole Source Request and Determination Form
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contractors Exempt Letter
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Purchasing Officers approval for exempt procurement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	BAR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	FIR
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Executed Contract, Agreement or Amendment
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Current Business Registration and CRS numbers on contract or agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Summary of Contracts and Agreements form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certificate of Insurance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	All documentation presented to Committees
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Other: Sole Source Pending Signature Attached _____

David C. Tapia Procurement Coordinator 05/25/2022
Department Rep Printed Name (attesting that all information included) Title Date

Fran Dunaway
Fran Dunaway (May 27, 2022 13:36 MDT) Chief Procurement Officer May 27, 2022

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 # 3203383

Contractor: Ciber Pathway

Description: The City of Santa Fe is preparing to upgrade from the current Tyler Munis System version 11.3 to version 19.3. This is a necessary upgrade as the current version 11.3 is preparing to sunset and will no longer be functional for City daily operations.

Contract Agreement Lease / Rent Amendment

Term Start Date: 06/15/2022 Term End Date: 06/30/2023

Approved by Council Date: Pending

Contract / Lease: 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 for support team provided by Ciber Pathway to assist in the Tyler Munis upgrade from version 11.3 to version 19.3.

3. Procurement History: Sole Source Procurement Expires 06/01/2023

Fran Dunaway
Fran Dunaway (May 27, 2022 13:36 MDT)

May 27, 2022

Purchasing Officer Review:

Date:

Comment & Exceptions: sole source 30 day posting- Proprietary 4 year contract for upgrade and services

4. Funding Source: ERP / Other Consulting

Org / Object: 3253950.510340

Andy Hopkins
Andy Hopkins (May 27, 2022 12:56 MDT)

May 27, 2022

Budget Officer Approval:

Date:

Comment & Exceptions: _____

Staff Contact who completed this form: David C. Tapia Phone # 505-955-5523

Email: dctapia@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

CITY OF SANTA FE

PROFESSIONAL SERVICES AGREEMENT

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

RECITALS

WHEREAS, the Chief Procurement Officer of the City has made the determination that this Agreement is in accordance with the provisions of the New Mexico Procurement Code (NMSA 1978, 13-1-28 et seq.) pursuant to NMSA 1978, § 13-1-95.2.E; and NMSA 1978, § 13-1-111.

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

WHEREAS, the Contractor does hereby accept its designation as [professional service], rendering services related to [insert services] for the City, as set forth in this Agreement; and

WHEREAS, it is agreed by the parties that the performance of the professional services is for a period of [insert term], as directed by the City.

NOW, THEREFORE, the parties hereby agree as follows:

1. Scope of Work.

The Contractor shall provide the following services for the City as described in Exhibit “A” attached hereto and incorporated herein

2. Standard of Performance; Licenses.

A. The Contractor represents that Contractor possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

B. 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 compensation not to exceed One Million, Five Hundred Seventeen Thousand, Two Hundred Fifty-Seven Dollars and Fifty Cents (\$1,517,257.50), including gross receipts tax. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$1,517,257.50). 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 in future fiscal years is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.)

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within 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, 2023** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). The City reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of four (4) years in accordance with NMSA 1978, §§ 13-1-150 through 152.

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. Entire Agreement.

This Agreement, together with any other documents incorporated herein by reference and all related Exhibits and Schedules constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. In the event of any inconsistency between the statements in the body of this Agreement, and the related Exhibits and Schedules, the statements in the body of this Agreement shall control.

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 NMSA 1978, sec. 38-3-2 . By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers

Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

19. Professional Liability Insurance.

Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

20. Other Insurance

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

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

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

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

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

21. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

22. Indemnification.

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City.

23. New Mexico Tort Claims Act

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

24. Invalid Term or Condition.

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

25. Enforcement of Agreement.

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

26. Notices.

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: Attn: Manuel Gonzales, ITT Director
200 Lincoln Ave. Santa Fe, NM 87504, mmgonzales@santafenm.gov].

To the Contractor: Ciber Pathway Inc.
Attn: Krishna Gajavelli, 5601 NW 72nd Street STE 178G, Warr Acres, OK 73132
accounts@ciberpathway.com

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.

28. 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.

29. Non-Collusion.

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

30. Default/Breach.

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

31. Equitable Remedies.

The Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the City irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the City, and the Contractor consents to the City's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. The City's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that the City may have under applicable law, including, but not limited to, monetary damages.

32. Default and Force Majeure.

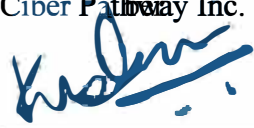
The City reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the City, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or

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

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

CITY OF SANTA FE:

CONTRACTOR:
Ciber Pathway Inc.



ALAN WEBBER, MAYOR

NAME Krishna Gajavelli

DATE: _____

President

TITLE

DATE: 05/18/2022

CRS# 03-323501005

Registration # _____

ATTEST:

KRISTINE BUSTOS MIHELICIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marco Martinez

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

ALEXIS LOTERO, INTERIM FINANCE DIRECTOR

Org. Name/Org#. 3253950.510340 ERP, Other Consulting AH
AH

Exhibit A

STATEMENT OF WORK

System Implementation Support Services

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1.1 Services Scope

Ciber Pathway Inc will be responsible to perform the following:

- a. Prepare project charter and detailed project plan with tasks.
 - b. Identify and document new features in Tyler Munis v2019 HCM and Finance sub-modules that are utilized by City of Santa Fe.
 - c. Conduct AS IS sessions with City of Santa Fe business users to review and understand current state of processes, requirements, gaps, challenges and pain points. Identify Must Have, Should Have, Could Have and Won't Have.
 - d. Prepare fit gap analysis document based on the AS IS sessions. And prioritize Must Have, Should Have, Could Have and Won't Have features or functionality.
 - e. Perform analysis to identify any identified gaps can be remedied by utilizing new features available in Tyler Munis v2019. Propose solutions if available for GAPS in new version to City of Santa Module leads.
 - f. Present new features available in Tyler Munis v2019 to City of Santa Fe module leads and advantages of utilizing those new features to improve the ROI of the product.
 - g. Identify and document changes to existing functionality in new Tyler Munis V2019.
 - h. Configure upgrade Tyler Munis V2019 test system as needed for new and existing features.
 - i. Unit and system test Tyler Munis v2019 system.
 - j. Assist City of Santa Fe users with User acceptance testing.
 - k. Work with Tyler support on resolutions with any issues identified during testing.
 - l. Identify and document all the existing reports available in Tyler Munis v2019.
 - m. Conduct report requirements session with City of Santa Fe business module leads to identify reporting requirements.
- HR
 - i. HCM-Weekly Monthly Quarterly Yearly
 - ii. PERA
 - iii. ACA Reporting
 - iv. Job requisition report
 - v. EEO reports
 - vi. Federal/state requirement reports
 - Finance
 - i. AP and AR Budget Billing Weekly Monthly Quarterly Yearly
 - ii. Federal/state requirement reports
 - Payroll
 - i. Biweekly processing validation report

- ii. Biweekly tax payments and 3rd party payment reports
- iii. Federal/state requirement reports
- iv. Year-end w2 validation reporting
- v. W4 validation reporting
- vi. Leave Accruals report by Calendar year and Fiscal Year.
- n. Prepare report design documents, build reports and deploy in TEST systems for testing.
- o. Assist City of Santa Fe users in user acceptance testing reports.
- p. Parallel current version to new version for transactions in payroll for at least one cycle to validate the results.
- q. Support City of Santa Fe with any issues during day-to-day activities after go-live with new version for minimum of 4 weeks.

1.2 Services, Roles & Responsibilities Work Streams:

This section defines the key work streams that are directly related to this project. All services and deliverables performed within the scope of this work will fall into one of the work streams below:

Work Streams:

- Program/Project Management
- Functional Process Design/Configuration and Testing
- Deployment and Immediate post go-live support.
- Reporting

1.2.1 Program/Project Management & Governance:

The objective of this workstream is to have Program/Project Management team collaborate with City of Santa Fe throughout the program to ensure project management will governance processes be defined, designed, executed, and refined, as needed.

- Develop Overall Upgrade Charter
- Establish and retain a resourceful City of Santa Fe project team who can address all aspects of the project scope and produce the required deliverables
- Establish and retain a resourceful Ciber Pathway Inc project team who can address all aspects of the project scope and produce the required deliverables
- Establish procedures for knowledge transfer between City of Santa Fe and Ciber Pathway Inc team.
- Verify that a project budget has been established and that the appropriate tracking mechanisms are in place.

- Track the overall progress of the project according to the work plan and ensuring that regular status reports are produced, distributed, and reviewed in a timely basis.
- Create project status reports and attend meetings with project stake holders and City of Santa Fe executive team to provide status updates, risks and any anticipated project delays
- Verify that regular project/cross-team communications are produced and are available to the core and extended project team members.
- Develop an issue management process and tracking tool
- Monitor and manage project issues.
- Verify that Quality Assurance procedures and processes are in place that will help generate high-quality work products and deliverables and a final product that meets the business requirements
- Develop a risk management plan.
- Regularly analyze project risks and establish processes and procedures to prevent or manage these risks
- Establish procedures and processes for capturing, escalating, and resolving the various types of project issues
- Vendor management and handle any additional procurements needed
- Establish and refine change control procedures and processes throughout the project life cycle.
- Document and facilitate key design decisions and ensure the right inputs are being provided by the right parties on time to the right decision-makers

1.2.2 Functional Process Design/Configuration and Testing:

The objective of this work stream is to realize the required ERP Upgrade so that the City of Santa Fe departments are fully supported across their end-to-end business processes.

More specifically, the activities in this work stream will assist in:

- Review and understand the existing requirements, gaps, and challenges already identified with respect to the business needs.
- Provide ongoing current state business process and legacy solution content, materials and City of Santa Fe subject matter personnel to ensure ownership of requirements, design, configuration, and testing priorities, decisions, deliverables, and results.
- Create design documentation that specifies package configuration choices and recommended options based on understood requirements
- Develop white papers and stakeholder communication content, via high quality and clear documentation, for all applicable new designs, business rules, and key decisions that need to be understood and accepted.
- Develop functional specifications for all applicable new designs, interfaces, workflows, and extensions
- Define ERP implementation configuration and development standards and best

practices that should be leveraged.

- Provide test plans, scripts, cases that can be reused
- Develop a testing strategy, plan, and schedule for City of Santa Fe businesses, including integration and user acceptance testing.
- Ensure clear documentation and execution of all defined test scenarios
- Monitor testing and provide test results/status and action plans to fix defects
- Assist City of Santa Fe users in performing user acceptance testing.

1.2.3 Reporting:

The objective of this workstream is to meet the reporting needs for the City of Santa Fe departments and businesses:

- Identify City of Santa Fe reporting needs.
- Create and approve inventory of reporting development objects to meet gaps
- Ensure development approach is consistent with reporting architecture defined by Tyler Munis.
- Build and unit test reports
- Incorporate reporting into end-to-end integration and UAT test plans
- Assist City of Santa Fe business users in conducting UAT.
- Develop reporting training materials

1.2.4 Deployment and Immediate Post Go-Live Support

The objective of this work stream is to ensure an accelerated and high-quality implementation followed by a focused and experienced support effort. The goal is to minimize business disruption and maximize user adoption. More specifically, the activities in this work stream will assist in:

- Providing an implementation schedule and associated staffing that can meet the demands of the rollout.
- Ensuring site readiness prior to cutover.
- Ensuring City of Santa Fe organization readiness to provide expanded support of the ERP solution to stakeholders.

1.3 Team Structure

All proposed key personnel must be approved by City of Santa Fe and named as “key personnel” in the contract. System Integration key personnel shall include, but not be limited to, the positions described below.

Sr. Program/Project Manager

The Sr. Program/Project Manager will be City of Santa Fe’s primary point of contact throughout the project. The Sr. Program/Project Manager will serve as the day-to-day, System Integrator lead and work directly with his/her counterpart at City of Santa Fe. This role is widely held as the most critical role to successfully support ERP Upgrade.

Functional/Process Leads/SME

These Functional/Process Leads/SME’s will provide project management capabilities for their functional/process domain and will be paired with City of Santa Fe leads for each domain. These individuals will possess knowledge of functional modules being upgraded as well as process, configuration, and integration best practices. These leads will be able to proactively guide City of Santa Fe’s team throughout the upgrade project.

Reporting Analyst

Reporting analyst will provide report design, development and train City of Santa Fe staff utilizing approved tools by Tyler Munis architecture.

1.3.1 Staffing Assumptions:

All personnel assigned to project are expected to work offsite or pre-arranged (Onsite-Offsite) schedule that is approved by Ciber Pathway Inc and as well as City of Santa Fe project management team.

Subtotal	1,211,700.00
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TERMS AND CONDITIONS

- 1. Customer will be billed after indicating acceptance of this quote
- 2. ~~Payment will be due prior to delivery of service and goods~~ *05/16/2022*
- 3. Please fax or mail the signed price quote to the address above

Customer Acceptance (sign below):

x *Krishna*
Print Name:

GRT Tax	8.438%
Tax due	102,237.19
Other	-
TOTAL	\$ 1,313,937.19

If you have any questions about this quote, please contact
Krishna Gajavelli, 405.938.5676, accounts@ciberpathway.com

Thank You For Your Business!



CITY OF Santa Fe

MEMORANDUM

TO: Francis Dunaway, Procurement Manager

FROM: Manuel Gonzales, ITT Director

RE: Sole Source Request

DATE: Monday May 2, 2022

BACKGROUND:

The City of Santa Fe's current Financial and Human Capital Management System is Tyler Technologies product Munis. The City implemented version 11.3 of Munis over two (2) years ago and consists of Munis Financial and Munis Human Capital Management (HCM). The City's application and data are Cloud Based and hosted by Tyler Technologies. Munis has over 1,100 City Staff End Users, 7,000 registered City Vendors, and has processed over 10 million transactions since its implementation.

ISSUE:

Tyler Technologies has announced the sunsetting of version 11.3 this fall. Once the version sunsets not only will Tyler no longer provide support for this version, but the version will also be unavailable for use. This means the City will be forced to complete a successful upgrade to a more current version no later than the Fall of 2022.

This means the City is on an escalated upgrade schedule, by this we mean instead of having a year or more to prepare for this upgrade, the City has less than six (6) months to not only plan but successfully implement an upgrade.

PROPOSED MITIGATION:

A pre-requisite for a successful Munis Upgrade implementation is to bring on board a dedicated Contractor who will be involved in both the planning and training. Best Practices dictate hiring an external resource who is an expert in local government management, technology systems, organizational management, guidelines, requirements, business processes, user roles, workflows, training, policies, and procedures.

Therefore the City's Munis Upgrade Project Team believe it is in the projects best interest to hire Ciber Pathways as a Sole Source contractor instead of opening the project up for an RFP. Below are some of the reasons why we believe this is the best mitigation strategy:

- As the current professional service provider for the City, Ciber Pathways is positioned to understand what has been configured and developed to date as part of the Tyler Munis Implementation
- Ciber Pathway thoroughly understands what is needed to advance the project to support both HCM and Finance with the upgrade, product enhancements, and post-production support
- Ciber Pathway possesses the knowledge of the City's HCM/Payroll and FIN implementation, software package, and configuration
- Ciber Pathway has extensively helped the City with various projects such as Payroll implementation, Payroll day-to-day support, Payroll Year end forms, Leave Accruals, HCM Year End forms, Finance Audit reports, Support for Auditors and Year end close process.

- Ciber Pathway was able to create, generate and produce many different reports for Finance, HR, Payroll as needed.
- As the current service provider Ciber Pathway supported in supporting payroll processing on bi-weekly basis, was able to successfully assist in establishing PERA processing in Tyler Munis and reporting, integrate Payroll processing with Finance (GL and AP) modules.
- Ciber Pathway helped with data conversion of Payroll data from JDEdwards to Tyler Munis.
- Ciber Pathway was successfully able to help the City HR department create, upload and print 1095C forms to adhere with ACA requirements for calendar year 2019, 2020 and 2021 as required by IRS.
- Ciber Pathway has previously sourced functional and technical resources to City of Santa Fe to support implementation, production, and development of reports in Tyler Munis HCM and Finance modules.

We believe with Ciber Pathway's extensive knowledge and exposure to not only the City's software configuration; they also are well versed in the City's processes and procedures. This knowledge will be extremely beneficial to the project due to the time constraints we are under. Ciber Pathway's knowledge and skillset will allow them to hit the ground running and is the approach most likely to have a successful upgrade in the timeframe allotted.

FUNDING SOURCE:

The proposed Sole Source would cost an estimated \$1,517,257.50 and will be paid utilizing funding from the 3253950.51034 ERP Other Consulting.

This funding has been verified and guaranteed to be available for this purchase by **David Tapia**.

The proposed contract will serve a term of 1 year at this rate.

RECOMMENDATION:

Due to the experience Ciber Pathway has with the City's Munis infrastructure it is the recommendation of the Project Team for the City to approve the Sole Source Request.

REQUEST:

ITT is requesting the approval of the Sole Source Request for Ciber Pathways.

Thank you,
Manuel Gonzales, ITT Director



City of Santa Fe, New Mexico



SOLE SOURCE REQUEST AND DETERMINATION FORM

This sole source request form **must** be submitted to the City of Santa, Purchasing Division for authorization, determination and processing by the Chief Procurement Officer (CPO).

Please ensure to complete this form in its entirety - () must be completed.*

*Date: 04/29/2022

*Prepared By Jackie Henley

*Title Business Analyst

*Vendor Name: Ciber Pathway

*Address: 5601 NW 72nd Street 178G

*City: Warr Acres

*State: OK

*Zip Code: 73132

*Description of Goods/Service to be procured:

*Estimated Cost: \$1,517,257.50

Term of Contract: One (1) to Four (4) year from award 1 year

*Sole Source Request Justification Questions 1-3.

1. Explain the purpose/need of purchase. Ensure to include a thorough scope of work for the services, construction or items of tangible personal property (if this is an amendment request to an existing contract, attach current contract).



City of Santa Fe, New Mexico



The City of Santa Fe's current platform is Tyler Technologies MUNIS version 11.3 and data are Cloud Based and hosted on Tyler Technologies. The platform is over two (2) years in existence with the City of Santa Fe and consists of MUNIS Financial and MUNIS Human Capital Management (HCM). MUNIS has over 1,100 City staff end users, 7,000 registered City vendors, and has processed over 10 million transactions. The upgrade will allow the MUNIS version to upgrade from 11.3 to 19.3.

A prerequisite for a successful MUNIS upgrade implementation is to bring on board a dedicated Contractor who will be involved in both planning the MUNIS upgrade and providing necessary training. Best Practices dictate hiring external resources who are experts in local government management, technology systems, organizational management, guidelines, requirements, business processes, user roles, workflows, training, policies, and procedures.

It is a requirement of our host, Tyler Technologies, to complete this upgrade no later than the Fall of 2022 as the Version 11.3 will be sunsetting and no longer available for use or support after the Fall of 2022.

Please see Exhibit A for the Scope of Work.



City of Santa Fe, New Mexico



2. Provide a detailed explanation of the criteria developed and specified by the department as necessary to perform and/or fulfill the contract.

The contractor has affirmed sole source for the services, construction or items of tangible personal property (*Attach memo from vendor*). Provide documentation of due diligence for other possible vendors/contractors to provide the requested services/goods proved unsuccessful; or

Other: explanation of the reasons, qualifications, proprietary rights or unique capabilities (*unique and how this uniqueness is substantially related to the intended purpose of the contract*) of the prospective contractor that makes the prospective contractor *the one source* capable of providing the required professional service, service, construction or item(s) of tangible personal property. (Please do not state the source is the “best” source or the “least costly” source. Those factors do not justify a “sole source.”) *Unique and how this uniqueness is substantially related to the intended purpose of the contract.*

Please see Exhibit B for a detailed list of Ciber Pathway’s experience, qualifications, and capabilities which demonstrates their unique ability to assist the City of Santa Fe in this upgrade.

3. Explain why other similar professional services, services, construction or item(s) of tangible personal property *cannot* meet the intended purpose of the contract.

- Contractor provided assistants with migration of the old payroll system into current Tyler Munis database
- Understanding of current essential Munis functions
- Understanding of the current Tyler Munis database
- Familiarity with Tyler Munis Technical Support
- Familiarity with Division’s processes and procedures
- Contractor assisted with development of the current Tyler Munis database
- Contractor assisted with data validation and verification in the current database



City of Santa Fe, New Mexico



***Approvals:**

Based on the above facts, the City of Santa Fe Purchasing Officer has made the determination that the justification for a Sole Source procurement is in accordance with the State Procurement Code, Section 13-1-126 Sole source procurement., NMSA 1978 and shall be posted for a 30-day period prior to award.

Fran Dunaway, CPO Date
Purchasing Officer for the
City of Santa Fe

Pursuant to the State Procurement Code, Section 13-1-126 Sole source procurement., NMSA 1978, the 30-day posting period of the Notice of Intent to Award this Sole Source request was met and no obligation to the award to the above referenced contractor were received. *This Sole Source determination will be valid for a period of one (1) year from the date of the award.*

Fran Dunaway, CPO Date
Purchasing Officer for the
City of Santa Fe

****Required Attachments:***

- *Letter from Contractor acknowledging they are the only source (on their business letterhead and signed by the head of business or financial operations),***
- *Quote from sole source Contractor***
- *Agenda Item to be presented to City Council if over \$60,000 for Professional Services and \$60,000 for Goods and Non-Professional Services***

Exhibit A: Scope of Work

Below is a Scope of Work for this contract.

- The Contractor will conduct interviews with stakeholders, upper management, end-users, consultant project management team, and business partners
- Provide a business and information technology analysis report on the current and upgrade versions of the MUNIS platform and its modules/programs.
- Provide a business and information technology analysis report on other City of Santa Fe's software and applications that have a business relationship with the MUNIS platform.
- Review and analyze all MUNIS user roles, workflows, business processes, and system administration and all other artifacts pertaining to this procurement.
- Gather business requirements from departments, configure and test daily operations in the new version 19.3.
- Identify, troubleshoot, and work with the City's ITT Department and Tyler Technologies to resolve any issues.
- Review and analyze the current structure of data and its mapping format.
- Develop a list of objectives for the upgrade implementation, project milestones, task assignments, and a performance matrix on outcomes.
- Work with the ITT Project Management Team on the project management schedule and task deadline dates
- Provide a monthly risk assessment report on criteria that address a successful project on the upgrade implementation of the MUNIS
- The Contractor will facilitate the data conversion from version 11.3 to 19.3 with Subject Matter Experts for each respective module.
- Provide guidance with the new design and transformation of the Chart of Accounts to optimize its full value to the City's governing body, upper management, end-users, and business partners.
- Provide training with General Ledger and its account mapping. The CAFR module will support to accumulation of data in a way that supports reporting and statutory requirements.
- Assist with the City's training all departments on the upgraded MUNIS version 19.3 and all-new features.
- Testing for each process and role before go-live with Subject Matter Experts (SME's)
- Enhance the General Ledger segments through streamlining and standardization to reduce the duplication efforts.
- Develop common language for enterprise data to be used across the City and drive the enterprise towards a consistent level of consistency, granularity, and integration across the system landscape.
- Enable more effective consolidations and create confidence in the uniformity and visibility of financial operations and data.

- Analyze the organizational structure and its staffing of operations to address flexibility and efficiencies.
- Increase decision-making capabilities through single sources of data for financial, budget, operational, and management reporting.
- Enable increased automation of manual processes and cumbersome business practices.
- Provide Go Live Support which will include:
 - Issue management,
 - Troubleshooting,
 - Training,
 - Customer support,
 - Consultant support
- Provide support for the project team SME's to document processes, test new systems, identify and document issues
- Identify a Project Team for each work stream that are responsible for each module within the MUNIS application
- Create Kick-off meetings with Contractors and Stakeholders in conjunction with the ITT Project Management Team.



April 25th, 2022

Ciber Pathway Inc., Experience and Qualifications:

- As the current professional service provider for City of Santa Fe, Ciber Pathway Inc is positioned to understand what has been configured, developed to date as part of Tyler Munis Implementation.
- Ciber Pathway Inc thoroughly understands what is needed to advance project to support HCM and Finance with Upgrade, and product enhancements and post-production support.
- Ciber Pathway Inc possesses the knowledge of the City's Tyler Munis HCM/Payroll and FIN implementation, Software Package, Configuration.
- Ciber Pathway Inc has extensively helped City of Santa Fe with various projects so far (Payroll implementation, Payroll day-to-day support, Payroll Year end forms, Leave Accruals, HCM Year End forms, Finance Audit reports, Support for Auditors and Year end close process).
- Ciber Pathway Inc has wide range expertise in implementing, supporting and upgrading ERP products (PeopleSoft, JDEdwards, Tyler Munis), Time Tracking systems like Kronos and other reporting tool that are added benefits to City of Santa Fe.
- Ciber Pathway Inc was able to create, generate and produce many different reports for Finance, HR, Payroll as needed.
- Ciber Pathway Inc helped Auditors hired by CoSF in generating reports out of Tyler Munis and JD Edwards system for reimbursement of CARES Act funds.
- As the current service provider Ciber Pathway Inc supported in supporting payroll processing on bi-weekly basis, was able to successfully assist in establishing PERA processing in Tyler Munis and reporting, integrate Payroll processing with Finance (GL and AP) modules.
- Ciber Pathway Inc helped with data conversion of Payroll data from JDEdwards to Tyler Munis.
- Ciber Pathway Inc was successfully able to help CoSF HR department create, upload and print 1095C forms to adhere with ACA requirements for calendar year 2019, 2020 and 2021 as required by IRS.
- Ciber Pathway Inc has previously sourced functional and technical resources to City of Santa Fe to support implementation, production and development of reports in Tyler Munis HCM and Finance modules.
- Ciber Pathway Inc consultants has over 22 years of combined experience in implementing, upgrading and support other ERP products including (Oracle ERP, PeopleSoft, SAP, Tyler Munis and Workday) with different industries including local government, state governments and private sectors.



5601 NW 72nd Street
Suite # 178G
Warr Acres, OK 73132
Ph: 405-938-5676
FAX: 405.938.3145
HR@CIBERPATHWAY.COM
www.ciberpathway.com

Please feel free to give me a call if you have any questions. We look forward for your continued business.

CIBER PATHWAY INC.,

Name: Krishna Gajavelli

Title: President

Date: 04/25/2022

Exhibit C: Quote



5601 NW 72nd Street STE 178G
Warr Acres, OK 73132
www.ciberpathway.com
Ph: 405.938.5676
Fax: 405.938.3145
Prepared by: Krishna Gajavelli

QUOTE

DATE	4/25/2022
QUOTE #	CPI0024
CUSTOMER ID	CPI238
VALID UNTIL	5/30/2022

CUSTOMER

City of Santa Fe
200 Lincoln Ave

Santa Fe, NM 87504

DESCRIPTION	AMOUNT
Tyler Munis Upgrade Support	
Program/Sr.Project Manager for 1500 hours at \$175/hour (May 2022 - December 2022)	\$ 262,500.00
Payroll SME for 1500 hours at \$145/hour (May 2022 - December 2022)	\$ 217,500.00
HR SME for 1500 hours at \$135/hour (May 2022 - December 2022)	\$ 202,500.00
Finance SME for 1500 hours at \$145/hour (May 2022 - December 2022)	\$ 217,500.00
Finance Business Analyst for 1500 hours at \$125/hour (May 2022 - December 2022)	\$ 187,500.00
SQL Server Reporting Analyst (Development of Reports,Train staff on report development) 1080 hours at \$115/hour (May 2022 - December 2022)	\$ 124,200.00
Notes: Upgrade project estimation from May 2022 - October 2022 - 6 Months and 3 months of post production support.	

	Subtotal	1,211,700.00

TERMS AND CONDITIONS

	Subtotal	1,211,700.00

TERMS AND CONDITIONS

1. Customer will be billed after indicating acceptance of this quote
2. Payment will be due prior to delivery of service and goods
3. Please fax or mail the signed price quote to the address above

Customer Acceptance (sign below):

x  _____

Print Name:

GRT Tax	8.438%
Tax due	102,237.19
Other	-
TOTAL	\$ 1,313,937.19

If you have any questions about this quote, please contact
 Krishna Gajavelli, 405.938.5676, accounts@ciberpathway.com

Thank You For Your Business!



5601 NW 72nd Street STE 178G
 Warr Acres, OK 73132
www.ciberpathway.com
 Ph: 405.938.5676
 Fax: 405.938.3145
 Prepared by: Krishna Gajavelli

QUOTE

DATE	3/28/2022
QUOTE #	CPI0025
CUSTOMER ID	CPI238
VALID UNTIL	4/28/2022

CUSTOMER

City of Santa Fe
 200 Lincoln Ave


Santa Fe, NM 87504

DESCRIPTION	TAXED	AMOUNT
Tyler Munis Payroll Support - 125/Hrs per month for 12 Months at \$125/HR	X	\$ 187,500.00

TERMS AND CONDITIONS

1. Customer will be billed after indicating acceptance of this quote
2. Payment will be due prior to delivery of service and goods
3. Please fax or mail the signed price quote to the address above

Customer Acceptance (sign below):

x  _____
 Print Name:

Subtotal	\$ 187,500.00
Taxable	187,500.00
GRT rate	8.438%
Tax due	15,820.31
Other	-
TOTAL	\$ 203,320.31

If you have any questions about this price quote, please contact
 Krishna Gajavelli, 405.938.5676, accounts@ciberpathway.com

Thank You For Your Business!



City of Santa Fe

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

BUSINESS REGISTRATION

Business Name: CIBER PATHWAY INC
DBA: CIBER PATHWAY INC

Business Location: 5601 NW 72nd ST SUITE 178 G
WARRACRES, OK 73132

Owner: KRISHNA GAJAVELLI

License Number: 221913

Issued Date: February 01, 2022

Expiration Date: February 01, 2023

CRS Number: 03-323501005

License Type: Business License - Renewable

Classification: Out of Jurisdiction Business License

Fees Paid: \$10.00

CIBER PATHWAY INC
5601 NW 72nd Street STE 178G NE
WARR ACRES, OK 73132

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE



City of Santa Fe, New Mexico

Memorandum



DATE: May 23, 2022

TO: Public Utilities Committee

FROM: Shirlene Sitton, Environmental Services Division Director *SS*

VIA: Alexis Lotero, Interim Finance Director
Fran Dunaway, Chief Procurement Officer
Shannon Jones, Public Utilities Department Director *SA*

RE: Rubicon SmartCity Contract

ITEM AND ISSUE:

The Environmental Services Division requests for the approval to enter a four-year contract with Rubicon Global LLC, utilizing the H-GAC Buy cooperative purchasing agreement contract FLO3-21, in the yearly amount of \$128,883.20 plus NMGRT for FY23 (\$515,532.80 Total for a 4 year contract); Shirlene Sitton, Environmental Services Division Director, sesitton@santafenm.gov; 505-955-2209.

BACKGROUND AND SUMMARY:

The Environmental Services Division (ESD) released an RFP in 2018 for a solid waste collection oriented on-board routing and ticketing technology. The contract was awarded to Rubicon Global LLC, a certified B corporation who already had similar technology for the commercial sector, which was oriented to help customers reduce their waste. Rubicon was entering into the municipal residential sector with its SmartCity product, when we chose to partner with them as a Beta city for product development. The partnership has been very successful, as they have improved their product and expanded the types of services offered, in-part based on our requirements and requests. Some of these examples include electronic in-app pre- and post-trips for the operators, a new cart maintenance ticketing system, and specialized graffiti work orders. The four-year contract comes to an end on June 31, 2022.

One of the elements of the RFP and subsequent contract included a route optimization project, which we have been working together on over the past few months. Rubicon has been collecting the data transmitted from our routes over the past four years, and has the information needed to ensure our over-the-road efficiency. We plan to implement the optimized routes in August of this year. With the amount of time and effort already invested to build these databases of addresses and routes, we feel it would not be in the City's best interest to change providers at this time. Rubicon is now represented on the H-GAC Buy cooperative purchasing agreement, enabling us to request a new contract through that method.

An overview of the services provided by Rubicon includes:

- On-board device with unique routes for each driver and turn by turn directions
- Exception reporting so drivers can take pictures of non-compliant set-outs that are geocoded, time-stamped, and linked to customer accounts
- On the fly re-routing to other operators in cases of vehicle breakdown
- Real-time GPS tracking of each vehicle on-route
- Web-based log in program for office staff to see vehicle locations, route completion status, exception pictures and reports, ensuring better customer service
- Ticketing and routing for daily on-call routes, repairs, or complaints
- Large variety of reporting available to download from collected data
-

- Route Optimization functions to save time and money
- Engine interface devices to report malfunctions via automated emails to maintenance staff
- Notes driver behaviors such as speeding, hard braking, and sudden turns
- Provides accountability for both customers and employees
- Reliable cloud-based technology hosted by Amazon

As they have grown and improved this line of business, they have been able to decrease costs, resulting in a cost savings of \$40,000 less over four years for the base price. This includes an upgrade from the iPhones currently in use, to tablets, which will give the operators a larger screen for turn-by-turn directions as they learn the new routes later this summer.

PROCUREMENT METHOD:

H-GAC Buy Cooperative Agreement

CONTRACT NUMBER: Munis Contract #3203377

FUNDING SOURCE:

Fund Name/Number: Environmental Services Enterprise Fund/510

Munis Org Name/Number: Admin/5100331

Munis Object Name/Number: Service Contracts/510310

ACTION REQUESTED: As ESD has been very satisfied with our partnership with Rubicon, and we wish to continue to utilize the technology into the future. ESD respectfully requests your review and approval of a new four-year contract with Rubicon.

MASTER SOFTWARE SERVICES AGREEMENT

THIS MASTER SOFTWARE SERVICES AGREEMENT (this “Agreement”) is made and entered into by and between RUBICON GLOBAL, LLC, a Delaware limited liability company (“Rubicon”), and the CITY OF SANTA FE, NEW MEXICO with a principal place of business at 200 Lincoln Ave Santa Fe, NM (“City”).

In consideration of the mutual covenants and agreements made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions.

Capitalized terms used and not otherwise defined in this Agreement shall have the following meanings:

1.1 “Affiliate” means any entity that is controlled by City, where “control” means the ownership of, or the power to vote, more than fifty percent (50%) of the voting stock, shares, or interests in an entity.

1.2 “Agreement” means this Agreement, and any Orders, exhibits, Statements of Work and amendments to the foregoing.

1.3 “City” means the entity entering into this Agreement and any Affiliate designated in this Agreement or an Order which is authorized to receive the Subscribed Services. City shall be fully responsible for the performance of all of its Affiliates’ obligations under this Agreement.

1.4 “City Content” means all data, imagery, information and other content (a) transmitted by or on behalf of City through the System; (b) provided by City or on City’s behalf for use in connection with the Subscribed Services; or (c) otherwise processed or stored by Rubicon or its contractors on City’s behalf pursuant to this Agreement.

1.5 “Documentation” means the then-current, commercially available user manuals, training materials and technical manuals relating to the Subscribed Services provided to City by Rubicon pursuant to this Agreement.

1.6 “Effective Date” means the earlier of (a) the date this Agreement and the first Order are accepted and signed by Rubicon and the City;

1.7 “Intellectual Property Rights” means, on a world-wide basis, any and all (a) rights associated with works of authorship, including without limitation, copyrights, copyrightable rights, moral rights and mask work rights; (b) trademark, service mark and trade name rights and any similar rights recognized under applicable law; (c) rights in confidential information and trade secret; (d) patents and patentable rights; (e) all rights with respect to inventions, discoveries, improvements, know-how, formulas, algorithms, processes, technical information and other technology; (f) all other intellectual and industrial property rights of every kind or nature, whether arising by operation of law, contract, license or otherwise; and (g) all international, national, foreign, state and local registrations, applications for registration and any renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisions, reissues, substitutions and reexaminations), all goodwill associated therewith, and all benefits, privileges, causes of action and remedies relating to any of the foregoing (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions; to sue for all past, present and future infringements or other violations relating thereto; and to settle and retain all proceeds from any such actions).

1.8 “Marks” means the trademarks, service marks or trade names of City.

1.9 “Order(s)” means the order(s), and any amendments thereto, executed by the parties and which references this Agreement. Each Order shall specify the Subscribed Services being subscribed for, the licensing parameters, the term of the Order, the applicable fees, billing period, and other charges, as well as payment terms. Each Order with the terms of this Agreement, and any exhibits and amendments to such Order, is a separate and independent contractual obligation of Rubicon from any other Order. In the event of any conflict between the terms of this Agreement and the terms of any such Order, the terms of such Order shall prevail.

1.10 “Professional Services” means implementation, consulting and training services, including without limitation, technical services to facilitate setup and deployment of the Subscribed Services specified in a Statement of Work.

1.11 “Rubicon Software” means Rubicon’s proprietary software programs used by Rubicon to provide the Subscribed Services (including, without limitation, all source code, object code, designs, copyrightable works, ideas, inventions, technology and other Intellectual Property Rights therein), as modified, enhanced or replaced by Rubicon from time to time. For the avoidance of doubt, Rubicon Software does not include City Content.

1.12 “Statement of Work” means a document executed by both parties that describes the Professional Services to be performed by Rubicon pursuant to the Professional Services Terms (as defined in Section 2.6), including without limitation, the project assumptions, specifications, scope, work plan, responsibilities, duration and fees for such Professional Services, which Statements of Work shall reference this Agreement and be sequentially numbered. Each Statement of Work with the Professional Services Terms, and any exhibits, change orders and amendments to such Statement of Work, is a separate and independent contractual obligation of Rubicon from any other Statement of Work.

1.13 “Subscribed Services” means Rubicon’s proprietary, web-based services set forth in an Order which are provided to City on a subscription basis and enable use of the Rubicon Software through the System.

1.14 “System” means the Rubicon Software and the server grade computers and related networks maintained by or on behalf of Rubicon and its third-party providers to host the Rubicon Software and provide the Subscribed Services to City, all as hereafter modified, enhanced or replaced by Rubicon.

1.15 “Third Party Offerings” means services delivered or performed by third parties independently of Rubicon related to the Subscribed Services, or other online, web-based CRM, ERP, or other business application subscription services, and any associated offline products provided by third parties, that interoperate with the Subscribed Services.

1.16 “Work Product” means any software, data, documentation, graphics, text, code, inventions, pictures, audio, video, animations, enhancements, improvements, methods, processes, works of authorship, work-flow methods or other deliverables or any portions of the foregoing that Rubicon creates, whether alone or jointly, while performing Professional Services or any other services hereunder. Work Product excludes: (a) the Subscribed Services; (b) the System; (c) any generic routines or code that have general application to the Rubicon Software or System; and (d) all modifications, alterations, derivative works and enhancements to the foregoing, and all copies thereof.

2. Services.

2.1 Subscribed Services. Subject to the terms and conditions set forth herein, including without limitation, City’s payment of all applicable fees, Rubicon hereby agrees to provide the Subscribed Services, and in connection therewith, Rubicon hereby grants to City during the term of the applicable Order a non-exclusive, non-transferable, non-sublicensable, limited right and license to (a) access and use of the Subscribed Services subject to the terms specified in the SOW and as specified in the applicable Order, solely for City’s internal use; (b) to transmit and receive City Content to and from the System; and (c) use the Documentation in connection with such rights. The rights granted to City pursuant to any Order shall terminate upon the termination or expiration of this Agreement or the applicable Order for any reason. All rights not expressly granted to City are reserved by Rubicon and its licensors.

2.2 Limitations. City shall not: (a) access or use any portion of the Subscribed Services or System except as expressly authorized pursuant to an Order; (b) cause or permit decompilation, reverse assembly or reverse engineering of all or any portion of the Subscribed Services or System; (c) copy any ideas, features, functions or graphics of the Subscribed Services or System or modify or make derivative works based upon the Subscribed Services or System; (d) delete, fail to reproduce or modify any patent, copyright, trademark or other proprietary rights notices which appear on or in the Subscribed Services, System or Documentation; or (e) directly or indirectly, sublicense, relicense, distribute, disclose, use, rent or lease the Subscribed Services or System, or any portion thereof, for third party use, third party training, facilities management or time-sharing, or use as an application service provider or service bureau. Without limiting the foregoing, City may not use the Subscribed Services or System to: (i) send or store material containing viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (ii) interfere with or disrupt the integrity or performance of the Subscribed Services, System or the data contained therein; or (iii) attempt to gain unauthorized access to the Subscribed Services or System.

2.3 Support. City will be responsible for providing first line maintenance and support to its authorized end users in connection with the Subscribed Services. Qualified employees of City who have been trained on use of the Subscribed Services (the “Designated Employees”) to contact Rubicon with technical questions or issues with respect to the Subscribed Services and to report System outages or failures. Rubicon shall respond to the technical support questions from the Designated Employees and commence the process of responding to System or Subscribed Services outages or failures in accordance with

Rubicon's standard procedures. The Designated Employees shall assist Rubicon in resolving issues with the Subscribed Services and System as City resources allow. Rubicon acknowledges that limited availability of Designated Employees does not, under any circumstance, waive Rubicon's obligations described in Addendum A. Rubicon is under no obligation to provide functional updates, enhancements or upgrades to the System or Subscribed Services by any time certain.

2.4 System Availability. Rubicon will use commercially reasonable efforts to enable and maintain access to the Subscribed Services. Updates to the System will be scheduled for evenings and/or weekends to minimize disruption. City acknowledges and agrees that certain portions of the Subscribed Services, including without limitation, data storage, hosting, and System hardware management, may be provided by third party service providers. Rubicon will provide ongoing management of the System, located at the third-party provider's location, in accordance with Rubicon's agreement with the third-party provider(s), in order to maintain the best practical availability of the Subscribed Services. Rubicon may change its third-party data hosting provider to another hosting provider, in Rubicon's sole discretion, from time to time. Additional system availabilities can be found in Addendum A.

2.5 Browsers. City acknowledges and agrees that the Subscribed Services will only be compatible with and support use with the most recently superseded version for one year from the date of the general release of the then-current version, of the following browsers: Edge, Firefox, Safari and Google Chrome.

2.6 Professional Services. If requested and as available, Rubicon will provide City with Professional Services pursuant to mutually agreeable Statements of Work in accordance with the Professional Services Terms attached hereto as Exhibit A ("Professional Services Terms").

2.7 Provisioning of the Subscribed Services. Rubicon may update the functionality and user interface of the Subscribed Services from time to time in its sole discretion as part of its ongoing improvement of the Subscribed Services. City agrees that its subscription to the Subscribed Services is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Rubicon regarding future functionality or features.

3. City Obligations.

3.1 Resources. Except as expressly set forth herein, City and its end users shall be solely responsible for providing all resources, equipment and software at its or their respective facilities which are necessary for them to access the System and/or receive the Subscribed Services. City and its end users must provide all equipment and licenses necessary to access and use the Internet, and pay all fees associated with such access and use. To the extent Rubicon's provision of the Subscribed Services requires data, documents, information or materials of any nature to be furnished, in whole or in part, by City or its employees, agents, contractors, representatives or authorized users, City will cause such employees, agents, contractors, representatives and authorized users to furnish such data, documents and information in a manner which permits Rubicon to perform the Subscribed Services as contemplated herein.

3.2 Third Party Coordination; Required Consents. To the extent the Subscribed Services require access to a third party service provider who is under contract with City, or access or use of such provider's information or interconnection with such provider's services, facilities, technology or systems in order to receive or transmit City Content, City shall be responsible for obtaining any required third party licenses or consents necessary for Rubicon to access and use such information, services, facilities, technology or systems.

3.3 Third-Party Web Sites, Products and Services. The Subscribed Services may rely on or require that City access Third Party Offerings. If City elects to use the Subscribed Services with Third Party Offerings, City agrees that: (a) its use of Third Party Offerings must at all times comply with the terms of service governing such offerings; and (b) Rubicon has the right to export and import City Content to and from such Third-Party Offerings for purposes of delivering the Subscribed Services purchased by City. City's or its user's use of third-party websites must at all times comply with the terms of service governing such websites. City understands and agrees that the availability of the Subscribed Services, or certain features and functions thereof, is dependent on the corresponding availability of Third-Party Offerings or specific features and functions of Third-Party Offerings. Rubicon will not be liable to City or any third party in the event that changes in Third Party Offerings cause the unavailability of the Subscribed Services or any feature or function thereof. Rubicon may also refer City to third party service providers that offer Third Party Offerings. Rubicon does not make any representations or warranties regarding any such Third Party Offerings, whether or not such Third Party Offerings or services are designated by Rubicon as "certified," "approved," "recommended" or otherwise, or the services are provided by a third party that is a member of a Rubicon partner

program. To the extent that Rubicon requires that City grant Rubicon authorizations, passwords or other user credentials to a Third-Party Offering (“Rubicon Access Codes”) to retrieve City Content or to enable interoperability with the Subscribed Services, City shall promptly provide such Rubicon Access Codes.

3.4 Integrated Third-Party Software. Rubicon may integrate third-party computer software into the Subscribed Services. In such an event, Rubicon will obtain, at no additional charge to City, all rights necessary for City to use such third-party computer software with the Subscribed Services. All free software is distributed to Client WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. A copy of the free software is included with the Subscribed Services. Rubicon disclaims on behalf of all individuals or entities that distributed such free software to Rubicon (the “Contributors”) all warranties and conditions, express and implied, including warranties or conditions of title and non-infringement, and implied warranties or conditions of merchantability and fitness for a particular purpose; and Rubicon excludes on behalf of all such Contributors (i) all liability for damages, including direct, indirect, special, incidental and consequential damages, such as lost profits; and (ii) any provisions which differ from this Agreement which are offered by any particular Contributor alone and not by any other party.

3.5 Compliance with Laws. City will comply with all applicable laws, rules and regulations relating to City’s or its authorized user’s receipt or use of the Subscribed Services. Without limiting the foregoing, City will be solely responsible for determining the extent to which the design or provision of the Subscribed Services is subject to any privacy laws or regulations (“Privacy Laws”) or the oversight of any regulatory agency charged with the enforcement thereof (“Regulatory Oversight”). To the extent that the design and operation of the Subscribed Services is subject to any Privacy Laws or Regulatory Oversight, City will specify any procedures to be taken by Rubicon during the customization and provision of the Subscribed Services to cause the Subscribed Services to be in compliance with such Privacy Laws and Regulatory Oversight. City shall not export the Subscribed Services, System or Documentation in violation of U.S. Department of Commerce export administration regulations.

3.6 Activity. Rubicon will provide City access to the Subscribed Services by issuance of a confidential site address and passwords to City. City is responsible for maintaining the confidentiality of such address and passwords and any activity that transpires through the use of such address and passwords. City shall: (a) notify Rubicon immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (b) report to Rubicon immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of City Content that is known or suspected by City; and (c) not impersonate another Rubicon client or user or provide false identity information to gain access to or use of the Subscribed Services.

4. Prices; Ordering; Payment.

4.1 Invoicing and Payment. Except as otherwise specified in an Order or Statement of Work: (a) City shall pay to Rubicon all fees, charges and expenses due and owing pursuant to an Order or Statement of Work in U.S. dollars to the address designated on the invoice within thirty (30) days following Rubicon’s invoice date; and (b) all payment obligations are non-cancellable, non-refundable and non-contingent. City may not set-off any amounts owing to City against any payments owing to Rubicon hereunder. Payments which are not received when due shall bear interest at the lesser of the maximum amount chargeable by law or one and a half percent (1½%) per month commencing with the date payment was due. In addition, in the event City fails to timely pay any fees or charges when due, Rubicon may, in its discretion, suspend or terminate any Subscribed Services or other services hereunder in accordance with Section 5.3.

4.2 Taxes and Duties. Excluding taxes based on Rubicon’s net income, City is liable and responsible for paying all federal, state and local sales, foreign withholding, value added, use, property, excise, service and other taxes, and all duties and customs fees relating to City’s receipt or use of the Subscribed Services, whether or not Rubicon invoices City for such taxes, duties or customs fees, unless City timely provides Rubicon with a valid tax exemption or direct pay certificate showing City is exempt from such payments. If Rubicon is required to pay any such taxes, duties or customs fees, City shall reimburse Rubicon for such amounts in accordance with Section 4.1,

4.3 Audits. During the Term, upon thirty (30) days prior written notice to City, Rubicon may audit City’s facilities, records and use of the Subscribed Services to determine City’s compliance with the terms and conditions of this Agreement. Such audits shall occur during regular business hours and shall be conducted in a manner designed to limit disruption to City’s business.

5. Term and Termination.

5.1 Term. The term of this Agreement (“Term”) shall not become effective until approved in writing by the City, and shall continue for a period of four (4) years unless earlier terminated in accordance with the provisions hereof.

5.2 Termination. Either party may terminate this Agreement or the applicable Order or Statement of Work if the other party breaches this Agreement or such Order or Statement of Work, as applicable, and fails to correct the breach within thirty (30) days following receipt of written notice from the non-breaching party. In addition, the City or Rubicon may terminate this Agreement immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or if a trustee is set up to administer a substantial portion of the other party’s assets or business.

5.3 Suspension of Services. In the event (a) City fails to timely pay any fees when due; or (b) Rubicon believes, upon advice of counsel, that any element of the Subscribed Services, or City’s receipt or use thereof, violates any applicable law, rule or regulation, Rubicon may in its sole discretion suspend or terminate any Subscribed Services and other services immediately without notice.

5.4 Effect of Termination. Upon termination of this Agreement or an Order or Statement of Work for any reason, all payment obligations shall become immediately due and owing and City shall immediately cease using the applicable Subscribed Services and return all Documentation to Rubicon. Upon termination of this Agreement, City shall also return to Rubicon or destroy all copies of Rubicon’s Trade Secrets and Confidential Information in every form. Upon request of Rubicon, City agrees to certify in writing to Rubicon that it and each of its Affiliates have performed the foregoing obligations. Sections 1, 4, 5.4, 6.2, 6.3, and 7, 8, 10 and 11 shall survive any termination of this Agreement in accordance with their respective terms. In the event of any termination hereunder, City shall not be entitled to any refund of any payments made by City.

6. Representations and Warranties.

6.1 Services Warranty. Provided that City notifies Rubicon of the non-conformance within the warranty period, and subject to the limitations set forth herein, Rubicon warrants that the Subscribed Services will be provided substantially in accordance with the applicable Documentation for a period of ninety (90) days from the date such Subscribed Services are first provided. No specific result from the provision of Subscribed Services is assured or guaranteed. In the event of any breach of the foregoing warranty, Rubicon shall, at its option and as City’s sole and exclusive remedy, (a) re-perform the Subscribed Services which were not performed as warranted at no additional charge; or (b) in the event Rubicon is unable to re-perform such Subscribed Services after exercising commercially reasonable efforts to do so, refund the fees paid to Rubicon for the Subscribed Services which were not performed as warranted. Notwithstanding the foregoing, Rubicon shall have no obligation to provide the warranty services described in this Section 6.1 if: (i) the performance failure is at least partially attributable to City’s deviation from applicable operating instructions or failure to perform City’s obligations set forth in this Agreement; or (ii) City or any other person or entity (other than Rubicon) has modified the Subscribed Services.

6.2 City Acknowledgment. City acknowledges and agrees that it has made its own evaluation in deciding to subscribe for the Subscribed Services. The warranties provided in this Agreement extend solely to City and to no other person or entity whatsoever. Without limiting the foregoing, Rubicon is not responsible for the results that may be obtained from use of the Subscribed Services.

6.3 DISCLAIMERS. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, RUBICON MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), WITH RESPECT TO THE SUBSCRIBED SERVICES, THE SYSTEM OR ANY OTHER SERVICES PROVIDED PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, PROFESSIONAL SERVICES. RUBICON EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OF TRADE, AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. RUBICON DOES NOT WARRANT THAT THE SUBSCRIBED SERVICES, SYSTEM OR OTHER SERVICES ARE OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE SUBSCRIBED SERVICES, SYSTEM OR OTHER SERVICES WILL BE UNINTERRUPTED OR THAT ALL ERRORS OR ISSUES WITH THE SUBSCRIBED SERVICES, SYSTEM OR OTHER SERVICES CAN OR WILL BE CORRECTED.

7. **Confidentiality.**

7.1 **Confidentiality.** Each party (the “Receiving Party”) acknowledges that it will have access to Confidential Information and Trade Secrets of the other party (the “Disclosing Party”). For purposes of this Agreement, “Trade Secrets” means information, without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and “Confidential Information” means information, other than Trade Secrets, that is of value to Disclosing Party and is treated as confidential. Rubicon’s Trade Secrets and Confidential Information include, without limitation, the Subscribed Services, the System, the Documentation and object and source code for the Rubicon Software. The Receiving Party agrees to use the Trade Secrets and Confidential Information of the Disclosing Party solely for purposes of performing its obligations or exercising its rights under this Agreement. The Receiving Party agrees to discuss the Trade Secrets and Confidential information of the Disclosing Party only with, and to transmit the Trade Secrets and Confidential Information only to, those officers, employees and consultants of the Receiving Party who have a need to know the Trade Secrets or Confidential Information for the purposes set forth herein and who have agreed in writing to treat such information as confidential on terms no less restrictive than as set forth in this Agreement. The parties acknowledge and agree that the terms of any previously executed confidentiality or nondisclosure agreements shall remain in effect with respect to the information exchanged thereunder.

7.2 **Security Precautions.** The Receiving Party shall take commercially reasonable security precautions to prevent unauthorized use and disclosure of the Trade Secrets and Confidential Information of the Disclosing Party and shall use at least the same degree of care the Receiving Party employs with respect to its own Trade Secrets and Confidential Information, but in no event less than a reasonable standard of care. The Receiving Party shall not permit unauthorized access to the Trade Secrets or Confidential Information of the Disclosing Party.

7.3 **Duration and Exceptions.** With regard to Confidential Information, the obligations in this Section 7 shall continue for the Term and for a period of five (5) years thereafter. With regard to Trade Secrets, the obligations in this Section 7 shall continue for so long as such information constitutes a trade secret under applicable law, but in no event less than the Term and for a period of five (5) years thereafter. The Receiving Party’s obligations with respect to Trade Secrets and Confidential Information of the Disclosing Party shall not apply to the extent such Trade Secrets or Confidential Information: (a) are previously known to the Receiving Party without restriction on disclosure; (b) cease to be secret or confidential except by reason of a breach of this Agreement by the Receiving Party; (c) are independently developed by the Receiving Party without reference to the Trade Secrets or Confidential Information of the Disclosing Party; or (d) were received from a third party without obligations of confidence and without breach of this Agreement. In addition, the Receiving Party may disclose Trade Secrets and Confidential Information of the Disclosing Party to the extent such disclosure is required by applicable law or by any governmental authority, provided the Receiving Party notifies the Disclosing Party, if permitted by law, of the applicable legal requirements before such disclosure occurs so as to enable the Disclosing Party to obtain such protection as may be available to preserve the confidentiality of such information.

8. **Intellectual Property Rights.**

8.1 **Rubicon’s Intellectual Property.** Rubicon (or its licensors) retains title to the Subscribed Services, System, and Documentation, and all modifications, alterations, derivative works, and enhancements thereto, and all copies thereof and Intellectual Property Rights therein. Except as specified herein, Client does not acquire any rights, express or implied, in the Subscribed Services, System or Documentation, and has no right to commercialize or transfer the Subscribed Services, System or Documentation, in whole or in part. No license, right or Intellectual Property Right in any Rubicon trademark, trade name or service mark is granted pursuant to this Agreement. Subject only to the following, title to all Work Product will at all times remain the sole and exclusive property of Rubicon or its licensors; provided that Rubicon shall not obtain any ownership rights in any City Content provided by, or on behalf of, City. Upon request, City agrees to execute such documents as may be reasonably requested by Rubicon to secure Rubicon’s rights in and to the foregoing. Rubicon hereby grants City during the term of the applicable Order a non-exclusive, royalty free (subject only to the fees provided for in a Statement of Work), limited right and license to copy, use, modify and sub-license all Work Product.

8.2 **City Content.** City shall own all City Content. City shall have sole responsibility for the accuracy, completeness, quality, integrity, legality, reliability, timeliness, appropriateness, and intellectual property ownership and right to use all City Content, and Rubicon shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store City Content for any reason. Rubicon does not warrant the correctness, completeness, merchantability or fitness for a particular purpose of any City Content. In the event this Agreement is terminated (other than by reason of City’s breach), Rubicon will make available to City a file of the City Content in its possession, if any, within thirty (30) following City’s

request; provided such request is made within thirty (30) days following termination of the Agreement. Rubicon reserves the right to (a) withhold, remove and/or discard City Content in its possession, if any, in the event City breaches this Agreement, including, without limitation, non-payment of fees and charges; and (b) purge and delete City Content, if any, in its possession if Client fails to request such Client Data within thirty (30) days following termination of this Agreement.

8.3 License to City Content. City hereby grants to Rubicon the non-exclusive right and license to (a) receive, retrieve, process, use and transmit any City Content necessary or reasonably desirable to perform the Subscribed Services or other services; (b) use, copy, manipulate and store any City Content that will be archived, stored or otherwise transmitted in connection with the Subscribed Services or other services; and (c) to aggregate City Content and data with content and data from other clients ("Data Aggregations") for purposes including, without limitation, product and service development and commercialization and quality improvement initiatives. Rubicon will redact City Content in such a way as to not divulge City's Confidential Information or Trade Secrets. All Data Aggregations will be the sole and exclusive property of Rubicon.

8.4 License to the Marks. City hereby grants to Rubicon the worldwide, non-exclusive limited right and license during the Term to use the Marks in connection with performance of the Subscribed Services and its other obligations under this Agreement.

9. Defense and Indemnification.

9.1 Limited Covenant to Defend. Rubicon will defend any third party claim brought against City in the United States to the extent that the claim, if true, would constitute an infringement or misappropriation by the Subscribed Services of any valid and subsisting patent or copyright (a) recognized under the laws of the United States; and (b) of which Rubicon had actual knowledge; provided, however, that: (i) City immediately advises Rubicon of the claim upon learning of the assertion of the claim; and (ii) Rubicon is given the sole right to control the defense and/or settlement of the claim, in litigation or otherwise.

9.2 Injunctions Obtained by Third Parties. If a third-party infringement claim, of which Rubicon is notified in accordance with Section 9.1 (or of which Rubicon is otherwise aware or believe is likely) results, or in Rubicon's opinion is likely to result, in an injunction prohibiting City from continued use of the Subscribed Services that is the subject matter of the claim, then Rubicon may, in its sole discretion and at its expense: (a) procure for City the right to continue to use the Subscribed Services that are the subject matter of the claim; (b) replace or modify the Subscribed Services that are the subject matter of the claim to make them non-infringing, but, where reasonably possible, preserving the functionality of such Subscribed Services; or (c) if the foregoing remedies are not commercially practical, suspend or terminate access to the infringing Subscribed Services.

9.3 Exceptions to Duties to Defend and Indemnify. Notwithstanding any other provisions hereof, Rubicon shall have no obligation to indemnify or defend City for any third party claim pursuant to this Section 9, nor be required to pay losses, damages or expenses under this Section 9, if City agrees to settle any such claim without the prior written consent of Rubicon, or if the claim arises out of, in whole or in part: (a) a modification of the Subscribed Services by anyone other than Rubicon; (b) use of the Subscribed Services other than in accordance with the Documentation or the terms of this Agreement; (c) use of a release of the Subscribed Services without having implemented updates, the use of which would have cured the alleged infringement; (d) any third party software or service; (e) use of the Subscribed Services in combination with Third Party Offering or any other third party hardware, software, database or materials where, absent such combination, the Subscribed Services would not be infringing; or (f) City's negligence or willful misconduct.

9.4 Sole Obligation. This Section 9 states Rubicon's sole obligation, and City's sole and exclusive remedy, with respect to infringement of proprietary and Intellectual Property Rights. Notwithstanding anything else in this Section 9, Rubicon's aggregate liability for indemnification pursuant to this Section 9 shall not exceed the original subscription fees paid by City to Rubicon for the infringing Subscribed Services.

10. Limitation on Liability.

10.1 EXCLUSION OF DAMAGES. IN NO EVENT SHALL RUBICON OR ANY OF ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE, DELAY OR MALFUNCTION), EVEN IF RUBICON HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

10.2 LIMITATION OF LIABILITY. RUBICON TOTAL AGGREGATE LIABILITY TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR ANY AND ALL CLAIMS AND DAMAGES ARISING FROM OR OUT OF THIS AGREEMENT (WHETHER ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED THE FEES PAID BY CLIENT TO RUBICON .

10.3 EXCEPTIONS. THE FOREGOING LIMITATIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.

11. Miscellaneous.

11.1 Dispute Resolution: Governing Law. The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provision. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMCA 1978, § 38-3-1 (G). By execution of this Agreement, Rubicon 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.

11.2 Force Majeure. Neither party will be liable for any loss, damage or delay resulting from any event beyond such party's reasonable control (a "Force Majeure Event"), and delivery and performance dates will be extended to the extent of any delays resulting from any such Force Majeure Event. Each party will promptly notify the other upon becoming aware that a Force Majeure Event has occurred or is likely to occur and will use commercially reasonable efforts to minimize any resulting delay in or interference with the performance of its obligations under this Agreement. Notwithstanding any other provision of this Section 11.2, a Force Majeure Event shall not relieve City of its obligations to pay monies due and owing to Rubicon hereunder.

11.3 Assignment. Neither party shall assign, transfer, or otherwise delegate any of its rights, duties, or obligations under this Agreement in whole or in part to any individual, firm or corporation without the prior written consent of the other party, which consent shall not be unreasonably withheld, and any attempted assignment (whether by operation of law or otherwise) shall be void; except that Rubicon may delegate any of its rights, duties, or obligations under this Agreement to one or more of its affiliates. Notwithstanding the foregoing, either party may assign its rights, duties, and obligations hereunder, without approval of the other party, to a party that succeeds to all or substantially all of its assets or business (whether by sale, merger, operation of law or otherwise), so long as the assignee, and the City agrees in writing to be bound by the terms and conditions of this Agreement; provided, however, that any such assignment by City shall be subject to any fee adjustments specified in an Order, or that may be necessary because of City's use of the subscribed Services beyond the licensing parameters specified in the applicable Order; and further provided that no such assignment may be to a competitor of Rubicon. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

11.4 Independent Contractors. Nothing in this Agreement shall be construed to create an agency, joint venture, partnership or other form of business association between the parties. Neither party has the right or authority to make any contract, representation or binding promise of any nature on behalf of the other party, and neither party shall hold itself out as having such right or authority.

11.5 No Waiver. The failure on the part of either party to exercise any right or remedy hereunder will not operate as further waiver of such right or remedy in the future or any other right or remedy.

11.6 Severability. In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision in any other circumstances, will not be affected thereby.

11.7 Counterparts. This Agreement may be executed in duplicate and either copy or both copies are considered originals.

11.8 Notices. All official notices (including any notices regarding breach, termination, renewal, etc.) required or permitted hereunder shall be in writing and shall be delivered personally or sent by certified, registered mail or next day express mail or courier, postage prepaid. Any such notice shall be deemed given (a) when so delivered personally; (b) three (3) days after, when sent by certified or registered mail; or (c) the day after, when sent by next day express mail or courier, as follows: (i) if to City, to it at: 1142 Siler Road, Santa Fe, NM 87507 attention Environmental Services Division Director; (ii) if to Rubicon, to it at: Rubicon Global, LLC, 950 East Paces Ferry Road, Ste 1900, Atlanta, GA 30326. In addition, routine, non-contractual notices, consents and approvals (including support) given under this Agreement may be delivered in writing as provided above or through electronic mail or other electronic record addressed to the parties identified herein.

11.9 Marketing. City agrees that Rubicon may reference City’s execution of this Agreement and its status as a user of the Subscribed Services in marketing materials and in sales presentations. Rubicon may use City’s Marks in connection with such usage upon written approval by the City.

11.10 Entire Agreement. This Agreement (including any Orders, Exhibits, Statements of Work and attachments, which are hereby incorporated herein by reference) constitute the final and entire agreement between the parties, and supersedes all prior written and oral agreements, understandings, or communications with respect to the subject matter of this Agreement.

11.11 Cooperative Purchasing. Rubicon and the City agree that other government entities (including but not limited to municipalities, counties, states, public utilities, non-profit hospitals, educational institutes, special governmental agencies, and non-profit corporations) that allow cooperative purchasing may utilize the terms of this agreement to procure Rubicon’s software and services.

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Master Software Services Agreement and to bind their respective party hereto.

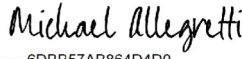
CITY OF SANTA FE, NEW MEXICO

Authorized Signature

Printed Name and Title

Date: _____

RUBICON GLOBAL, LLC

DocuSigned by:

6DBB57AB864D4D0...

Authorized Signature Michael Allegretti Chief Strategy Officer

Printed Name and Title
Date: 5/23/2022 | 11:01 AM EDT

ADDENDUM A

This agreement incorporates the additional terms and conditions in the addendum between RUBICON (RUBICON) and the CITY OF SANTA FE (CITY).

TERMINATION

This Agreement may be terminated by City upon 30 days written notice to the RUBICON.

INDEMNIFICATION

RUBICON shall indemnify, hold harmless and defend CITY from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from RUBICON's performance under this Agreement as well as the performance of RUBICON's employees, agents, representatives and subcontractor.

NEW MEXICO TORT CLAIMS ACT

Any liability incurred by CITY 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. 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.

APPLICABLE LAW; CHOICE OF LAW; VENUE

RUBICON shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of CITY of Santa Fe. In any action, suit or legal dispute arising from this Agreement, RUBICON agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by CITY for the performance of this Agreement. If sufficient appropriations and authorization are not made by CITY, this Agreement shall terminate upon written notice being given by CITY to RUBICON. The CITY's decision as to whether sufficient appropriations are available shall be accepted by RUBICON and shall be final.

RELEASE

RUBICON, upon acceptance of 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. RUBICON agrees not to purport to bind CITY to any obligation not assumed herein by CITY unless RUBICON has express written authority to do so, and then only within the strict limits of that authority.

INSURANCE

RUBICON 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. RUBICON shall furnish CITY with proof of insurance of RUBICON's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than CITY and RUBICON. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

Signature Lines required:

City of Santa Fe:

Alan Webber, Mayor

Date: _____

DocuSigned by:
Michael Allegretti
6DBB57AB864D4D00
Name & Title Michael Allegretti Chief Strategy Officer
Date: 5/23/2022 | 11:01 AM EDT
CRS# 03-396297-00-9
City of Santa Fe Business
Registration # _____

Attest:

Kristine Bustos Mihelcic, City Clerk

City Attorney's Office:

Marcos Martinez

Marcos Martinez (May 23, 2022 08:14 MDT)
Senior Assistant City Attorney

Approved for Finances:

Alexis Lotero, Interim Finance Director

Org/Obj 5100331.510310 *AH*
AH

Exhibit A
Professional Services Terms

These Professional Services Terms are hereby annexed to and made a part of the Master Software Services Agreement (the "Agreement") between Rubicon and City. In the event any provisions of these Professional Services Terms contradict or are inconsistent with the provisions of the Agreement, the provisions these Professional Services Terms shall prevail and govern.

1. Services. Upon approval by the City, Rubicon will provide consultants to perform implementation, consulting and training services to the extent such Professional Services are identified in any mutually agreed upon Statement of Work more fully describing the project assumptions, specifications, scope, work plan, responsibilities, duration and fees for such Professional Services, which Statements of Work shall reference the Agreement and be sequentially numbered. Any modifications to a Statement of Work shall be made by written change order, in Rubicon's standard form, executed by both parties to this Agreement (a "Change Order"). Each Change Order complying with this Section shall be deemed to be an amendment to the applicable Statement of Work to which it applies and shall become a part thereof.
2. Cooperation. All Professional Services will be coordinated with the designated City Project Coordinator, as identified in each Statement of Work. City shall cooperate and provide information as is reasonably necessary or desirable for the timely completion of the Professional Services. City shall at all times make available its functional and/or information technology personnel as reasonably required or desirable for Rubicon to perform the Professional Services, and City shall timely fulfill its obligations and responsibilities set forth in each Statement of Work. To the extent required or as specified in any Statement of Work or work plan, City shall provide Rubicon with access to its facilities, software, systems, data, information and support materials to perform the Professional Services. City acknowledges that Rubicon's performance hereunder is contingent on City's timely and effective performance of City's responsibilities and City's timely decisions and approvals. If City fails to provide required information and/or make decisions as agreed or in a reasonably expeditious and timely manner, and such failure results in a delay in delivery of any deliverables or Work Product or to the overall project, City agrees to extend the time frame for delivery of the deliverable or project, as applicable, on a day for day basis and compensate Rubicon for any additional work required as a result of such delay.
3. Project Control. Rubicon shall have the sole right to supervise, manage, contract, direct, procure, perform, or cause to be performed, all Professional Services performed by it pursuant to a Statement of Work. Rubicon may subcontract all or a portion of the Professional Services to a qualified third party. In recognition that Rubicon personnel may perform similar services for third parties, this Agreement shall not prevent Rubicon from providing services or developing materials that may be perceived as competitive with those developed or provided hereunder, subject to the confidentiality provisions of the Agreement.
4. Compensation. All Professional Services will be provided by Rubicon on a time, materials and expense basis at Rubicon's then current rates, unless otherwise agreed by the parties in a Statement of Work.
5. Termination. These Professional Services Terms shall be effective as of the Effective Date of the Agreement and shall remain in effect until (a) terminated by either party upon thirty (30) days prior written notice in the event no Statement of Work is outstanding; or (b) as provided in the Agreement, whichever is earlier.
6. Additional Services. Any services performed by Rubicon at the request of City that are outside the scope of any Professional Services described in the applicable Statement of Work shall be governed by these terms and will be billed at Rubicon's then current rates. All required services by Rubicon outside the scope of any Professional Services will need to be approved in writing by the City and follow City procurement requirements.

**ORDER NUMBER 1 TO THE
MASTER SOFTWARE SERVICES AGREEMENT**

This independent Order Number 1 (“Order”) to the Master Software Services Agreement is made, and shall not become effective until approved in writing by the City, by and between Rubicon Global, LLC (“Rubicon”) and the CITY OF SANTA FE, NEW MEXICO (“City”). This Order is part of the Master Software Services Agreement between the parties, dated when signed by the City (“Agreement”). Capitalized terms used and not otherwise defined in this Order shall have the respective meanings set forth in the Agreement.

1. The Subscribed Services.

DESCRIPTION	COST
Year 1 Cost	\$128,883.20
Year 2 Cost	\$128,883.20
Year 3 Cost	\$128,883.20
Year 4 Cost	\$128,883.20
Total Cost (48-month contract)	\$515,532.80

The complete pricing proposal has been included in this package as Addendum B.

2. Other Charges. As may be agreed to by the parties in writing from time to time.

3. Payment Terms. The parties agree that the fees for the above services shall be a total of FIVE HUNDRED FIFTEEN THOUSAND, FIVE HUNDRED THIRTY-TWO DOLLARS AND EIGHTY CENTS (\$515,532.80) payable as follows (“Fee”):

a. US\$10,740.27 due monthly as described in Section 4 Paragraph 4., for services rendered during the term of the agreement described in Section 5, Paragraph 5.1, and 5.2.

4. Renewal. **This agreement shall begin on the date approved by the City, and end on June 30, 2027** In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

5. Separate Agreement. Rubicon may provide Professional Services regarding the Subscribed Services provided hereunder pursuant to a Statement of Work to the Professional Services Terms executed between the parties. City understands and agrees that such Professional Services and associated Statements of Work that may be signed are separate and independent contractual obligations from any Order or amendment thereto relating to the access and use of the Subscribed Services. City shall not withhold payments that are due and payable pursuant to this Order or any other Order(s) or amendment(s) thereto because of the status of Professional Services performed under any Statement of Work.

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Order and to bind their respective party hereto.

ACCEPTED BY:

CITY OF SANTA FE, NM

Authorized Signature

Printed Name and Title

ACCEPTED BY:

RUBICON GLOBAL, LLC

Authorized Signature

Printed Name and Title

ADDENDUM B

SERVICE AVAILABILITY

RUBICONSmartCity software is hosted externally using Amazon Web Services (AWS).

Below please find our standard Service Level Availability Policy (SLA):

Rubicon's Service Availability commitment for a given calendar month is **99.5%**. Service Availability is calculated per month as follows: $(\text{Total time} - \text{Unplanned Outage} - \text{Planned Maintenance}) / (\text{Total} - \text{Planned Maintenance}) \times 100$

- Definitions:
 - *Total time* is the total minutes in the month
 - *Unplanned Outage* is total minutes unavailable due to an unplanned outage in the month
 - *Planned Maintenance* is total minutes of planned maintenance in the month. Currently, Planned Maintenance is four (4) hours for weekly maintenance, four (4) hours for monthly maintenance, four (4) hours for quarterly maintenance. Rubicon's current weekly maintenance begins at 10 pm (Eastern) on Fridays; monthly maintenance begins at 2:00 am (Eastern) on Saturday; and quarterly maintenance begins at 6:00am (Eastern) on Saturday. All times are subject to change upon reasonable notice. If actual maintenance exceeds the time allotted for Planned Maintenance, it is considered an Unplanned Outage. If actual maintenance is less than time allotted for Planned Maintenance, that time is not applied as a credit to offset any Unplanned Outage time for the month. The measurement point for Service Availability is the availability of the Rubicon Service. Customer may request an availability report once per month.
- Service Response
 - Rubicon Production Support and Service Level Availability Policy (SLA)
 - Rubicon's Service Response commitment is: (1) not less than 50% of (online) transactions in two (2) seconds or less and not more than 10% in five (5) seconds or more.
 - Service Response is the processing time of the Rubicon Production Service in the Amazon Web Service data center to complete transactions submitted from a web browser.
 - The time required to complete the request will be measured from the point in time when the request has been fully received by the encryption endpoint in the Amazon Web Service data center, until such time as the response begins to be returned for transmission to Customer. Customer may request a response time report not more than once per month via email.
- Disaster Recovery
 - Rubicon commits to a recovery time objective of twelve (12) hours - measured from the time that the Rubicon Service becomes unavailable until it is available again. Rubicon commits to a recovery point objective of one (1) hour - measured from the time that the first transaction is lost until the Rubicon Service became unavailable.
 - Rubicon will test the disaster recovery plan once every six months and will make available a written summary of the results of the most recent test available to Customer upon its request made via the Customer Center.
- Severity Level Determination Submittal
 - Customer shall reasonably self-diagnose each support issue and recommend to Rubicon an appropriate Severity Level designation. Rubicon shall validate Customer's Severity Level designation or notify Customer of a proposed change in the Severity Level designation to a higher or lower level with justification for the proposal. In the event of a conflict regarding the appropriate Severity Level designation, each party shall promptly escalate such conflict to its management team for resolution through consultation between the parties' management, during which time the parties shall continue to handle the support issue in accordance with the Rubicon Severity Level designation. In the rare case a conflict requires a management discussion, both parties shall be available within one hour of the escalation.

- Support Issue Production Levels - Response and Escalation
 - Response Time is the period from the time the Production case was logged in the Customer Center until Rubicon responds to Customer and/or escalation within Rubicon, as appropriate. Because of the widely varying nature of issues, it is not possible to provide specific resolution commitments.
 - SEVERITY LEVEL 1
 - Definition: The Rubicon Service is unavailable for all users
 - Rubicon Response Commitment: Rubicon will respond within one (1) hour of receipt of case.
 - Resolution: Rubicon will work to resolve the problem until the Service is returned to normal operation. Customer will be notified of status changes.
 - Escalation: If the problem has not been resolved within one (1) hour, Rubicon will escalate the problem within the appropriate Rubicon organization. The escalated problem will have higher priority than ongoing support, development or operations initiatives.
 - Customer Response Commitment: Customer shall remain accessible by phone for troubleshooting from the time a Severity 1 issue is logged until such time as it is resolved.
 - SEVERITY LEVEL 2
 - Definition: The Rubicon Service contains a bug that prevents Customer from executing one or more critical business processes with a significant impact and no workaround exists.
 - Rubicon Response Commitment: Rubicon will respond within one (1) hour of receipt of case.
 - Resolution: Rubicon will work to resolve the problem until the Service is returned to normal operation. Customer will be notified of status changes.
 - Escalation: If the problem has not been resolved within four (4) hours.; Customer may request that Rubicon escalate the problem within the appropriate Rubicon organization where the escalated problem will have higher priority than ongoing development or operations initiatives.
 - Customer Response Commitment: Customer shall remain accessible by phone for troubleshooting from the time a Severity 2 issue is logged until such time as it is resolved.
 - SEVERITY LEVEL 3
 - Definition: The Rubicon Service contains a bug that prevents Customer from executing one or more important business processes. A workaround exists but is not optimal.
 - Rubicon Response Commitment: Rubicon will respond within four (4) hours of receipt of case.
 - Resolution: If resolution requires a Rubicon bug fix, Rubicon will add the bug fix to its development queue for future Update and suggest potential workaround until the problem is resolved in a future Update. Customer will be notified of status changes.
 - Escalation: If the problem has not been resolved within one (1) week, Customer may request that Rubicon escalate the problem to the appropriate Rubicon organization .
 - Customer Response Commitment: Customer will respond to Rubicon requests for additional information and implement recommended solutions in a timely manner.
 - SEVERITY LEVEL 4:

- Definition: The Rubicon Service contains an issue that may disrupt important business processes where a workaround is available or functionality is not imperative to Customer's business operations.
 - Rubicon Response Commitment: Rubicon will respond within twenty-four (24) hour of receipt of case.
 - Resolution: If resolution requires a Rubicon bug fix, Rubicon will add the bug fix to its development queue for a future Update and suggest potential workaround until the problem is resolved in a future Update. Customer will be notified of status changes.
 - Escalation: None.
 - Customer Response Commitment: Customer will respond to Rubicon requests for additional information and implement recommended solutions in a timely manner.
- CUSTOMER CARE or OPERATIONS REQUEST (Severity Level 5):
 - Definition: Non-system issues such as Named Support Contact change, requests for SLA reports or business documents, etc. If necessary to open a Support case requesting assistance, Severity 5 should be used.
 - Rubicon Response Commitment: Rubicon will respond within twenty-four (24) hours of receipt of case.
 - Resolution Commitment: Rubicon will respond to request. Customer will be notified of status changes.
 - Escalation: None.
 - Customer Commitment: Customer will respond to Rubicon requests for additional information in a timely manner.
- Rubicon Support Scope
 - Rubicon will support functionality that is developed by Rubicon and under its direct control. For any other functionality, and/or issues or errors in the Rubicon Service caused by issues, errors and/or changes in Customer's information systems and/or third party products or services, Rubicon may assist Customer and its third party providers in diagnosing and resolving issues or errors but Customer acknowledges that these matters are outside of Rubicon's support obligations. Service Level failures attributable to (i) Customers acts or omissions; and (ii) force majeure events shall be excused.
- Rubicon Service Credit
 - In the event of a failure by Rubicon to meet the Service Availability and Service Response minimums as set forth in the SLA, as Customer's sole and exclusive remedy, at Customer's request, Rubicon shall provide service credits in accordance with the following:
 - First month in any rolling six (6) month period: 10% of the Subscription Fee paid for the applicable month for the affected Service
 - Second month in any rolling six (6) month period: 20% of the Subscription Fee paid for the applicable month for the affected Service
 - Third month in any rolling six (6) month period: 30% of the Subscription Fee paid for the applicable month for the affected Service
 - Fourth month in any rolling six (6) month period: 40% of the Subscription Fee paid for the applicable month for the affected Service
 - Fifth month in any rolling six (6) month period: 50% of the Subscription Fee paid for the applicable month for the affected Service or within thirty (30) days of such failure Customer shall have the option to terminate the entire Agreement and upon such termination Customer shall receive a refund of all prepaid subscription fees that are unearned as of the date such termination is effective.

- If more than one of the above (a through e) is triggered, Customer will be eligible for the greater amount for the applicable month only. Credits shall be deducted from subsequent invoices for subscription fees or other fees or, upon expiration or termination of the Agreement, paid to Customer directly.

ADDENDUM B

Statement of Work – RUBICONSmartCity™

Rubicon will outfit **56** of the City’s solid waste and recycling vehicles with the appropriate number of In-Cab-Interface (ICI) devices in order to provide insights into the City’s waste, recycling, yard waste, and bulk pick-up collection operations (the ICI total includes an additional allotment for Supervisor use). Rubicon can either provide all hardware and accompanying accessories for the ICI devices for all vehicles, or provide download licenses which allow the department to utilize existing City owned ICI devices.

- Monitor and collect real time data on the City’s solid waste, recycling, and bulk operations, capturing vehicle position, associated driver, route details & progress, and vehicle breadcrumbs on the Portal;
- Provide data insights on service verification, vehicle telematics, and driver performance;
- Log and photograph exceptions at the curb including, but not limited, cart not out, cart blocked, and bulk before /after photos;
- Report critical community issues – such as potholes, graffiti, branches, damaged public litter cans - via the In-Cab-Interface. Issues will be associated with a location and time stamp.
- Optimize bulk and other ad hoc, point to point routing, increasing the number of pick-ups per day;
- Provide overview of all routes, route progress, and route details through the Portal;
- Provide dynamic route information to City drivers via in-truck technology, including route progress, turn by turn directions, and voice over directions;
- Digitize existing operations including electronic pre / post-trip inspections, scale tickets, and route details;
- Improve accuracy and responsiveness to customer service requests in “real time”;
- Gather, review, and export data on route mileage, route start and stop time, percentage of completed stops, miles driven, stationary time, and more;
- Identify cost savings by optimizing routes, improving driver performance, and identifying efficiencies;

Rubicon’s team will work hand in hand with the Environmental Services Division to install (if necessary), instruct, and successfully deploy our solution. Rubicon will outfit the City’s solid waste and recycling vehicles with ICI devices and any required accessories. We will closely coordinate with City staff to ensure installation does not disrupt daily operations. In addition, our Customer Success team will conduct a series of stakeholder specific trainings onsite or remotely to ensure all necessary and applicable City drivers, dispatchers, supervisors, and managers all know how to use our technology. Our Customer Success team will be available to do additional remote and onsite training as needed by the City.

Rubicon will provide the City of Santa Fe with ongoing support delivered by our Customer Success Manager, whose mission is to deliver on our commitments to meet or exceed the City’s expectations. Rubicon will provide the City with numerous ways to contact the Customer Success Manager (i.e. phone, email, online help desk). This advocate is responsible for contract adherence, relationship health and continuous improvement, and will serve as an escalation point. The Customer Success Manager will also conduct consistent update calls with the City and provide support and training as needed throughout the lifetime of the contract.

Rubicon Deliverables:

- Provide all necessary hardware, software, installation, and training.
- Install all equipment or, in the case of City-led installation, advise the City on best method to install the equipment.
- Provide training to City staff on the equipment and portal and any maintenance required throughout the lifetime of the contract, where necessary.
- Monitor and service the hardware as needed to ensure it continues to function effectively for the lifetime of the contract.

- Provide analysis on this data as needed to deliver insights to the Environmental Services Division.

Pricing Details

The parties agree that the fees for the above services shall be a total of **\$515,532.80** payable as follows (“Fee”):

- a. **\$128,883.20.**
- b. **\$128,883.20 due upon the first anniversary of the agreement.**
- c. **\$128,883.20 due upon the second anniversary of the agreement.**
- d. **\$128,883.20 due upon the third anniversary of the agreement.**

30-days prior to the due dates Rubicon will provide an invoice to the City, and support the city in creating a purchase order.

Rubicon uses a Software-as-a-Service (SaaS) model for pricing. SaaS service models provide several advantages for the customer:

- Solution upgrades become available for customers automatically. Costs and effort associated with upgrades and new releases are lower than the traditional model that usually forces the user to buy an upgrade package and install it or pay for specialized services to get the environment upgraded.
- Reduce the costs for hardware and software licenses compared with the traditional model because service usually resides in shared or multi-user environments.
- Reduce the time spent on installation and configuration reducing issues that complicate software deployment.
- Reduce maintenance costs since Rubicon owns the environment and costs are split among all customers that use the solution.
- No hidden costs for additional services or features.

The proposed RUBICONSmartCity cost is for 56 vehicles in Santa Fe’s sanitation fleet. A breakdown of all costs have been included below:

56 Vehicles - Rubicon Provided Tablets		
	<i>UNITS</i>	<i>COST</i>
Total Annual Recurring		\$128,883.20
Portal & Mobile App Software License	56	\$73,608.00
Y Hardware (Pods)	56	\$10,483.20
X Hardware (Tablets)	53	\$44,792.00
Y1		\$128,883.20
Y2		\$128,883.20
Y3		\$128,883.20
Y4		\$128,883.20
PROMOTIONAL DISCOUNT TOTAL		\$515,532.80

What’s Included in Portal & Mobile App Software License: \$73,608.00 Annually

- Unlimited City of Santa Fe staff access to the RUBICONSmartCity Portal (Software)
- External hosting in a secure cloud environment

- All personnel training, hardware and software maintenance and warranty
- Access to all currently available features and software updates and upgrades
 - This includes in field supervisor, street sweeper, and snow removal Mobile App and Portal developments as they become publicly available

What’s Included in Rubicon Y Hardware (Rubicon Provided Pod): \$10,483.20 Annually

- Pod devices (Geotab GO9 AVL/Telematics devices) for 56 solid waste vehicles.
- All mobile data services and costs
- All hardware maintenance and warranty

What’s Included in X Hardware (Rubicon Provided Tablets): \$44,792.00 Annually

- In-Cab-Interfaces (iPad Mini Tablets) to be used across the entirety of the City’s solid waste operation (53 devices)
- All mobile data services and costs
- All required charging cables, charging stations, iPad cases, and iPad mounts
- Warranty includes up to 10 replacement In-Cab-Interface devices per year

What’s Included in Rubicon Y Installation: N/A

- Rubicon will install 56 in-vehicle GO9 telematics devices in the City of Santa Fe’s solid waste vehicles
- Rubicon will utilize Geotab certified vendor to complete all of the necessary G09 installations

The City can opt to extend this contract at their discretion. Any extensions or renewals beyond the 4th payment will be charged at the recurring annual cost of **\$128,883.20**.

HGAC Add-Ons for RUBICONSmartCity

Should the City wish to add additional technology, devices, or services during the course of the contract, the City may purchase these at their discretion at any time during the lifetime of this agreement. The cost for additional technology, devices, and or services is listed as follows:

Additional Device Costs	
<i>Item/Service</i>	<i>COST</i>
Y Pod	\$187/yr
iPhone w/Software	\$2,3400/yr
Software License Only	\$1,368/yr
Fleet Optimization	\$2,500/vehicle
API Integration	250/hr



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # Pending3203377

Contractor: Rubicon

Description: on-board routing and ticketing

Contract Agreement Lease / Rent Amendment

Term Start Date: Upon approval Term End Date: 6/30/26

Approved by Council Date: Pending

Contract / Lease: \$128,883.20 plus NMGRT for FY23 (\$515,532.80 Total for a 4 year 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)

There is no history on this contract.
Contract is new.

3. **Procurement History:** _____

JoAnn Lovato for F.D.
JoAnn Lovato for F.D. (May 24, 2022 16:53 MDT)

May 24, 2022

Purchasing Officer Review: _____ Date: _____
Comment & Exceptions: Reviewed 3.24.22. Original contract procured in 2018 via RFP. CoOp agreement current since 2019.

4. **Funding Source:** ESD Enterprise Fund **Org / Object:** 5100031.510310

Andy Hopkins
Andy Hopkins (May 24, 2022 12:00 MDT)

May 24, 2022

Budget Officer Approval: _____ Date: _____
Comment & Exceptions: _____

Staff Contact who completed this form: _____ Phone # _____

Email: _____

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



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

BUSINESS REGISTRATION

Business Name: RUBICON GLOBAL, LLC
DBA: RUBICON GLOBAL, LLC

Business Location: 950 E PACES FERRY RD STE. 1900
ATLANTA, GA 30326

Owner: RUBICON GLOBAL, LLC

License Number: 232783

Issued Date: May 19, 2022

Expiration Date: May 19, 2023

CRS Number: 03588295006

License Type: Business License - Renewable

Classification: Out of Jurisdiction Business License

Fees Paid: \$10.00

RUBICON GLOBAL, LLC
100 W MAIN ST STE. 610
LEXINGTON, KY 40507

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)

4/15/2022

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 ABD Insurance and Financial Services, Inc. 777 Mariners Island Blvd Suite 250 San Mateo, CA 94404 www.theabdteam.com	CONTACT NAME: Cert Request PHONE (A/C, No, Ext): 650-488-8565 E-MAIL ADDRESS: TechCertRequest@theabdteam.com	FAX (A/C, No):	
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED Rubicon Technologies, LLC 950 E Paces Ferry Rd, Ste 1900 Atlanta GA 30326	INSURER A: Atlantic Specialty Insurance Company		27154
	INSURER B:		
	INSURER C: Allied World Assurance Co (U.S.) Inc.		19489
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES

CERTIFICATE NUMBER: 67732165

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>		711-01-70-74-0003	4/4/2022	4/4/2023	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ 15,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			711-01-70-74-0003	4/4/2022	4/4/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	<input checked="" type="checkbox"/>		711-01-70-74-0003	4/4/2022	4/4/2023	EACH OCCURRENCE	\$ 15,000,000
							AGGREGATE	\$ 15,000,000
								\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			406-04-67-35-0002	4/4/2022	4/4/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> 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
C	Pollution Liability			03112806	4/4/2022	4/4/2023	Limit \$10,000,000 Retention \$25,000	

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

RE: All Operations of the Named Insured.
 City of Santa Fe New Mexico is additional insured as respects General Liability policy but only to the extent required by written contract or written agreement.

CERTIFICATE HOLDER**CANCELLATION**

City of Santa Fe New Mexico
 ATTN: Kayla Conner
 1142 Siler Road, Building A
 Santa Fe, NM 87507

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

Rod Sockolov

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ACORD 25 (2016/03)

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CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: RUBICON

Procurement Title: Cooperative Agreement H-GAC Buy under Contract FL03-21

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 Staff Name Kayla Conner

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: 

Kayla Conner Kayla Conner (May 18, 2022 09:42 MDT) PROJECT SPECIALIST 5/10/2022

Department Rep Printed Name (attesting that all information included) Title Date

JoAnn Lovato for F.D. JoAnn Lovato for F.D. (May 24, 2022 16:53 MDT) Contract Supervisor May 24, 2022

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.



RUBICON

April 18, 2022

Kayla Conner
City of Santa Fe, New Mexico
200 Lincoln Ave
P.O. Box 909
Santa Fe, NM, 87504-0909

Dear Ms. Conner,

Rubicon is listed on H-GAC Buy under Contract FL03-21. This contract expires on 02/28/2023, at which time Rubicon will be required to resubmit a bid to continue its listing on H-GAC. Rubicon has been listed on H-GAC since 2019, and it expects to maintain a contractual relationship with H-GAC for the foreseeable future. Per HGAC's policy, the end date of Rubicon's contract with the End User can extend past the end date of Rubicon's contract with H-GAC. The End User can place POs for the duration of its contract with Rubicon even if it is past the end date of Rubicon's current contract with H-GAC.

Rubicon's contract with HGAC contains a "Most Favored Customer" clause, which requires Rubicon to "provide its most favorable pricing and terms to H-GAC." By using HGAC, City of Santa Fe benefits from this agreement.

Sincerely,

DocuSigned by:

6DBB57AB864D4D0...
Michael Allegretti
Chief Strategy Officer
Rubicon Global, LLC

4/18/2022 | 6:54 PM EDT

H-GAC

Houston-Galveston Area Council

P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Cooperative Agreement - Rubicon Global, LLC - Public Services - ID: 6309

GENERAL PROVISIONS

This Agreement is made and entered into, by and between the Houston-Galveston Area Council hereinafter referred to as H-GAC having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and Rubicon Global, LLC, hereinafter referred to as the Contractor, having its principal place of business at 950 East Paces Ferry Road, Suite 1900, Atlanta, GA 30326.

WITNESSETH:

WHEREAS, H-GAC hereby engages the Contractor to perform certain services in accordance with the specifications of the Agreement; and

WHEREAS, the Contractor has agreed to perform such services in accordance with the specifications of the Agreement;

NOW, THEREFORE, H-GAC and the Contractor do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The Contractor warrants and assures H-GAC that it possesses adequate legal authority to enter into this Agreement. The Contractor's governing body, where applicable, has authorized the signatory official(s) to enter into this Agreement and bind the Contractor to the terms of this Agreement and any subsequent amendments hereto.

ARTICLE 2: APPLICABLE LAWS

The Contractor agrees to conduct all activities under this Agreement in accordance with all federal laws, executive orders, policies, procedures, applicable rules, regulations, directives, standards, ordinances, and laws, in effect or promulgated during the term of this Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish H-GAC with satisfactory proof of its compliance therewith.

ARTICLE 3: PUBLIC INFORMATION

Except as stated below, all materials submitted to H-GAC, including any attachments, appendices, or other information submitted as a part of a submission or Agreement, are considered public information, and become the property of H-GAC upon submission and may be reprinted, published, or distributed in any manner by H-GAC according to open records laws, requirements of the US Department of Labor and the State of Texas, and H-GAC policies and procedures. In the event the Contractor wishes to claim portions of the response are not subject to the Texas Public Information Act, it shall so; however, the determination of the Texas Attorney General as to whether such information must be disclosed upon a public request shall be binding on the Contractor. H-GAC will request such a determination only if Contractor bears all costs for preparation of the submission. H-GAC is not responsible for the return of creative examples of work submitted. H-GAC will not be held accountable if material from submissions is obtained without the written consent of the contractor by parties other than H-GAC, at any time during the evaluation process.

ARTICLE 4: INDEPENDENT CONTRACTOR

The execution of this Agreement and the rendering of services prescribed by this Agreement do not change the independent status of H-GAC or the Contractor. No provision of this Agreement or act of H-GAC in performance of the Agreement shall be construed as making the Contractor the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of the Contractor are subject to the exclusive control and supervision of the Contractor. The Contractor is solely responsible for employee related disputes and discrepancies, including employee payrolls and any claims arising therefrom.

ARTICLE 5: ANTI-COMPETITIVE BEHAVIOR

Contractor will not collude, in any manner, or engage in any practice which may restrict or eliminate competition or otherwise restrain trade.

ARTICLE 6: SUSPENSION AND DEBARMENT

Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3 CFR Part 1989 Comp. p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to the Federal Rule above, Respondent certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas and at all times during the term of the Contract neither it nor its principals will be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas Respondent shall immediately provide the written notice to H-GAC if at any time the Respondent learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. H-GAC may rely upon a certification of the Respondent that the Respondent is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the H-GAC knows the certification is erroneous.

ARTICLE 7: GOAL FOR CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS (if subcontracts are to be let)

H-GAC’s goal is to assure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible in providing services under a contract. In accordance with federal procurements requirements of 2 CFR §200.321, if subcontracts are to be let, the prime contractor must take the affirmative steps listed below:

1. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
2. Assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller task or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises;
5. Using the services and assistance as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 6.

Nothing in this provision will be construed to require the utilization of any firm that is either unqualified or unavailable. The Small Business Administration (SBA) is the primary reference and database for information on requirements related to Federal Subcontracting <https://www.sba.gov/federal-contracting/contracting-guide/prime-subcontracting>

NOTE: The term DBE as used in this solicitation is understood to encompass all programs/business enterprises such as: Small Disadvantaged Business (SDB), Historically Underutilized Business (HUB), Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE) and Disabled Veteran Business Enterprise (DVBE) or other designation as issued by a certifying agency.

Contractor agrees to work with and assist HGACBuy customer in meeting any DBE targets and goals, as may be required by any rules, processes or programs they might have in place. Assistance may include compliance with reporting requirements, provision of documentation, consideration of Certified/Listed subcontractors, provision of documented evidence that an active participatory role for a DBE entity was considered in a procurement transaction, etc.

ARTICLE 8: SCOPE OF SERVICES

The services to be performed by the Contractor are outlined in an Attachment to this Agreement.

ARTICLE 9: PERFORMANCE PERIOD

This Agreement shall be performed during the period which begins Mar 01 2021 and ends Feb 28 2023. All services under this Agreement must be rendered within this performance period, unless directly specified under a written change or extension provisioned under Article 21, which shall be fully executed by both parties to this Agreement.

ARTICLE 10: PAYMENT OR FUNDING

Payment provisions under this Agreement are outlined in the Special Provisions. H-GAC will not pay for any expenses incurred prior to the execution date of a contract, or any expenses incurred after the termination date of the contract.

ARTICLE 11: PAYMENT FOR WORK

The H-GAC Customer is responsible for making payment to the Contractor upon delivery and acceptance of the goods or completion of the services and submission of the subsequent invoice.

ARTICLE 12: PAYMENT TERMS/PRE-PAYMENT/QUANTITY DISCOUNTS

If discounts for accelerated payment, pre-payment, progress payment, or quantity discounts are offered, they must be clearly indicated in the Contractor's submission prior to contract award. The applicability or acceptance of these terms is at the discretion of the Customer.

ARTICLE 13: REPORTING REQUIREMENTS

If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may terminate this agreement with notice as identified in Article 29 of these General Provisions. H-GAC has final determination of the adequacy of performance and reporting by Contractor. Termination of this agreement for failure to perform may affect Contractor's ability to participate in future opportunities with H-GAC. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement. Any additional reporting requirements shall be set forth in the Special Provisions of this Agreement.

ARTICLE 14: INSURANCE

Contractor shall maintain insurance coverage for work performed or services rendered under this Agreement as outlined and defined in the attached Special Provisions.

ARTICLE 15: SUBCONTRACTS AND ASSIGNMENTS

Except as may be set forth in the Special Provisions, the Contractor agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of H-GAC. The Contractor acknowledges that H-GAC is not liable to any

subcontractor or assignee of the Contractor. The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Agreement as if the performance rendered was rendered by the Contractor. Contractor shall give all required notices, and comply with all laws and regulations applicable to furnishing and performance of the work. Except where otherwise expressly required by applicable law or regulation, H-GAC shall not be responsible for monitoring Contractor's compliance, or that of Contractor's subcontractors, with any laws or regulations.

ARTICLE 16: AUDIT

Notwithstanding any other audit requirement, H-GAC reserves the right to conduct or cause to be conducted an independent audit of any transaction under this Agreement, such audit may be performed by the H-GAC local government audit staff, a certified public accountant firm, or other auditors designated by H-GAC and will be conducted in accordance with applicable professional standards and practices. The Contractor understands and agrees that the Contractor shall be liable to the H-GAC for any findings that result in monetary obligations to H-GAC.

ARTICLE 17: TAX EXEMPT STATUS

H-GAC and Customer members are either units of government or qualified non-profit agencies, and are generally exempt from Federal and State sales, excise or use taxes. Respondent must not include taxes in its Response. It is the responsibility of Contractor to determine the applicability of any taxes to an order and act accordingly. Exemption certificates will be provided upon request.

ARTICLE 18: EXAMINATION OF RECORDS

The Contractor shall maintain during the course of the work complete and accurate records of all of the Contractor's costs and documentation of items which are chargeable to H-GAC under this Agreement. H-GAC, through its staff or designated public accounting firm, the State of Texas, and United States Government, shall have the right at any reasonable time to inspect, copy and audit those records on or off the premises by authorized representatives of its own or any public accounting firm selected by H-GAC. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Failure to provide access to records may be cause for termination of the Agreement. The records to be thus maintained and retained by the Contractor shall include (without limitation): (1) personnel and payroll records, including social security numbers and labor classifications, accounting for total time distribution of the Contractor's employees working full or part time on the work, as well as cancelled payroll checks, signed receipts for payroll payments in cash, or other evidence of disbursement of payroll payments; (2) invoices for purchases, receiving and issuing documents, and all other unit inventory records for the Contractor's stocks or capital items; and (3) paid invoices and cancelled checks for materials purchased and for subcontractors' and any other third parties' charges.

Contractor agrees that H-GAC will have the right, with reasonable notice, to inspect its records pertaining to purchase orders processed and the accuracy of the fees payable to H-GAC. The Contractor further agrees that the examination of records outlined in this article shall be included in all subcontractor or third-party agreements.

ARTICLE 19: RETENTION OF RECORDS

The Contractor and its subcontractors shall maintain all records pertinent to this Agreement, and all other financial, statistical, property, participant records, and supporting documentation for a period of no less than seven (7) years from the later of the date of acceptance of the final payment or until all audit findings have been resolved. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the seven (7) years, whichever is later, and until any outstanding litigation, audit, or claim has been fully resolved.

ARTICLE 20: DISTRIBUTORS, VENDORS, RESELLERS

Contractor agrees and acknowledges that any such designations of distributors, vendors, resellers or the like are for the convenience of the Contractor only and the awarded Contractor will remain responsible and liable for all obligations under the Contract and the performance of any designated distributor, vendor, reseller, etc. Contractor is also responsible for receiving and processing any Customer purchase order in accordance with the Contract and forwarding of the Purchase Order to the designated distributor, vendor, reseller, etc. to complete the sale or service. H-GAC reserves the right to reject any entity acting on the Contractor's behalf or refuse to add entities after a contract is awarded.

ARTICLE 21: CHANGE ORDERS AND AMENDMENTS

- A. Any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in federal or state law or by regulations, are automatically incorporated without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
- B. To ensure the legal and effective performance of this Agreement, both parties agree that any amendment that affects the performance under this Agreement must be mutually agreed upon and that all such amendments must be in writing. After a period of no less than 30 days subsequent to written notice, unless sooner implementation is required by law, such amendments shall have the effect of qualifying the terms of this Agreement and shall be binding upon the parties as if written herein.
- C. Customers have the right to issue a change order to any purchase orders issued to the Contractor for the purposes of clarification or inclusion of additional specifications, qualifications, conditions, etc. The change order must be in writing and agreed upon by Contractor and the Customer agency prior to issuance of any Change Order. A copy of the Change Order must be provided by the Contractor to, and acknowledged by, H-GAC.

ARTICLE 22: CONTRACT ITEM CHANGES

- A. If a manufacturer discontinues a contracted item, that item will automatically be considered deleted from the contract with no penalty to Contractor. However, H-GAC may at its sole discretion elect to make a contract award to the next lowest Respondent for the item, or take any other action deemed by H-GAC, at its sole discretion, to be in the best interests of its Customers.
- B. If a manufacturer makes any kind of change in a contracted item which affects the contract price, Contractor must advise H-GAC of the details. H-GAC may allow or reject the change at its sole discretion. If the change is rejected, H-GAC will remove the item from its program and there will be no penalty to Contractor. However, H-GAC may at its sole discretion elect to make a contract award to the next lowest Respondent for the item, or take any other action deemed by H-GAC, at its sole discretion, to be in the best interests of its Customers.
- C. If a manufacturer makes any change in a contracted item which does not affect the contract price, Contractor shall advise H-GAC of the details. If the 'new' item is equal to or better than the originally contracted item, the 'new' item shall be approved as a replacement. If the change is rejected H-GAC will remove the item from its program and there will be no penalty to Contractor. However, H-GAC may at its sole discretion elect to make a contract award to the next lowest Respondent for the item or may take any other action deemed by H-GAC at its sole discretion, to be in the best interests of its Customers.
- D. In the case of specifically identified catalogs or price sheets which have been contracted as base bid items or as published options, routine published changes to products and pricing will be automatically incorporated into the contract. However, Contractor must still provide thirty (30) calendar days written

notice and an explanation of the changes to products and pricing. H-GAC will respond with written approval.

ARTICLE 23: CONTRACT PRICE ADJUSTMENTS

Price Decreases

If Contractor's Direct Cost decreases at any time during the full term of this award, Contractor must immediately pass the decrease on to H-GAC and lower its prices by the amount of the decrease in Direct Cost. (Direct Cost means Contractor's cost from the manufacturer of any item or if Contractor is the manufacturer, the cost of raw materials required to manufacture the item, plus costs of transportation from manufacturer to Contractor and Contractor to H-GAC. Contractor must notify H-GAC of price decreases in the same way as for price increases set out below. The price decrease shall become effective upon H-GAC's receipt of Contractor's notice. If Contractor routinely offers discounted contract pricing, H-GAC may request Contractor accept amended contract pricing equivalent to the routinely discounted pricing

Price Increases

Contractors may request a price increase after twelve (12) months from the bid opening date of the bid received by H-GAC. The amount of any increase will not exceed actual documented increase in Contractor's Direct Cost and will not exceed 10% of the previous bid price. Considerations on the percentage limit will be given if the price increase is the result of increased tariff charges, or other economic factors.

Price Changes

Any permanent increase or decrease in offered pricing for a base contract item or published option is considered a price change. Temporary increases in pricing by whatever name (e.g. 'surcharge', 'adjustment', 'equalization charge', 'compliance charge', 'recovery charge', etc.), are also considered to be price changes. For published catalogs and price sheets as part of an H-GAC contract, requests to amend the contract to reflect any new published catalog or price sheet must be submitted whenever the manufacturer publishes a new document. The request must include the new catalog or price sheet.

All Products shall, at time of sale, be equipped as required under any then current applicable local, state, and federal government requirements. If, during the course of any contract, changes are made to any government requirements which cause a manufacturer's costs of production to increase, Contractor may increase pricing to the extent of Contractor's actual cost increase. The increase must be substantiated with support documentation acceptable to H-GAC prior to taking effect. Modifications to a Product required to comply with such requirements which become effective after the date of any sale are the responsibility of the Customer.

Requesting Price Increase/Required Documentation

Contractor must submit a written notification at least thirty (30) calendar days prior to the requested effective date of the change, setting the amount of the increase, along with an itemized list of any increased prices, showing the Contractor's current price, revised price, the actual dollar difference and the percentage of the price increase by line item. Price change requests must include H-GAC Forms D Offered Item Pricing and E Options Pricing, or the documentation used to submit pricing in the original Response and be supported with substantive documentation (e.g. manufacturer's price increase notices, copies of invoices from suppliers, etc.) clearly showing that Contractor's actual costs have increased per the applicable line item bid. The Producer Price Index (PPI) may be used as partial justification, subject to approval by H-GAC, but no price increase based solely on an increase in the PPI will be allowed. This documentation should be submitted in Excel format to facilitate analysis and updating of the website. The letter and documentation must be sent to the Bids and Specifications manager, William Burton, at William.Burton@h-gac.com

Review/Approval of Requests

If H-GAC approves the price increase, Contractor will be notified in writing; no price increase will be effective until Contractor receives this notice. If H-GAC does not approve Contractor's price increase, Contractor may terminate its performance upon sixty (60) days advance written notice to H-GAC, however Contractor must fulfill any outstanding Purchase Orders. Termination of performance is Contractor's only remedy if H-GAC does not approve the price increase. H-GAC reserves the right to accept or reject any price change request.

ARTICLE 24: DELIVERIES AND SHIPPING TERMS

The Contractor agrees to make deliveries only upon receipt of authorized Customer Purchase Order acknowledged by H-GAC. Delivery made without such Purchase Order will be at Contractor's risk and will leave H-GAC the option of canceling any contract awarded to the Contractor. The Contractor must secure and deliver any item within five (5) working days, or as agreed to on any corresponding customer Purchase Order.

Shipping must be Freight On Board Destination to the delivery location designated on the Customer purchase order. The Contractor will retain title and control of all goods until delivery is completed and the Customer has accepted the delivery. All risk of transportation and all related charges are the responsibility of the Contractor. The Customer will notify the Contractor and H-GAC promptly of any damaged goods and will assist the Contractor in arranging for inspection. The Contractor must file all claims for visible or concealed damage. Unless otherwise stated in the Agreement, deliveries must consist only of new and unused merchandise.

ARTICLE 25: RESTOCKING (EXCHANGES AND RETURNS)

There will be no restocking charge to the Customer for return or exchange of any item purchased under the terms of any award. If the Customer wishes to return items purchased under an awarded contract, the Contractor agrees to exchange these items for other items, with no additional charge incurred. Items must be returned to Contractor within thirty (30) days from date of delivery. If there is a difference in price in the items exchanged, the Contractor must notify H-GAC and invoice Customer for increase price or provide the Customer with a credit or refund for any decrease in price per Customer's preference. On items returned, a credit or cash refund will be issued by the Contractor to Customer. This return and exchange option will extend for thirty (30) days following the expiration of the term of the Contract. All items returned by the Customer must be unused and in the same merchantable condition as when received. Items that are special ordered may be returned only upon approval of the Contractor.

ARTICLE 26: MANUALS

Each product delivered under contract to any Customer must be delivered with at least one (1) copy of a safety and operating manual and any other technical or maintenance manual. The cost of the manual(s) must be included in the price for the Product offered.

ARTICLE 27: OUT OF STOCK, PRODUCT RECALLS, AND DISCONTINUED PRODUCTS

H-GAC does NOT purchase the products sold pursuant to a Solicitation or Agreement. Contractor is responsible for ensuring that notices and mailings, such as Out of Stock or Discontinued Notices, Safety Alerts, Safety Recall Notices and customer surveys, are sent directly to the Customer with a copy sent to H-GAC. Customer will have the option of accepting any equivalent product or canceling the item from Customer's Purchase Order. Contractor is not authorized to make substitutions without prior approval.

ARTICLE 28: WARRANTIES, SALES, AND SERVICE

Warranties must be the manufacturer's standard and inclusive of any other warranty requirements stated in the Agreement; any warranties offered by a dealer will be in addition to the manufacturer's standard warranty and will not be a substitute for such. Pricing for any product must be inclusive of the standard warranty.

Contractor is responsible for the execution and effectiveness of all product warranty requests and any claims, Contractor agrees to respond directly to correct warranty claims and to ensure reconciliation of warranty claims that have been assigned to a third party.

ARTICLE 29: TERMINATION PROCEDURES

The Contractor acknowledges that this Agreement may be terminated for Convenience or Default. H-GAC will not pay for any expenses incurred after the termination date of the contract.

A. Convenience

H-GAC may terminate this Agreement at any time, in whole or in part, with or without cause, whenever H-GAC determines that for any reason such termination is in the best interest of H-GAC, by providing written notice by certified mail to the Contractor. Upon receipt of notice of termination, all services hereunder of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination.

The Contractor may cancel or terminate this Agreement upon submission of thirty (30) days written notice, presented to H-GAC via certified mail. The Contractor may not give notice of cancellation after it has received notice of default from H-GAC.

B. Default

H-GAC may, by written notice of default to the Contractor, terminate the whole or any part of the Agreement, in any one of the following circumstances:

- (1) If the Contractor fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the Contractor fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreements that completion of services herein specified within the Agreement term is significantly endangered, and in either of these two instances does not cure such failure within a period often (10) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.
- (3) In the event of such termination, Contractor will notify H-GAC of any outstanding Purchase Orders and H-GAC will consult with the End User and notify the Contractor to what extent the End User wishes the Contractor to complete the Purchase Order. If Contractor is unable to do so, Contractor may be subject to a claim for damages from H-GAC and/or the End User.

ARTICLE 30: SEVERABILITY

H-GAC and Contractor agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 31: FORCE MAJEURE

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with H-GAC.

ARTICLE 32: CONFLICT OF INTEREST

No officer, member or employee of the Contractor or subcontractor, no member of the governing body of the Contractor, and no other public officials of the Contractor who exercise any functions or responsibilities in the review or Contractor approval of this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement.



City of Santa Fe, New Mexico

Memorandum



DATE: May 26, 2022

TO: Governing Body
Finance Committee
Quality of Life Committee

VIA: Kyra Ochoa, Community Health and Safety Director 
Paul Joye, Chief of Police  Kyra Ochoa (May 26, 2022 11:56 MDT) May 26, 2022

FROM: Ben Valdez, Deputy Chief of Police 
Lead Negotiator for the FY23 Management Team

ITEM AND ISSUE:

Request for approval of the Collective Bargaining Agreement between the City of Santa Fe and the Santa Fe Police Officers Association for FY23. Contract includes salary increases in the amount of \$(2,251,013.00) for sworn and civilian bargaining unit employees. Ben Valdez, Deputy Chief of Police, bpvaldez@santafenm.gov, 505-955-5040.

BACKGROUND AND SUMMARY:

For FY22 the City of Santa Fe allocated \$(2,251,013.00), which was an equivalent of a 16% increase per funded position for Santa Fe Police Officers Association (SFPOA) bargaining unit employees. Through mutual collaboration between the SFPOA and the City of Santa Fe Management Team, we were able to complete contract negotiations for FY23. The agreement was ratified by the SFPOA. Below is a summary of the items negotiated:

- **Section 16 Compensation-**

- Pay Increases-

- 16% Salary increase for all Non-Sworn, Non-Probationary Employees
- 16% base rate increase for Police Officer I \$25.826
- 16% base rate increase for Police Officer II \$29.522
- 16% base rate increase for Senior Police Officer \$35.960
- 16% base rate increase for Police Detective \$35.960
- 16% base rate increase for Police Sergeant \$40.600

Budget Increase of \$2,251,013.00 allocated in FY23

- Incentive Pay-

- Removed Auxiliary Field Training Officers, including those not assigned to Patrol, from the Field Training Officer Incentive. Field Training Officer Incentive Pay is only permitted for the 8 sworn personnel assigned as Field Training Officers conducting patrol field training for police cadets and lateral police officers.

No Fiscal Impact.

- **Section 18B Lateral Officer/Retired Officer Hire Program-**

- Change eligibility requirement for a lateral police officer to test for Sergeant. Requirement includes holding the rank of Senior Police Officer (5 years of service in law enforcement to achieve this rank) for a minimum of two years consecutive years with Santa Fe Police Department.
- Change eligibility requirement for a retired police officer to test for Sergeant. Requirement includes holding the rank of Senior Police Officer (5 years of service in law enforcement to achieve this rank) for a minimum of two years consecutive years with Santa Fe Police Department.
- This change allows our Department to remain competitive with attracting experienced lateral officers who have served or are currently serving as Supervisors and Police Commanders. The Department will benefit from their leadership experience. This also ensures an equitable opportunity to our staff that we have cultivated as police cadet hires. The required time in service in law enforcement is the same for lateral hires and our personnel that started with the agency as a police cadet.

No Fiscal Impact.

- **Section 34 Disciplinary Action-**

- Included clarifying language stating the disciplinary action beginning at a Written Reprimand shall require approval of the City Manager prior to implementation.
- Included clarifying language for an officer conference action, which was previously used interchangeably with verbal counseling.
- Included clarifying language for a letter of counseling requiring approval by a Deputy Chief of Police.

No Fiscal Impact.

- **Appendix B Car Plan-**

- Remove (60) roadway miles distance for officers and non-sworn personnel hired before April 1, 2012 from the City of Santa Fe municipal limits.
- Change language that all officers and non-sworn personnel will not utilize vehicles more than 55 radius miles from the City of Santa Fe limits, except on official business.
- This change allows our Department to continue to be competitive with surrounding law enforcement agencies throughout the state in the Santa Fe Area. Many have increased their take home radius due to housing challenges in their communities to both maintain their current staff and to attract additional candidates.
- The current housing inventory in the immediate Santa Fe area is limited and a home purchase on available homes are out of the reach financially for both sworn and non-sworn staff. The down payment housing assistance pilot program is a great step in the right direction for a long term solution, but will take some time to get off the ground and operationalized.
- This change is needed as an immediate action plan to maintain our staff who are currently 0.10 of a mile to 1.3 miles outside our current radius. Currently they are securing their department vehicles at secured facilities of law enforcement agencies we are competing with for police candidates. For law enforcement professionals, the homes they are able to afford currently fall outside our radius. Many of these personnel also face a tough decision if they begin growing their family and need to purchase a home to accommodate for their family growth; park at our competitor's facility or work for our competitor and be relieved of the commute.
- In addition, we have a number of experienced lateral candidates who have inquired about joining our team but have not initiated the process because they would also fall outside the

current authorized radius. For law enforcement professionals, the homes they are able to afford currently fall outside our radius. Increasing this radius allows them to join our team, remain in their current home, and not cause disruption to their spouse and children for work and school.

- Since 2012 when the current radius was implemented we have seen improvements in our vehicle maintenance with the use of synthetic fluids which increased the mileage for oil changes from 2,500 miles to 5,000 miles. The Department has been purchasing Ford Interceptor vehicles which have been able to stand up to the rigors of police work and by design have not had the wear and tear on brakes, tires and transmissions that our previous vehicle platform had. In addition, our vehicles have improved fuel efficiency. With the implementation of hybrid patrol vehicles we will realize additional fuel savings even with the current inflation of fuel, with our vehicles achieving double the fuel mileage of our current non-hybrid patrol vehicles. With this consideration, there will be no fiscal impact.

No Fiscal Impact.

ACTION REQUESTED:

The Santa Fe Police Department respectfully requests your review and approval of the Collective Bargaining Agreement between the City of Santa Fe and the Santa Fe Police Officers Association.

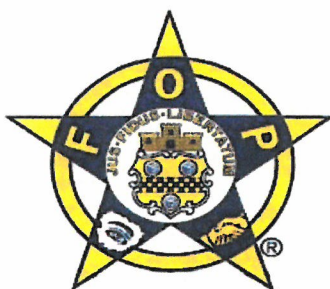
AGREEMENT

BETWEEN

THE CITY OF SANTA FE

AND THE

SANTA FE POLICE OFFICER'S ASSOCIATION



Whole Agreement in Effect

July 1, 2022 through June 30, 2025

With changes to Whole Agreement effective July 1, 2022

Year number 1 of Whole Agreement

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I. AGREEMENT

THIS AGREEMENT is entered into by and between the City of Santa Fe Municipal Corporation of the State of New Mexico, hereinafter sometimes referred to as the "Employer", and the Santa Fe Police Officers' Association, hereinafter referred to as the "Association", which is an affiliate of the Fraternal Order of Police Labor Council and the Santa Fe Lodge #3 Fraternal Order of Police. This agreement is for the purpose of setting forth the mutual understanding of the parties as to wages, hours, and other conditions of employment of those employees for whom the Employer has recognized as the exclusive bargaining representative.

WHEREAS, the parties hereto have reached an agreement on all matters which have been subject to negotiation and desire to reduce such agreement in writing in order to avoid any misunderstanding on what in fact has been agreed to:

WHEREAS, the Public Employees Bargaining Act was enacted to guarantee employees the right to organize and bargain collectively with the City, to protect the rights of the City, its employees, and labor organizations, to promote harmonious and cooperative relationships between the City and the employees and to acknowledge the rights of the citizens to the orderly and uninterrupted delivery of services.

NOW THEREFORE, IT IS HEREBY AGREED:

- A. The City of Santa Fe recognizes the Santa Fe Police Officer's Association as the exclusive bargaining representative for non-probationary employees in the following job classifications: Animal Services Officer, Crime Scene Technician, Police Detective, Police Officer I, II, Senior Police Officer, Police Sergeant, Police Training Administrator, Public Safety Aide, Property/Fleet Manager, Evidence/Property Custodian, and District Attorney Liaison.
- B. The City of Santa Fe extends to the Santa Fe Police Officers' Association representing such unit of employees the following rights:
 - 1. To represent the employees in negotiations and in the settlement of grievances;
 - 2. To Association membership dues deductions, upon presentation of dues deduction authorization cards signed by individual employees. It is further agreed that the Employer shall deduct said dues from the pay of employees covered under this agreement, who authorize such deductions, and shall remit such deductions to the Treasurer of the Association within ten (10) days after such deductions are made; and
 - 3. To exclusive representation status during the term of this Agreement as provided in the Public Employee Bargaining Act.
- C. The Employer, the Association, and any employee of the Department shall not discriminate against any member of the bargaining unit on account of race, color, sex, creed, religion, marital status, age, sexual orientation, veteran status, disability, and national origin or membership status in the Association, or on any other basis prohibited by city, county, state or federal laws, and;

- D. For the purposes of this agreement and any subsequent Memorandum of Understanding, the City of Santa Fe shall be referred to as the Employer; the Santa Fe Police Department shall be referred to as the Department; the Chief of Police shall be referred to as the Chief; the Santa Fe Police Officers' Association shall be referred to as the Association, and any reference to an Association member shall be referred to as employee.

II. MANAGEMENT RIGHTS

It is agreed that, except as expressly modified by the terms of this Agreement, the City of Santa Fe (Employer) retains the exclusive right to:

- A. Determine the mission, budget, organization, number of employees, and internal security practices of the Department.
- B. Determine qualifications for employment and content of personnel examinations.
- C. Recruit, examine, evaluate, and train employees and determine the time and methods of such actions.
- D. Direct employees and evaluate their performance, based on standards of work established by the Department.
- E. Determine the standards for hire, promotion, and assignment.
- F. Assign, transfer, or retain employees in positions, including the assignment of employees to specific positions and the determination of job content and/or job duties.
- G. Suspend, demote, discharge, or terminate employees for cause.
- H. Relieve an employee from duty for cause or due to reduction in work force.
- I. Determine the location and operation of its facilities.
- J. Determine the number of personnel allocated by position and minimum staffing levels by unit.
- K. Maintain the efficiency of government operations.
- L. Schedule work outside normal scheduling as required in a manner most advantageous to the Department and consistent with community needs and public safety.
- M. Take actions necessary to carry out the mission of the Department in all cases to include emergency situations.
- N. Direct the Department to establish the methods, means, equipment, and personnel by which the Employer's operations are to be conducted.
- O. Determine methods, processes, and means by which Department services are provided.

D. WORK STOPPAGES

The Employer and the Association agree that the public interest requires the efficient and uninterrupted performance of all City services, and to this end pledge their best efforts to avoid or eliminate any conduct contrary to this objective. The Association shall not cause any work stoppage, strike, slowdown, or sickouts by employees under this Agreement, and should this occur, the Association agrees to take appropriate steps to end such interference. Employees shall not cause or engage in any work stoppage, strikes, slowdowns, or sickouts for the term of this Agreement.

Section 2 LOST, DAMAGED OR STOLEN PROPERTY

- A. Employees who have lost, damaged, or have had Employer property stolen in the line of duty regardless of the cost, will not be required to reimburse the Employer unless negligence is proven in a predetermination hearing to the satisfaction of the Chief or his designee, pursuant to Section 34 of this Agreement unless said employee waives the predetermination hearing and admits to the allegations of negligence.
- B. The Employer will replace health aids prescribed by a licensed medical professional, uniform apparel, and required equipment damaged in the line of duty as a result of a direct delivery of service that has been officially documented. Health aids, uniform apparel and required equipment will be fully replaced by the Employer. This language is not intended to for the replacement of old worn out health aids or uniform apparel or required equipment.
- C. All instances of lost, damaged, or stolen property will be reported to the employee's supervisor on duty, in writing at the time of occurrence, or before the end of the shift. Failure to notify the supervisor will negate any claim for replacement. Damaged property shall be presented to the Support Services Commander for inspection, prior to replacement and shall be turned in for destruction at the time of replacement.

Section 3 UNIFORMS/CLOTHING

- A. It is understood by the parties to this Agreement that uniform regulations of the Department are established by the Chief and the primary purpose of this section is to protect employees from financial hardship resulting from changes in uniform regulations.
- B. Bargaining unit employees will be allocated \$650.000 annually less any required deductions, paid to bargaining unit employees by check annually no later than the first full pay period in July. The clothing allowance will be used for the purchase of uniforms and equipment required by the Santa Fe Police Department's Standard Operating Procedures and this CBA. All bargaining unit employees assigned to motorcycle or bicycle patrol, and special operations division shall receive an additional \$50.00 annually for a total allocation of \$700.00 annually on the check identified above. This clothing allowance is included in the

employee's taxable income in accordance with IRS regulations. Purchases will be subject to applicable gross receipts taxes.

Any bargaining unit employee found to be in violation of the dress standards set forth in the Santa Fe Police Department's Standard Operating Procedures and/or as published in this Agreement, or who reports for duty in clothing that is not clean and in good condition as determined by the Police Chief or designee, may be progressively disciplined, up to and including termination for not maintaining those standards.

C. The parties hereby agree that the following are recognized as approved clothing items for the purposes and intent of clothing allowance:

- | | | | |
|-----|--------------------|-----|---------------------------------|
| 1) | Shirts | 11) | Cold Weather Clothing |
| 2) | Trousers | 12) | Socks |
| 3) | Ties | 13) | Raingear |
| 4) | Footwear | 14) | Patches |
| 5) | Jackets/Coats | 15) | Nametags |
| 6) | Gloves | 16) | Pins |
| 7) | Equipment Belts | 17) | Court Attire |
| 8) | Equipment Holsters | 18) | Coveralls |
| 9) | Headwear | 19) | Safety Vests |
| 10) | Trouser Belts | 20) | Flashlight |
| | | 21) | Non-Prescription Safety Eyewear |

The parties further agree that all items listed above must be approved by the Chief or designee(s). The parties further agree that any equipment or clothing deemed useful to enhance the performance and/or safety of his/her duties may be allowed by approval of the Chief of Police or designee(s).

Section 4 FIREARMS TRAINING

The Department will meet all minimum standards for training as established by the New Mexico Law Enforcement Board.

The Department will have a minimum of three (3) shoots per year. One shoot will be comprised of a day and a night DPS qualification session. One will be comprised of a FATS (Firearm Training Simulator) session, and one will be determined by the Chief of Police.

The Department will provide weapons and agrees that for the two (2) shoots that are conducted on the range, the Department will provide ammunition for any Department issued weapon for those employees who are required to carry a weapon.

The Department will provide two (2) boxes of training ammunition per year, for any Department issued weapon, for those employees who are required to carry a weapon for the purpose of training.

At any time an employee who wishes to be issued this ammunition shall contact an armorer for this issue.

Section 5 TIME OFF TO VOTE

In accordance with the provisions of Section 01-12-42 NMSA 1978, employees who are registered to vote may absent themselves from work for up to two (2) hours for the purpose of voting between the opening and closing of the polls.

The Employer may specify the hours during this period in which the employees may be absent.

These provisions do not apply to any employee whose work day begins more than two (2) hours after the opening of the polls or ends more than three (3) hours prior to the closing of the polls.

Any employee who abuses administrative leave by requiring its use for purposes other than traveling to and from the polling place and voting may be charged with Leave Without Pay and subject to disciplinary action.

Section 6 TRAINING AND EDUCATION

The Employer encourages employees to develop and expand their potential. Employees may be allowed to change hours to attend class during normal work hours depending on the work schedule, with approval of the supervisor. The following classroom participation methods are approved:

- Traditional on campus classroom attendance.
- Online classes wherein the syllabus specifically identifies required login times and dates for classroom attendance.

Time away from work may be paid for by the Employer. Approval to attend courses during working hours will depend on work schedules, work needs, etc.

Tuition expenses for college credit hours will not be reimbursable by the Employer except as provided in the City Tuition/Training Program. Employees shall obtain approval of their immediate supervisor before making any plans to attend classes.

The Employer also offers training sessions in many specialized areas. Supervisors and/or the Training Officer are aware of what training is being offered and will post notices of training opportunities that might be of benefit to employees. If an employee desires training in a specific area, the supervisor and/or training officer must be consulted in writing and will attempt to obtain the requested training.

All requests for education, training, and tuition assistance will be routed through the immediate chain of command to the Training Unit, and evaluation of all requests will be made in accordance with the following policies:

1. Administrative Manual - Tuition and Training; “Employee Tuition and Training Assistance Guidelines.”
2. Santa Fe Police Department Directives Manual; “Career Development Program”, Directive Number 22.1.

Section 7 MATERNITY LEAVE

The City will comply with the provisions of the Family Medical Leave Act.

Section 8 MILITARY LEAVE

If an employee is or becomes a member of any component of the United States Armed Forces or the New Mexico National Guard, they upon request, will be granted military leave without pay for the first enlistment. Such leave will terminate thirty (30) days after this enlistment expires. Employees who return from military service on a timely basis shall be entitled to job restoration provided they make application, subject to meeting all pre-employment qualifications within thirty (30) days after the date of release from duty under conditions other than dishonorable. The employee must be qualified to perform the duties of the position involved.

A returning employee shall be restored to the position which he/she vacated upon entering the military service. An employee may be entitled to be re-employed in another position, provided he/she is qualified and such re-employment does not necessitate the removal of another person with longer service.

An employee who enters military service shall receive pay for any accrued annual leave to which he/she may be entitled provided a written request is made to the City Manager.

The **Uniformed Services Employment and Reemployment Rights Act (USERRA)** was enacted in October 1994 and is codified in Title 38, United States Code Chapter 43. **USERRA** provides numerous employment and reemployment rights to service members and prohibits workplace discrimination against National Guard and Reserve members. If a member of this department is deployed, the following requirements apply:

1 to 30 days – The employee can return to work the **next regularly scheduled workday** after the active military orders expire. If the next regularly scheduled workday is the next calendar day, the employee must be allowed eight (8) hours of rest after he/she had been transported to his/her residence from their place of service.

31 to 180 days – The employee can return to work within **14 days** after the active military orders expire.

Over 180 days - Employee can return to work within **90 days** after the active military orders expires.

EXAMPLE; if the employee is deployed **120 days**, and returns back to the United States, and their active orders expire on **July 1st**, the employee is not required to return to work until at least **July 14**.

To the extent the above is inconsistent with USERRA, USERRA will govern.

Section 9 ANNUAL MILITARY TRAINING

Employees are allowed up to a total sum of 30 days of military leave with pay per federal fiscal year. Fifteen (15) days of Military Leave with Pay (MLWP) is allowed for training. An additional fifteen (15) days is allowed for active duty or deployment orders when mandated for Federal, National or State disaster deployments. MLWP shall be used in accordance with an employee's regularly scheduled work week. For employees working 4/10 hour days, this translates into 300 hours. For 24 hour shifts, this translates into 720 hours. For 8 hour days, this translates into 240 hours. For 4 hour days: 120 hours.

Employee must give the employer advance notice (either in writing or verbally) of upcoming military service of any type. The National Guard provides a yearly schedule which employees should provide as soon as possible. Human Resources, Department Directors and Supervisors will need a copy of the orders and/ or notice. If the employee does not give notice, the employee will not be eligible for reemployment protection following the period of military service. The only exceptions to the notification requirement would be if the giving of notice is precluded by military necessity (e.g. a classified recall) or if it is otherwise impossible or unreasonable to give notice. These exceptions to the notice requirement are expected to be very rare. Employees may then provide orders upon return or as soon as possible. It is best for the employee to give an employer as much advance notice as possible.

Training orders:

Any training orders over the allowed 15 days per federal fiscal year will be marked as Military Leave without Pay, or the employee may use leave requested on a P-30.

Active Duty/ Deployment orders:

Any active duty/deployment orders over the allowed (thirty) 30 days per federal fiscal year will have to be either Military Leave without Pay, or paid by the employee using earned leave requested on a P-30.

Section 10 LEAVES OF ABSENCE WITHOUT PAY

When an employee has demonstrated a need for time off, the Employer may grant the employee leave without pay for a period not to exceed one (1) year with the approval of the City Manager.

During such leave, the employee's position may be filled by another employee. At the expiration of leave without pay, the employee may be reinstated in the position vacated. If not reinstated to the same position, the employee may be offered another vacant position provided he/she is qualified to perform the work. Approved leave without pay shall not constitute a break in service but all time off in excess of thirty (30) days will be discounted from continuous service time.

Failure of an employee to report his/her return fourteen (14) days prior to the expected date of return from leave may be cause for refusal of reinstatement and the employee may be terminated from any further employment obligations.

Section 11 HARASSMENT

It is the policy of the Employer to maintain an environment in the workplace that is free of harassment because of race, color, religion, gender, sexual orientation, age, national origin, and disability. Harassment by a supervisor, co-worker, subordinate or city employee is unlawful under state and federal law. The Employer is committed to providing a work environment that is free of harassment.

COMPLAINT PROCEDURE:

Harassment in any form may be cause for severe disciplinary action, including discharge. Any employee experiencing or observing harassment should immediately contact their Supervisor, Division Director, Department Director, the City Manager, or the Human Resources Department who will conduct the investigation. Internal Affairs will not conduct the investigation. Such reports will be treated on a confidential basis and handled expeditiously.

Any employee under investigation will be afforded all rights under the Employer-Employee Relations Act as outlined in Appendix A.

Refer to City of Santa Fe Policy #2500-4-1 effective 10/31/91 revised 6/17/05.

This does not prohibit the Employee from seeking assistance from the State EEOC and/or Federal EEOC.

Section 12 **EMPLOYEE SAFETY AND HEALTH**

The Employer believes that the safety and health of its employees are prime considerations in every phase of its activities. The Employer is concerned for the human value of life, health and physical well-being, and it is convinced that good safety and health practices are essential to efficient services to the public.

It is the Employer's intent to provide and maintain safe and healthy working conditions for its employees. In order to ensure this, the Employer will:

1. Instill in its employees an awareness of the need to promote safety and healthy working habits and attitudes on a continuous basis.
2. Provide safety equipment and procedures, provide protection against health hazards in the work place, and ensure the safety of employees.
3. Comply with applicable laws.

Section 12A **LIGHT DUTY**

1. Any employee placed on temporary light duty by the Employer's Occupational Medicine Doctor for a work related injury or illness may continue to work within the Police Department without the loss of pay or reduction of benefits if light duty work is available and budget constraints allow. Light duty will be granted at the sole discretion of the Chief of Police and in the absence of extraordinary circumstances shall not exceed six months.
2. Any employee placed on temporary light duty for non-work related injury or illness may continue to work within the Police Department without loss of pay or reduction of benefits if light duty work is available and budget constraints allow. Light duty will be granted at the sole discretion of the Chief of Police and in the absence of extraordinary circumstances shall not exceed six months.

Section 12B **MEDICAL SEPARATION**

1. The parties hereby adopt personnel rule 7.60 and incorporate as if fully set forth herein.

Section 13 **ADMINISTRATIVE LEAVE**

- A. If the Employer grants Administrative Leave to all other city employees, then employees covered under this Agreement who are required to work during this time will be paid at their regular rate of pay, plus administrative leave equal to the number of hours granted by the Employer at hour for hour. If the employee is off, the employee will receive the same amount of hours in administrative time. All administrative leave must be used within one (1) calendar year from the date of accrual.

B. Special Days:

For the purpose of recognizing their employees, the Employer will grant the following administrative leave:

1. Ten (10) hours administrative leave for every calendar year that an employee drives his/her assigned vehicle without a charged accident.
2. Ten (10) hours administrative leave for every calendar year of unused sick leave.

C. Employer shall provide a list of employees who are eligible to receive the special days administrative leave on or before February 15th of each year.

Section 13B PERSONAL HOLIDAY

The Association agrees to hereby eliminate the Annual Personal Holiday received by each individual member as outlined by the City of Santa Fe Personnel Rules.

Section 14 [Reserved]

Section 15 EXAMINATIONS

A. Physical Fitness:

1. All sworn employees shall be required to meet all established minimums for certification as prescribed by the New Mexico Law Enforcement Academy Board during their employment with the Department.
2. All requirements for fitness testing shall be developed by the Employer, and shall be criteria related and validated for law enforcement personnel.
3. In an effort to promote good physical fitness within the Department, the Employer shall arrange with the Employer's physical fitness complexes to obtain keys for those complexes to allow employees covered by this agreement to maintain their physical fitness. Keys shall be obtained for only those physical fitness complexes that are approved by the Employer. The keys shall be maintained by the Department in accordance with established procedures.
 - a. The Department, the Recreation Department who manages the Employer's physical fitness complexes, and the Association shall develop procedures and rules governing the access and use of the Employer's physical fitness complexes prior to the complexes being used.

- b. Participation in this program is totally voluntary on the part of the employee. Non participation in this program does not relieve the employee from being physically fit to perform his/her job as required by Federal, State or City law, policy or regulation. However, the right to deny participation in this program for cause is reserved by the Chief. If the employee does not meet the requirements, he/she will be given 90 days to comply with the requirements.
- c. Employees volunteering to participate in this program agree to abide by all the rules and procedures governing this program.
- d. An employee may be denied participation in this program for any violation of the established procedures and rules, based upon the nature and severity of the infraction.
- e. This program may be reviewed monthly and may be modified at the discretion of the Chief. If, in the opinion of the Chief, this program for the Department, as covered by this Agreement, proves unworkable in practice, the Chief shall have the option of terminating the program upon sixty (60) days written notice of intent to the Association. The Employer and the Association will meet and attempt to solve problems relating to the program, otherwise, said notice shall be final.
- f. If at any time a safety concern is identified which may jeopardize the employee's health or safety, this program shall be immediately suspended until such time as the concern is addressed and rectified.

B. Medical Physical

Medical Physical may be required at any time to assess the physical capabilities or physical well being of any employee as it relates to the successful performance of the employee based upon assignment or due to illness.

C. Psychological Evaluations

Psychological evaluations shall be required and administered as prescribed in Directive Number 94.1.

D. Drug and Alcohol Testing

Drug and alcohol testing shall be required and administered as prescribed in the Drug and Alcohol Testing Policy for the Department (Appendix D).

E. **ADA**

If it is determined by the city that an employee cannot perform his/her duties, the employee will be afforded all rights under the Americans with Disabilities Act.

Any discipline, demotion, loss of pay, or transfer as a result of a City mandated examination is grievable.

Section 16 COMPENSATION

A. **PAY PLAN**

1. **PAY PLAN** - The *Pay Plan* shall be inclusive of those positions/classifications which are covered under this Agreement and shall be categorized into two (2) groups, *sworn* positions and *non-sworn* positions. The Pay Plan shall reflect a minimum pay rate for sworn personnel and non-sworn personnel.

a. **Sworn Positions:**

1. Sworn positions shall consist of the following classifications:

Police Officer I Police Officer II Senior Police Officer
Police Detective Police Sergeant

b. **Non-Sworn Positions:**

1. Non-sworn positions shall consist of the following classifications:

Public Safety Aide Animal Service Officer
Crime Scene Technician Property-Fleet Manager
Evidence/Property Technician Police Training Administrator

2. **SALARY INEQUITIES** – Salary inequities created by errors in the pay rate that are discovered and proven to be valid shall be addressed and corrected by approval of the City Manager.

3. **SALARY INCREASE** -

The Association recognizes that it may be necessary for the Employer to increase compensation in order to recruit and retain qualified police officers.

- Fiscal Year 2023:

The salary increase will be effective the first full pay period in fiscal year 2023 following approval of this agreement by the City's Governing Body.

Sworn Positions:

Bargaining Unit employees in a Sworn Position will receive the following identified increases from their current pay rate or the minimum of the classification pay rate, based on whichever is greater.

<i>Police Officer I</i>	\$25.826	16%
<i>Police Officer II</i>	\$29.522	16%
<i>Senior Police Officer</i>	\$35.960	16%
<i>Detective</i>	\$35.960	16%
<i>Sergeant</i>	\$40.600	16%

Non-Sworn Positions:

Bargaining Unit employees in a Non-Sworn Position and in a non-probationary status as of July 1, 2022, will receive a sixteen percent (16%) increase from their current rate of pay.

B. PROMOTIONS

The Association and the Employer agree to adhere to the promotional policy for positions covered in the bargaining unit as currently established by the employer and as outlined in this Agreement. Upon promotion to a higher classification in the pay plan, the employee will advance to the new pay classification.

1. Non-probationary employees who meet the minimum requirements/qualifications for Police Officer I, Police Officer II, Senior Police Officer shall be eligible for promotion to that classification the first day of the pay period following the date on which the requirements are met.
 - a. Promotion to a higher classification shall be dependent upon the employee possessing a satisfactory performance evaluation and the written recommendation from the employee's commander/manager.

- b. Performance evaluations and methods for conducting performance evaluations will be based upon and in accordance with the Police Department Policies and Procedures regarding performance evaluations.
2. Non-probationary employees who meet the minimum requirements/qualifications for Detective I and Police Sergeant shall be eligible to test for that position the date on which the requirements are met. Testing for these positions/classifications shall be in accordance with Section 37: FILLING OF VACANCIES of this Agreement.

C. COURT ALLOWANCE

The Employer will pay a minimum of two (2) hours court time at time and one-half unless the employee appears in court within one (1) hour of his/her tour of duty, starting or ending. In the event the court appearance is within one (1) hour of the tour of duty, starting or ending, the employee will be paid a minimum of one (1) hour at a rate of time and one-half. The rate of pay will be in compliance with Section 21 *Hours of Work and Overtime*. Employees appearing in court during their tour of duty will receive "court time.

D. BILINGUAL PAY

1. Only those languages identified in this agreement as adding to the increased productivity and efficiency of the Department shall qualify for pay under this subsection. The languages currently recognized by this agreement are as follows:

-Spanish
2. An employee shall qualify for bilingual pay upon demonstrating an acceptable level of reading, writing, and conversational proficiency. Job-related material will be used in determining the proficiency as established by a collaborative team of test proctors composed of one representative from the Association and one representative from the Human Resources Department. The parties hereby agree that all test material will be prepared in a fair and equitable manner by a neutral third party agreed upon by the proctors. It is further hereby agreed by the parties that should an employee pass any portion of the testing process, the employee will not be required to test in that particular portion of the testing process again within a six month period from the date of the initial test. There will be no limit as to how many times an employee may test for bilingual pay.
3. Employees wishing to qualify for bilingual pay shall submit a written request to the SFPOA Board. The test proctor who has been selected by the SFPOA Board shall arrange for testing of the employee within twenty (20) days of receipt of the request.

4. Employees who are certified in the conversational area shall be paid \$100.00 per month. Such payments shall be made bi-weekly. Employees shall be eligible to test for Bilingual Pay upon becoming a bargaining unit employee.
5. Employees who demonstrate proficiency in all three areas (reading, writing and speaking) shall be paid \$140.00 per month. All bilingual applicants must test and pass a proficiency exam. Only 22 positions are available for employees to test for and receive the \$140.00. Proof of certification shall be prepared by the said neutral third party, reviewed and approved by the proctors and presented to the Chief or designee(s) in the form of a memorandum signed by both proctors. Selection will be made based on the earliest certification date. In the event there is a tie based on certification dates, selection will be made based on seniority.
6. A list of employees receiving the bilingual pay will be prepared by the proctor who has been selected to represent the employer and made available to the RECC (Dispatch) and commanders. Employees who unreasonably fail to respond to a call or request for bilingual assistance may be subject to lose his/her bilingual pay incentive at the sole discretion of the Chief or designee(s).
7. Payments under this plan shall be made the first pay period after testing has been completed.

E. SPECIALIZED UNITS:

The Employer shall pay employees assigned to the following specialized units listed below:

S.W.A.T. Team members	\$100.00 per month
TEMS Team members	\$100.00 per month
K-9 Officers	\$100.00 per month
E.O.D.	\$100.00 per month
F.T.O.	\$125.00 per month

Employees may belong to only one (1) special unit at any given time, and are eligible for only one (1) specialty pay. This includes employees who currently belong to more than one special unit. The only exception will be Field Training Officers (F.T.O.'s) who may belong to a second special unit, however, they shall only receive one (1) specialty pay.

All personnel assigned to specialized units being compensated with incentive pay shall only be eligible to receive the pay when certified in the specialty. (i.e. F.T.O. Certification, Basic SWAT Certification, EMT Basic and TEMS Certification, EOD certification, K-9 Certification)

Assignment to any specialized unit within the Department shall be made in accordance with Section 37: Filling of Vacancies/Assignments and Transfers of this Agreement. The specialized unit commander may also utilize a testing process to assist in determining the best qualified applicant(s) for the assignment.

F. FIELD TRAINING PROGRAM

There will be 8 eligible positions to receive FTO pay for those who hold certification in Instructor Development and Field Training. The FTO incentive pay shall only be for the 8 sworn personnel assigned as FTO's conducting patrol field training for police cadets and lateral police officers.

G. SHIFT DIFFERENTIAL

Shift differential is intended to compensate those employees who report to work at an odd hour to relieve the previous shift. Shift work is recognized where more than one group of employees report to work during the same twenty-four (24) hour work day or when an employee is working hours during a shift to cover minimum staffing requirements.

5% of employee's hourly base rate if half or the majority of shift is worked after 2pm.

10% of employee's hourly base rate if half or the majority of shift is worked after 8pm.

Classification Sworn	Minimum Requirements for Classification	Minimum Pay Rate
Police Officer I	Certified police officer with SFPD off probationary status or certified lateral police officer with less than 36 months of service with any law enforcement department	\$25.826
Police Officer II	Completion of 36 months of service with SFPD or any law enforcement department	\$29.522
Senior Police Officer	Completion of 60 months of service with SFPD or any law enforcement department	\$35.960
Detective	Eligible to submit application to test for Detective upon completion of 36 months of service with SFPD*	\$35.960
Sergeant	Eligible to submit application to test for Sergeant upon completion of 84 months of service with SFPD*	\$40.600
	All promotions shall be in accordance with Section 16 <i>Compensation, Paragraph B Promotions</i> of the Collective Bargaining Agreement.	
	* Lateral Officers/Retired Officers must meet minimum requirements as outlined in Section 18B Lateral Officer/Retired Officer Hire Program of the Collective Bargaining Agreement for placement in their initial classification and for promotion to a higher classification.	

Classification Non – Sworn	Minimum Pay Rate
Public Safety Aide	\$18.610
Animal Services Officer	\$17.724
Crime Scene Technician	\$21.544
Property – Fleet Manager	\$23.752
Evidence/Property Technician	\$16.880
Police Training Administrator	\$23.752

Section 17 ANNUAL LEAVE

- A. Employees are eligible for prorated annual leave accrual for hours worked and during paid leave in accordance to the following schedule(s):
- 0-1 year of service: up to 100 hours per calendar year.
 - 1-5 years of service: up to 126 hours per calendar year.
 - 5-10 years of service: up to 146 hours per calendar year.
 - 10-15 years of service: up to 167 hours per calendar year.
 - 15-20 years of service: up to 191 hours per calendar year.
 - 20 and more years of service: up to 215 hours per calendar year.
- B. An employee eligible to accrue annual leave pursuant to these rules, may request and be granted use of accrued leave at the discretion of the Employer. No annual leave shall be advanced by the Employer.
- C. An employee shall be allowed to progress from one graduated rate of accrual for annual leave to the next on the first day of the month immediately following completion of the required total length of service.
- D. The amount of accrued annual leave that will be allowed to be carried over from one calendar year to the next will be double the amount an employee is allowed to accrue in one calendar year in relation to the applicable years of service.
- E. The Employer may buy back that portion of an employee's annual leave that exceeds his/her maximum carry over at the end of each calendar year providing the following criteria is met:
1. A maximum of eighty (80) hours can be sold back in any one year, providing the balance will remain at the respective maximum carry-over rate at the end of each calendar year.
 2. The employee must state in writing to the Human Resources Director, no sooner than February 1 and no later than March 31 of each calendar year his/her intention to sell back the annual leave in excess of the respective maximum carry-over balance.
 3. Sufficient City funding is available.

- F. Upon separation of his/her employment, an employee shall be compensated for all unused and un-forfeited annual leave.
- G. Upon death of an eligible employee, compensation for unused total annual leave shall be payable to the employee's estate.

Section 18 SENIORITY

- A. Except for sections which contain specific different definitions in this Agreement, seniority is defined as follows:
 - 1. Higher ranks have seniority on junior ranks. The employee with the most continuous service within rank is senior within that given rank. For the purposes of breaking ties in seniority, the first criteria to be applied shall be continuous service with the Department, the employee with the most continuous time being senior. The term continuous service shall be interpreted to mean total service from the date of last hire as an employee of the Department. The final seniority standing is not subject to grievance.
 - 2. For the purpose of receiving issued equipment and vehicles, the senior employee will receive new equipment before the junior employee, when the senior employee's equipment or vehicle is in need of or due for replacement. Once an employee receives a new vehicle, the vehicle will be assigned to the employee for a period of five (5) years or seven (7) years depending on specialty assignment. New vehicle shall be defined as no more than one year from the date of receipt by the Department and have less than 15,000 miles. Vehicles that have sustained significant damage and/or repair shall not be considered a new vehicle for the purpose of issuance. Any equipment issued to an employee will be replaced because of normal wear or damage to the equipment. (This does not preclude employees from receiving new field supplies/equipment upon their hire and duty assignment with the department.)
- B. Seniority Determination for Groups of Employees Hired the same day in the same classification:
 - 1. Groups of employees with the same date of hire in the same classification shall be identified.
 - 2. The final overall test score on the entrance examinations administered by Human Resources will determine seniority. The employee with the highest test score number will have the most seniority and the employee with the lowest test score number will have the least seniority within that group.
 - 3. If employees have the same overall test score on the entrance examination

administered by Human Resources, the following steps will be adhered to:

- Order Lottery: Groups of employees will participate in an order lottery. This lottery number will determine the order in which employees will draw in the seniority lottery.
 - Seniority Lottery: The employee with the lowest lottery number in the Order Lottery will draw first in the Seniority Lottery. The employee with the lowest lottery number will have the most seniority and the employee with the highest lottery number will have the least seniority within that group.
4. Employees will be required to sign an acknowledgement notice accepting their permanent seniority order and this will be placed in their police department personnel file.
 5. Seniority shall be defined as time in service with the Santa Fe Police Department for the purpose of equipment/vehicle issue.
 6. In the case of Patrol Division, Criminal Investigations Division, Support Operations, and Administration Division time within the division/unit will be the considering factor for equipment/vehicle issue.
 7. Sergeants will continue to utilize time in service in these areas.
 8. An employee may voluntarily decline a new vehicle. If employee declines a vehicle, said employee will be placed at the bottom of the seniority list.

C. Patrol Shift Bid:

1. Patrol Shift bid shall be done by utilizing a sign up chart based on continuous service with the Santa Fe Police Department. The term continuous service shall be interpreted to mean total service from date of last hire as an employee of the Department. Sergeants will continue to utilize time in grade for shift bid purposes. Each employee shall be granted 10 minutes to select his/her team placement. The Department shall two weeks prior to the bid date post a list advising the employees of their designated date and time to bid.
2. In order to assist in placement selection Sergeants will bid first, then all other eligible police department personnel in order designated by the patrol shift bid sign up chart.
3. Each employee can either bid in person or telephonically on the posted date and time. If an employee is unable to bid in-person or telephonically at their

designated date and time, the employee may bid in written form up to 24 hours prior to the employees posted date and time. The selection shall be utilized during the employee's assigned time.

4. Any employee who misses allotted time or failed to submit a written request shall be placed at the end of the entire bidding list.
5. Should an uneven number of positions become available the Chief or designee, shall predetermine which team(s) shall be allotted more slots, this will be done so that all positions are known to the employees prior to bidding on a patrol position.
6. Should any circumstance arise wherein it is determined by the Chief of Police that reassignment of Patrol Officers and/or Sergeants is necessary in order to preserve, maintain or otherwise establish the efficiency and effectiveness of Police Operations the Chief may reassign Patrol Personnel at his/her discretion provided that a seven day notice is served to the effected Patrol Personnel prior to the reassignment taking effect.

Section 18A Reemployment

- A. If an employee resigns his employment the following shall be adhered to if the employee is rehired:

Ninety (90) days or less - Rehired to previous rank and pay grade with all seniority.

Ninety One (91) days or more - If certified, will be hired under the Lateral Hire Program.

All others are considered a new hire.

Section 18B Lateral Officer/Retired Officer Hire Program

GOAL: The City of Santa Fe and the Santa Fe Police Officer's Association seek to employ highly trained and experienced Police Officers.

1. Lateral Officers:

- a) All Lateral officers hired will be required to complete a minimum twelve (12) month probationary period with the Santa Fe Police Department. For the purpose of seniority under this collective bargaining agreement, lateral hires will begin at the bottom of the established seniority list and will receive no credit for prior years of service as a certified police officer or government employee as it pertains to seniority only.

- b) Lateral officers will be hired at the entry pay of the classification for which they meet minimum qualifications and pass all testing standards.
- c) Lateral officers are eligible to test for Detective upon reaching the rank of Police Officer II and must be off probation.
- d) A lateral officer upon holding the position/title of “Senior Officer” with the Santa Fe Police Department, will be eligible to test for Sergeant after two (2) consecutive years of service.
- e) A qualifying military lateral hired after July 1, 2020, will be hired at the rank of Police Officer I, regardless of total military police experience.

2. Retired Officers:

- a) All retired officers hired will be required to complete a minimum twelve (12) month probationary period with the Santa Fe Police Department. For the purpose of seniority under this collective bargaining agreement, and retired hires will begin at the bottom of the established seniority list and will receive no credit for prior years of service as a certified police officer or government employee as it pertains to seniority only.
- b) Retired officers will be hired at the entry pay of the classification for which they meet minimum qualifications and pass all testing standards.
- c) Retired officers are eligible to test for Detective upon reaching the rank of Police Officer II and must be off probation.
- d) A retired officer upon holding the position/title of “Senior Officer” with the Santa Fe Police Department, will be eligible to test for Sergeant after two (2) consecutive years of service.

Section 19 HOLIDAYS

A. The following are days which are adopted as legal holidays by the City Council:

- New Year's Day (January 1st) (Actual)
- Martin Luther King Birthday (City Observed)
- President's Day (Observed the Friday after Thanksgiving)
- Memorial Day (City Observed)
- Independence Day (July 4th) (Actual)
- Labor Day (City Observed)
- Fiesta Holiday (Four hours on Friday of Fiesta Holiday)
- Columbus Day (Observed December 24th)

Armistice Day and Veteran's Day (November 11th) (Actual)
Thanksgiving Day (4th Thursday in November) (Actual)
Christmas Day (December 25th) (Actual)

- B. Employees required to work on the day a holiday is observed shall be compensated for such work in accordance with the provision of City Human Resources Rule 6.50, paragraph B: "All employees who are required to work a holiday shall be compensated at the rate of two and one-half (2 ½) times their hourly rate," with the exception of the Fiesta Holiday when the employee shall receive only four (4) hours of holiday pay.

Section 20 SICK LEAVE

Sick leave may be authorized when an employee is incapacitated by sickness or injury, or when an employee needs time off for medical, dental and optical diagnosis or treatment. Sick leave may also be utilized to care for immediate family members who may be seriously ill or disabled.

A. SICK LEAVE ACCRUALS:

Employees are eligible for prorated sick leave accrual for hours worked and during paid leave in accordance with the following schedule:

- 0-1 year of service: up to 72 hours per calendar year.
- 1-5 years of service: up to 96 hours per calendar year.
- 5-10 years of service: up to 112 hours per calendar year.
- 10-15 years of service: up to 128 hours per calendar year.
- 15-20 years of service: up to 144 hours per calendar year.
- 20 and more years of service: up to 159 hours per calendar year.

- B. An employee may request use of accrued leave provided that such use is applicable sick leave. An employee who abuses sick leave by using it for purposes other than those authorized in Human Resources Rule 13.30 shall have the absence charged as Leave Without Pay and may be grounds for disciplinary action.
- C. The Employer may require an employee to furnish a physician's statement for sick leave taken at any time abuse of such leave is suspected. Refusal by an employee shall result in disciplinary/corrective action.
- D. Only complete calendar months of service before and after interruptions or breaks shall be counted in computing the total number of years of service by which an employee is allowed to progress from one graduated rate of accrual to another. The following rules shall apply:

1. When an employee has not experienced any interruption or break in service, the date from which his/her years of service is counted shall be the first day of the first complete calendar month worked.
 2. Periods of service as an employee prior to a break or interruption are less than twelve (12) months duration and are not the result of disciplinary action.
 3. Periods of Leave Without Pay in excess of thirty (30) days shall not be counted as service time.
- E. An employee shall be allowed to progress from one graduated rate of accrual for sick leave to the next on the first day of the month immediately following the completion of the required total length of service.
- F. The Employer may buy sick leave on a yearly basis providing the following criteria are met:
1. An employee shall have and/or maintain a minimum balance at the end of each calendar year of five hundred (500) hours before buy-back may occur.
 2. An employee must state in writing to the Human Resources Director, no sooner than February 1 and no later than March 31 of each calendar year his/her intentions to sell back the sick leave.
 3. A maximum of ninety-six (96) hours may be sold back in any one year, never allowing the balance to drop below the minimum.
 4. The conversion ratio shall be one (1) hour of pay for every two (2) hours of sick leave.
 5. Sufficient City funding is available.
- G. An employee is not required to sell the leave in excess of the minimum balance.

H. **BEREAVEMENT LEAVE:**

Employees will be allowed up to a total of forty (40) hours of bereavement leave in the event of a death in the employee's immediate family. Such leave shall be charged to sick leave, compensatory time, annual leave, or Sick Leave Bank if all other leave has been exhausted.

1. When justified, that the deceased is an immediate family member or domestic partner, additional leave may be granted by the Association (Executive Board) at the request of the employee. This additional leave may be charged to sick leave. If

the employee does not have any available sick leave, the additional leave may be charged to annual leave and/or compensatory time.

2. Immediate family is defined as a parent, step-parent, legal guardian, grandparent, spouse, child, sister, brother, father-in-law, mother-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, niece, nephew, aunt, uncle, grandchildren and domestic partner of the employee.
3. For the purpose of bereavement, if any employee has exhausted all their leave, and have met all the provisions in Eligibility and Limitations paragraphs c, d, f, g and h listed below. Employees may use up to 40 hours of the sick leave bank.

I. SICK LEAVE BANK:

The Sick Leave Bank serves as a depository into which participating employees may donate accrued sick leave and annual leave for allocation to other participating employees. The purpose of this bank is to alleviate the hardship caused if illness or injury forces the employee to exhaust all sick leave time.

1. Eligibility and Limitations

In order to qualify for usage of the Sick Leave Bank, an employee must be eligible and approved for FMLA, exhausted all other leave, and have met the provisions of all paragraphs (a-h) below:

- a. The criteria for Sick Leave Bank usage is a determination by the Human Resources Department that the medical condition meets eligibility as defined in the Family and Medical Leave Act.
- b. For purposes of the Sick Leave Bank, immediate family or household member is defined as, husband, wife, mother, step parents, father, brother, sister, children, step-children, or any relative or person living in the employee's household for whom the employee has custodial responsibility, or where such person is financially and emotionally dependent on the employee and where the presence of the employee is needed.
- c. The Sick Leave Bank is available to those employees who have completely exhausted all available leave and who are not receiving temporary disability benefits under the City's Workers' Compensation program.
- d. All employees must contribute (20) hours/ two (2) days of accumulated sick leave or annual leave or compensatory time to be eligible to participate, and only those who contribute are eligible. This contribution must be done per calendar year. Before the deduction will be made by payroll an employee must sign the authorization form.

- e. The maximum number of Sick Leave Bank hours that may be granted by the Association to any employee during the calendar year is up to 480 hours. Upon approval of the Association (Executive Board) and Employer additional Sick Leave Bank hours may be granted on a case by case basis.
- f. Benefits from the bank are not available retroactively.
- g. Once benefits are donated, they are no longer available to the employees.
- h. Donated accumulated leave time contributed to the pool become the property of the Association and may not be withdrawn, targeted for specific individuals, returned to an employee upon separation, retirement, or become part of the employee's estate upon his/her death.

2. Qualifying Exigency for Military Family Leave (FMLA):

In order to qualify for usage of the sick leave bank you must be eligible and approved for Qualifying Exigency for Military Family Leave (FMLA) and exhausted all other leave.

3. **Donations**

Employees wishing to transfer a portion of his/her accumulated leave time must sign a Sick Leave Bank Donation Form indicating the number of hours to be transferred. Employees will be given an opportunity to donate accumulated leave time to the bank per calendar year. City payroll and the Association shall approve donation forms.

- a. Employees may not donate more than 100 hours of sick leave within ninety (90) days of their separation date from the Department. Upon an employee's separation date, the City will look back to determine whether any donations above 100 hours occurred within the ninety (90) days prior to separation from the Department. Any hours above the 100 hour limit will be subtracted from the sick leave bank.
- b. Upon death of an employee, compensation for unused total sick leave shall be payable to the employee's estate. [Human Resources Policy 13.30 (1)]

4. **Withdrawals**

- a. A memorandum generated by the member must be submitted to the Association ten (10) calendar days before anticipating the leave. Once approved, the Association must notify the payroll office three (3) days prior to the City payroll due date. If deadlines are not met, the employee will be denied sick leave donations.

- b. When a member is physically or mentally unable to apply for Sick Leave Bank, the immediate next-of-kin may make a request for Sick Leave Bank on his or her behalf. If there is no next-of-kin available, this request may be made by the legally appointed guardian, conservator or an individual acting under valid power of attorney. If none of the above are available, a supervisor and/or a union board member may make this request on the employee's behalf.
- c. The Association will render a decision to the employee within five (5) working days after receipt of the request.

Section 21 HOURS OF WORK AND OVERTIME

- A. The normal work day shall be ten (10) hours for all employees covered by this Agreement, unless otherwise agreed upon by the Chief and the Association. However, if the parties disagree, the Chief has the right to make the final decision. The normal work period will be forty (40) hours comprised of four (4) ten (10) hour days, or five (5) eight (8) hour days, as previously scheduled.

The Labor/Management Committee (LMC) shall discuss alternative work schedules for employees to present to the Chief. The LMC shall consider whether the new work schedule will directly benefit the community and/or provide greater availability of services to the public.

- B. Employees shall be entitled to overtime compensation at the rate of time-and-one-half their regular straight-time rate when they perform work in excess of forty (40) hours regularly scheduled in one week. Regular rate of pay and rules governing overtime compensation will be adhered to in accordance with FLSA.
 - 1. The work week shall consist of seven (7) consecutive days beginning at 0001 each Saturday, or the tour starting the hour nearest to that time after 0001 hours.
 - 2. The work day will be any regularly scheduled consecutive twenty-four (24) hour period beginning at the start of the employee's regularly assigned shift.
 - 3. For the purpose of this section, an employee who elects to change shifts will not be considered to have worked in excess of eight hours on any one work day.
 - 4. The employer shall give seven (7) day notice in writing to an employee prior to changing a work shift, unless the said employee agrees to the change occurring before the seven days. For example: changing and employee from a day shift to a graveyard shift or vice versa.

C. Rest Periods

1. All employees are permitted a 15-minute rest period during each one-half shift. The rest period shall be scheduled near the middle of each one-half shift insofar as practicable. Rest periods are not to be accrued or carried over or used at the beginning of a shift or to extend a lunch period.
2. A 15-minute rest period shall be allowed for an employee between shifts, or as soon as possible when doubling for a full eight-hour (8-hour) shift.
3. The Employer will attempt to ensure that a lunch period will be scheduled for each employee if the time permits.

D. Compensatory Time:

Time worked over forty (40) hours per work period will be compensated at one and one-half times the employee's regular rate of pay or in the form of compensatory time at the discretion of the employee. Compensatory time will be computed at the rate of one and one-half times the hours actually worked. The maximum accrual of comp-time for any employee is 480 hours. The employer reserves the right to pay all time worked over forty (40) hours per work period in lieu of a request for compensatory time made by the employee.

An employee may request payment for up to 100 hours of the accumulated compensatory time per fiscal year if the funds are available. If an employee terminates his/her employment with the City for any given reason, the employee will be compensated for all accumulated compensatory time. Compensatory time may also be utilized to realize accelerated retirement.

E. Fair Labor Standards Act

The parties agree to follow/comply with the provisions of the Fair Labor Standards Act, except as provided for in this Agreement and in accordance with the Act.

The Employer retains the right to adjust work schedules within the work period as allowed under FLSA. Schedule adjustments, as allowed for under FLSA, shall be temporary and are allowable only within the 40 hour work period.

Section 22 EXTRA DUTY ASSIGNMENTS

The Employer shall maintain a list within the Department of all employees who are willing to perform extra duty.

- A. When available, the Employer shall offer extra work opportunities only to persons on the list and extra duty work shall be made in sequential order through the list, with new opportunities being offered first to the person following the one who accepted the last offer. When the list is exhausted, officers shall return to the top of the list. The intention of this section is to equalize opportunities for extra duty among all persons on the list.
- B. In order to keep the list current, the Employer shall remove from the list any person who refused three (3) consecutive offers of extra duty work. This removal will remain in effect for the remainder of the quarter. On duty status does not count as a refusal.
- C. Any person who accepts an extra duty assignment but is unable to carry it out must notify the Chief or designee who will offer the assignment to the next person on the list. Notification will be made at least forty-eight (48) hours in advance of the assignment, except in case of emergency.
- D. The employee shall receive a rate of pay on all EXTRA DUTY ASSIGNMENTS at a rate of time and one-half per hour.
- E. The list shall be updated quarterly and all employees desiring to sign up for extra duty assignments shall have a two week period to do so at the beginning of January, April, July and October. Employees shall sign up in person. If an employee is off during the sign up period, that employee will be allowed to sign up within three days of their return to work. It is the responsibility of supervisors to inform employees on leave regarding the sign up list and expiration date.
- F. The Department may assign personnel to staff extra duty assignments when employees on the list for extra duty assignments fail to meet the needs of the Department as they relate to departmental need or public safety.
- G. Failure to report for the assignment will be grounds for removal from the list for the remainder of the quarter.
- H. The Employer and the Association hereby recognize and agree that Section 22 Paragraph A of this agreement is not applicable to investigative case plans due to their sensitive nature.

Section 23 OUTSIDE EMPLOYMENT

Outside Employment will be granted in accordance with Directive 29.1.

Section 24 EARLY RETIREMENT

Bargaining unit employees who are eligible for retirement may convert unused sick leave to early retirement based on the following schedule and requirements:

- A. Accelerated Leave. An employee may use sick leave in order to realize accelerated retirement providing the following criteria is met:
 - 1. An employee must state in writing his/her intention to retire to the Human Resources Director and sign a retirement contract with the Employer.
 - 2. An employee may not experience any type of salary increase during the period of conversion.
 - 3. Employees who have completed twelve (12) years of continuous employment with the Department may use sick leave at a ratio of 1 day for 1 day of sick leave up to a maximum of 1,040 hours and an additional 1,100 hours of sick leave at a ratio of 1 day for 2 days of sick leave up to a maximum of 2,140 hours in order to realize accelerated retirement.

- B. Under no circumstances will there be a cash payment for any unused sick leave except in accordance with Paragraph F of Section 20.

Section 25 LIABILITY PROTECTION

- A. Pursuant to 41-4-1 et seq., N.M.S.A. (1978), as amended, the New Mexico Tort Claims Act, the Employer shall provide protection to employees from liability arising out of acts committed during the performance of their activities in the conduct of their office and within the scope of their duties.

- B. Legal counsel will be provided as set forth in the New Mexico Tort Claims Act, Section 41-4-1 et seq., N.M.S.A. (1978), as amended.

Section 26 GROUP MEDICAL INSURANCE

The Employer has a group medical insurance plan that is offered to City employees. The employee will be advised of the plan at the employee orientation. The Employer will pay 76.5% of the cost of the group medical insurance premiums currently offered by the Employer to City Employees.

Each Union shall participate and have one vote on the committee that is composed to establish, evaluate, select and recommend group medical or dental insurance plans.

Specific details of the plan and cost to an employee are available from the Human Resources Department.

Section 27 WORKERS COMPENSATION

The Employer will comply with the provisions of the New Mexico Workers' Compensation Act.

Refer to Appendix C.

Section 28 JURY DUTY AND WITNESS PAY

Employees will be allowed to serve on jury duty during their normally scheduled work hours without loss of pay. If the employee is summoned to jury duty outside of their normally scheduled work hours, they will be compensated as hours worked. Jury fees received (excluding reimbursement for travel and meals) shall be remitted to the City Finance Department.

Personnel who are called to testify off duty as expert witnesses on behalf of the City or in relation to investigations which they have conducted shall have the option of receiving paid overtime or receiving a witness fee for the testimony. The employee will not be allowed to receive both compensations. In the event the employee chooses to receive the overtime pay in lieu of the witness fee, the employee will remit the witness fee check to the City.

Section 29 ON CALL AND CALL BACKS

A. On call Status:

1. The Department Section/Unit Commander(s) will develop and maintain an internal on-call schedule by Section/Unit for those employees assigned to the following sections/units: Criminal Investigations Section, Crime Scene Unit, Animal Services Unit, Traffic Fatal Team.

On call staffing shall be filled in the following capacities:

Criminal Investigations Section - one (1) Criminal Investigation Sergeant, two (2) Criminal Investigators or one (1) Criminal Investigator & one (1) sworn officer assigned to the Criminal Investigations Section and, one (1) Crime Scene Technician (full time or Auxiliary).

Animal Services Division - one (1) Animal Services Officer.

Traffic Fatal Team - one (1) Traffic Fatal Team Officer and one (1) auxiliary traffic officer.

- a. On call status coverage shall be designed to assure proper coverage and staffing for hours not covered by a normal work period (forty (40) hours comprised of four (4) ten (10) hour days or five (5) eight (8) hour days as previously scheduled).
- b. Any employee who is scheduled to be on on-call status and is unable to carry out the schedule must notify his/her Supervisor/Commander as soon as possible. Notification will be made at least forty-eight (48) hours in advance of the on-call status assignment, except in cases of emergency. The Supervisor/Commander will then make the necessary adjustments, if needed, to fulfill the scheduled on-call coverage.
- c. Assignment to the on-call program shall be mandatory for those members assigned to the sections/units identified in paragraph A subsection 1 of Section 29 of the CBA. Any employee who fails to respond to a call out within the designated time frame may be subject to disciplinary/corrective action in accordance with Section 34: Disciplinary Action of the CBA.
- d. The Department shall provide a cellular telephone to any employee assigned to on-call status.
- e. On-call status will be for seven (7) consecutive days. An on-call day will consist of a twenty-four (24) hour period.

Any employee may be removed from on-call status prior to the end of their seven (7) days for the following cause(s):

1. At the discretion of the Chief or designee
2. Serious illness or injury
3. Family emergency
4. The Employer shall compensate employees assigned to the on-call program.
5. Employees assigned to the on-call program shall receive one-hundred dollars (\$100.00) per on-call rotation they participate in as defined in paragraph A-1 of Section 29 of the CBA. This amount shall not include any actual overtime hours worked by an employee as a result of being called out.
6. Employees assigned to the on-call program are eligible for only one (1) on-call program compensation pay per on call week.

7. On-call Status: An employee will not be required to remain at home for the purposes of meeting the requirements for on call status, so long as said employee can assure availability and fitness for duty within sixty (60) minutes from the time of the initial notification from the on call supervisor. The parties hereby recognize and agree that response time may be extended with commander approval.

B. Call Back Time:

When an employee is required to physically report to a post after the conclusion of a normal work shift and prior the beginning of said employee's next work shift, the employee shall receive compensation at time and one-half for a minimum of two (2) hours from the time said employee is contacted by a Supervisor and/or Commander. The rate of pay will be in compliance with Section 21 *Hours of Work and Overtime*.

If an employee is called by a supervisor while off duty and not required to report to post and the phone call exceeds six (6) minutes the employee will be compensated for the actual time spent on the phone call.

Section 30 DEFERRED COMPENSATION PROGRAM

The Employer will provide opportunities to participate in a 457b.

Section 31 CHECK OFF AUTHORIZATION

- A. The Employer shall deduct from employees' pay for each pay period, Association dues in an amount specified upon presentation of dues deduction authorization card signed by individual employees.
- B. The Employer shall pay the amount withheld to the Association.
- C. The Employer and the Association will comply with Supreme Court ruling in Janus V. AFSCME, Council 31, 138 S. Ct. 2448 (2018),
- D. The Association agrees that it will indemnify, defend and hold the Employer harmless from and against any claims arising from payroll deductions made by the Employer pursuant to this Article, except those claims incurred solely as a result of a breach by the Employer of its legal duties or obligations under the United States Constitution.

Section 32 LAY OFF AND RECALL

- A. Should a reduction in personnel services be mandated by the governing body, the Employer will review all alternatives to the layoff of personnel. The Association will be provided the opportunity to offer alternatives to the reduction of personnel.

- B. Layoff: If a reduction in work force becomes necessary, all of the following factors shall be considered:
 - 1. Seniority of the employee,
 - 2. Training, skills, and abilities of the employee, and
 - 3. Departmental needs.

- C. Transfers: When a lay-off occurs, the mandatory transfers between units shall be made in such a way as to maximize the efficiency and effectiveness of the Department. In making such transfer decisions, the following factors shall be considered:
 - 1. Seniority of the employee
 - 2. Qualifications of personnel
 - 3. The nature of the transfer and the skills called for within the unit being transferred to
 - 4. Departmental needs, and
 - 5. The stated assignment preferences

- D. Recall: Personnel separated as a result of a reduction in force shall be recalled based upon all of the following factors:
 - 1. Seniority of the employee
 - 2. Training, skills, and abilities of the employee
 - 3. Disciplinary history of the employee for the past twelve (12) months, and
 - 4. The stated assignment preferences

- E. The term "seniority" for the purposes of this section is set forth in Section 18: "Seniority" of this Agreement.

Section 33 INTERNAL AFFAIRS

It is the policy of the Department to maintain internal discipline, open lines of communication with the general public, and encourage citizens to freely express concerns or complaints of misconduct, malfeasance, or other inappropriate conduct by members of the Department. All members of the Department are responsible for ensuring departmental integrity and assisting in the expeditious response to citizen complaints in a fair and impartial manner.

A. PURPOSE

1. In recognition of the need to maintain departmental integrity, the Professional Standards Unit is charged with the responsibility of impartially and objectively investigating all allegations of malfeasance, non-feasance, and misfeasance brought against any member of the Department.
2. The Professional Standards Unit may conduct investigations into allegations of misconduct as outlined herein for the purpose of providing the Chief with a means of impartially assessing employee actions to ensure compliance with departmental rules and regulations, to enforce internal discipline, and to provide a vehicle through which citizen concerns may be equitably evaluated and judiciously addressed.
3. To ensure the rights provided under the Peace Officers Employer-Employee Relations Act, NMSA 29-14-1 through 11, Garrity Rights originating from the U.S. Supreme Court Case “Garrity vs. New Jersey;”, and Weingarten Rights originating from the 1975 U.S. Supreme Court Case “NLRB vs. Weingarten, Inc.” 420 U.S. 251, 88 LRRM 2689.

B. ORGANIZATION & STAFFING

The Professional Standards Unit reports directly to the Chief.

1. Under certain conditions, the Chief may appoint a Sergeant or above to conduct an Internal Affairs Investigation.
 - a. Conditions are listed as, but not limited to: absence by the Internal Affairs Officer; the existence of multiple complaints at one time; the existence of a possible conflict of interest.
 - b. If the Chief appoints a Sergeant or above to conduct an Internal Affairs Investigation, he/she may be temporarily assigned to the Professional Standards Unit while the case is being actively investigated, to include preparing the final report for the Chief.

C. RESPONSIBILITIES & DUTIES

The Professional Standards Unit is responsible for performing those duties in accordance with Department policies and all applicable laws, to include but not limited to:

1. Recording, registering, and conducting the investigation of complaints against employees;
2. Conducting the investigation of alleged or suspected misconduct within the department;
3. Overseeing the investigation of inquiries into violations of department policy not investigated through the Internal Affairs Unit;
4. Maintaining the confidentiality of the Internal Affairs Investigation and records. Internal Affairs investigations are considered to be highly confidential in nature. When the confidentiality of an internal affairs investigation is compromised by either the Employer or the employee, it shall be treated as a violation of policy and investigated immediately by order of the Chief of Police.
5. Administering, maintaining and investigating civil actions brought against the Department;
6. Disseminating information to the public on procedures to be followed in registering complaints against agency employees.

D. AUTHORITY

1. Emergency suspension against an employee may be imposed by a supervisor and/or command officer having the rank of Lieutenant or above, only in situations where the affected employee is clearly physically or mentally unable to perform his/her duties and/or the employee is alleged to have committed one or more severe infractions of the Department's policies and procedures.
2. If an emergency suspension is imposed, the suspended employee and the supervisor will present themselves at the Chief's Office no later than 9:00 AM on the next working day. An emergency suspension which will extend beyond one (1) work day must be approved by the Chief.
3. Any administrative investigation will be completed within 180 days. The 180 day period shall not include time for review. Additional extensions may be granted if circumstances arise outside of the control of Department or City of Santa Fe (e.g. Military Leave, FMLA, pending criminal investigation or criminal charges, time

to locate a critical witness, etc. A copy of the approval, to include the amount of time granted and reason for delay, will be sent to the employee. The Chief's review process shall be completed within 30 days.

E. FINDINGS

Upon completion of the investigation, a finding shall be made and the investigation shall be classified as one of the following;

1. Sustained - the allegation is supported by sufficient proof.
2. Not-sustained -the evidence is insufficient to prove or disprove an allegation.
3. Unfounded - there is no basis for the complaint, not founded on fact or truth.
4. Exonerated - conduct was proper, cleared of allegations.

The Chief shall review the investigation and either concur or not concur with the findings. The Chief, via letter, shall notify the employee being investigated as to the disposition of the investigation within ten (10) business days of the Chief's decision. Upon receiving the Chief's decision, the employee, via written request, shall then be permitted access to review the Internal Affairs file. The employee's Union Representative and/or legal counsel shall be permitted to review the Internal Affairs file if requested in writing by the employee.

All findings shall be based solely on the totality of the evidence gathered by the investigator during the course of the internal affairs investigation. Findings should not be based on the personal opinions, bias, and feelings of the investigator. Findings should not include statements made by the investigator which serve to lend credence to the finding beyond the merit of the evidence, but may not preclude opinions derived from training, experience and work related knowledge.

F. DUTY STATUS DURING INVESTIGATION

The Chief, in the best interest of the Department, may elect to take any of the following actions concerning an employee's duty status during an Internal Affairs investigation:

- A. Continue the employee on duty as assigned.
- B. Continue the employee on duty in a temporary assignment. This temporary assignment will not be deemed disciplinary in nature and is designed to protect the employee, Employer, and the public interest.
- C. Impose administrative leave with pay upon an employee pending the results of the investigation and/or subsequent department proceedings.

- D. Impose leave without pay based the severity of allegation that the employee may have committed one or more severe infractions of the Department's policies and procedures, City of Santa Fe Rules and Regulations, or law and with the approval of the City Attorney and the City Manager.

G. EMPLOYEE RIGHTS

- A. All Internal Affairs investigations shall be conducted fairly and impartially and in compliance with the New Mexico State Peace Officer Employer-Employee Relations Act. The Act affords certain rights to employees who are under investigation by his/her employer for alleged actions which could result in administrative action. The Act is attached hereto as Appendix A.

Section 34 DISCIPLINARY ACTION

- A. In the event that an investigation could result in the implementation of disciplinary action, if the investigated employee so requests, the Association may designate two representatives to participate at all stages of the proceedings. The employee shall be provided with copies of the written charge(s) and discipline decision.

B. Administrative Investigations

When an employee is under the investigation by the Employer for alleged actions that could result in administrative/criminal sanctions being levied against the employee, the employee shall be afforded all rights and privileges, if any, guaranteed by the New Mexico Peace Officers Employer-Employee Relations Act. A copy of the Act is included as Appendix A.

C. Basis for Employee Discipline

1. Discipline

Disciplinary actions for employees are based on showing of cause. Disciplinary actions will be consistent with governing laws and regulations and will be taken without regard to race, age, religion, color, national origin, ancestry, sex, physical or mental disability or serious medical condition. No employee will be disciplined for refusing to perform an unlawful act.

2. Approval by the City Manager

Disciplinary action beginning at a Written Reprimand shall require approval of the City Manager before implementation. Whenever such approval is not practical

because of urgent circumstances, necessary action may be taken and the situations reviewed with the City Manager as soon as practical.

3. **Progressive Discipline**

An employee shall be progressively disciplined based on the nature of the infractions(s). Each case of inadequate performance or act of misconduct shall be judged individually. The step of progressive discipline depends on the severity of the infraction and the employee's previous work and disciplinary record. Discipline will be based on fundamental fairness, equity and consistency within the Department. Because of the serious nature of some infractions, the first disciplinary action may be dismissal or other disciplinary action.

- a. **Officer Conference:** An officer conference by an immediate supervisor is used for minor infractions such as informing employees that their performance, actions, behavior or conduct needs to change. Under normal circumstances supervisory personnel should use an officer conference first before any formal disciplinary is taken. A POA Representative will NOT be called during this supervisor and employee conference time. An officer conference is issued directly from the supervisor to the employee and does not require chain of command approval. Causes of an officer conference include, but are not limited to:

1. Substandard work performance
2. Tardiness

Supervisors/Commanders will complete the proper Officer Conference Form with all necessary information in the text. The Officer Conference Form shall be maintained by the supervisors/commanders for three months.

- b. **Letter of Counseling:** (written warning memorandum). A letter of counseling by an immediate supervisor is used for minor infractions to inform employees that their performance, actions, behavior or conduct needs to improve. An employee may receive a letter of counseling for an infraction that is of a greater degree than that for which verbal counseling may be used or in cases when the initial verbal counseling did not correct the behavior in question. At the time of a letter of counseling being issued to an employee, no more than two POA Representatives will be present and the content of the letter of counseling may include a reference to the date and time of a verbal counseling being issued by a commander for the infraction defined in the letter of counseling. The letter of counseling shall be kept in the police department file for a period not to exceed three months, for the purpose to monitor a change with the employee's behavior, conduct, work performance, or actions. A letter of counseling may be used in conjunction with the employee's Performance Appraisal Development Plan

(PADP) or interim Performance Appraisal Development Plan (PADP). A letter of counseling must be approved through the chain of command by a Deputy Chief of Police. Causes of letter of counseling include, but are not limited to:

1. Repeated tardiness
2. Missed court appearance/administrative hearing in a misdemeanor case

- c. **Written Reprimand:** An employee shall receive a written reprimand because the deficiency or infraction is of a greater degree than that for which a corrective action may be used or if the corrective action did not change the employee's behavior.

Causes for written reprimands include, but are not limited to:

1. Failure to follow safety rules
2. Failure to follow published rules and regulations
3. Missed court appearance/administrative hearing in a felony case

Written reprimands shall be placed in the employee's Human Resources file. The employee will be provided with a copy of the statement. The employee will be given the opportunity to review and acknowledge that he/she has reviewed the statement. The employee may respond by noting on the reprimand that they do not agree with the statement or may file a written rebuttal, which shall be placed in the employee's Human Resources file. Complaints or disagreements concerning written reprimands may be addressed through the informal grievance procedure, by mutual agreement.

At the employee's request, the written reprimand will be removed from the employee's Human Resources file twelve (12) months after the employee received the reprimand provided the employee has not received another written reprimand or other disciplinary action during the twelve (12) month period.

- d. **Suspension:** An employee may be suspended without pay for a single serious infraction or for continued inadequate job performance or misconduct. Such suspension will not exceed thirty (30) working days. Suspension of an employee is subject to the formal grievance procedure. Causes for suspension include, but are not limited to:

1. The causes listed for written reprimands
2. Continued instances of poor performance or a single occurrence of poor performance if serious
3. Insubordination

At the employee's request any suspension will be removed from the employee's Human Resources file eighteen (18) months after the employee received the suspension, provided the employee has not received another suspension or other disciplinary action during the eighteen (18) month period. If an employee receives a subsequent disciplinary action during the original eighteen month time frame, the original disciplinary action shall be held in the Human Resources file for a total of, but not longer than three (3) years.

e. Demotion and Dismissal: An employee may be demoted or dismissed for continued inadequate job performance or for other causes. The demotion or dismissal of an employee is subject to the formal grievance procedure. Causes for demotion or dismissal shall include, but are not limited to:

1. All causes listed previously if continuing and are on going infractions
2. Theft or intentional abuse and destruction of City property or unapproved use of city property for any reason
3. Conviction of a felony
4. Conduct unbecoming an employee of the City or Police Department
5. Deliberate falsification of information on the employee's job application or other record
6. Violation of the New Mexico Controlled Substances Act, or using controlled substances or alcohol on the job, or reporting to work under the influence of an unlawful controlled substance or alcohol, except that use of alcohol or unintentional use of a controlled substance while in the performance of their duties will not be a violation
7. Insubordination deemed blatant or hostile
8. Failure to meet standards of substance abuse rehabilitation programs
9. Lying in an Internal Affairs Investigation (Dismissal)

The preceding examples are typical of the types of infractions sometimes encountered, but are not inclusive of all situations that may arise. The Employer reserves the right to exercise judgment and render disciplinary action or dismissal as determined appropriate based on the circumstances of each case.

D. Disciplinary Files

The Department shall maintain a disciplinary file on each employee who receives a disciplinary action. The file shall include all disciplinary actions which have not been removed pursuant to the terms of this section. The disciplinary file shall also include a history of all disciplinary actions which occurred during the employee's service with the Department.

A brief chronological history of disciplinary actions taken will be maintained by both the Department and Human Resources. This history shall be limited to date, employee name, charge and disposition.

E. Pre-determination hearings

An employee notified of a possible written reprimand, suspension, demotion or dismissal shall be entitled to a pre-determination hearing before the Chief or designee.

1. **Loudermill Rights.** Unlike Weingarten, the employer has an obligation to inform the employee of his/her Loudermill Rights to a hearing. The right is known as "Loudermill Right" based upon the 1985 U.S. Supreme Court decision in the case of *Cleveland Board of Education v. Loudermill*.
2. **Notice.** An employee shall be notified in writing at least forty-eight (48) hours prior to the date and time of the pre-determination hearing. The notice shall disclose the proposed disciplinary actions, reasons for the proposed disciplinary actions, and shall state the time, place and date of the hearing.
3. **Hearing Procedure.** The hearing shall be informal and shall be conducted by the Chief or designee. The employee shall be represented by legal counsel and/or up to two representatives of the Association. The purpose of the hearing is to provide the employee with a reasonable opportunity to address the reasons for the proposed disciplinary action.
4. **Waiver.** The hearing may be waived by the employee in which case the disciplinary action is effective immediately.
5. **Decision. The Chief, or designee,** shall render a final recommendation within five (5) business days of the hearing, and forward the recommendation to the City Manager. If the employee wishes to appeal the disciplinary action, the employee shall submit a written appeal to the City Manager within five (5) business days from the date the employee was served with the decision from the Chief or designee. The written appeal must state the specific reasons why the disciplinary action should not be taken. The City Manager has fifteen (15) business days from the receipt of the employee's written appeal to consider the appeal and respond in

writing to affirm, modify or reject disciplinary action. The City Manager, at his/her discretion, may also within this time period request a meeting with the Union and the employee to discuss the appeal.

6. **Appeal.** If the association is dissatisfied with the decision of the City Manager with regards to suspensions, demotions, or terminations, it may appeal the decision by serving a written demand for arbitration pursuant to the Arbitration provision of Section 35. An employee dissatisfied with the decision of the City Manager with regards to disciplinary action other than suspensions, demotions or terminations may appeal the decision at the cost to the employee by serving a written demand for arbitration pursuant to the Arbitration provision of section 35.

Section 35 GRIEVANCE AND APPEAL PROCEDURES

Grievances shall be limited to alleged contractual violations, misapplication or misinterpretation of any provisions of this Agreement. Grievances shall be filed within fifteen (15) business days from the date the violation(s) occurred, or from when the Association or the employee was aware or reasonably could have been aware of the violation(s) of the Agreement.

A. Informal Grievance Procedure

The purpose of the informal grievance procedure is to provide employees with a fair and equitable process for resolving complaints or problems. Most grievances should be resolved at the lowest possible level and as informally as possible before the parties resort to the formal grievance procedure.

1. The affected employee shall discuss the problem with his/her first line supervisor and attempt to work out a solution. No written documentation is required, and it is anticipated that most problems will be resolved at this level.
2. If the employee does not obtain a satisfactory solution to the problem after consultation with the first line supervisor, the employee may discuss the problem again informally with the next level supervisor if applicable.
3. If the problem is not resolved by a supervisor in the chain of command, the employee may file a written complaint with the Chief. The written complaint shall contain the following information:
 1. The name and position of the affected employee.
 2. A clear and concise statement of the grievance.
 3. The issue or issues involved.
 4. The relief sought.
 5. The date the incident or violation took place.
 6. The specific section or sections alleged to have been violated.

The Chief or designee shall respond in writing within ten (10) business days of receipt of the written complaint and shall within this time period request a meeting with the Association and/or the affected parties to discuss the grievance and its settlement. If the grievance is not satisfactorily resolved at this level, the grievance may be submitted to the formal grievance process.

B. Formal Grievance Procedure

If a mutually agreed upon solution was not reached through the informal grievance procedure, the Association must submit a formal grievance to the City Manager within seven (7) business days from the date of the informal grievance written response from the Chief.

Formal Grievances may be filed by the Association on behalf of an individual employee or group of employees covered by this Agreement, or the Association as the exclusive representative. If an individual employee decides to file a formal grievance, they do so at their own expense and must provide for their own counsel.

All steps of the Informal Grievance Process must be completed prior to evoking the Formal Grievance Procedure. All formal grievances shall be filed in writing and shall contain the following information:

1. The name and position of the affected employee
2. A clear and concise statement of the grievance
3. The issue or issues involved
4. The relief sought
5. The date the incident or violation took place
6. The specific section or sections alleged to have been violated

The City Manager or designee shall respond in writing within twenty (20) business days of receipt of the written grievance and shall within this time period request a meeting with the Association to discuss the grievance and its settlement. If the grievance is not satisfactorily resolved at this level, the grievance may be submitted to final and binding arbitration by the Association (but not by the individual employee) within ten (10) business days after the time for response of the City Manager.

C. Miscellaneous

1. Tape recorders or other electronic recording devices may be used by any party participating in the grievance.
2. Any of the time limits set out in this procedure may be extended, waived, or otherwise modified by written mutual agreement of both parties.
3. A party to this Agreement or an individual employee may be represented by counsel at any step of the formal grievance procedure at his/her own cost.

4. A grievance may be withdrawn by the Association at any step of the procedure without prejudice and without precedence except as to objections of timeliness. The arbitrators shall decide all disputes regarding the grievability of grievances.

D. Arbitration

1. The Association has complete discretion as to whether it will demand arbitration or accept the City Manager's response. If however, the Association decides to demand arbitration it must serve a written demand for arbitration upon the Employer within ten (10) business days from the time of response from the City Manager.
2. Within five (5) business days of the written demand for arbitration, the Association shall make a request for a panel of seven arbitrators from the Federal Mediation and Conciliation Service (FMCS) or the American Arbitration Association (AAA), unless the parties can agree upon an arbitrator or alternative panel of arbitrators from which to select an arbitrator.
3. Within five (5) business days of the receipt of a list of arbitrators, the parties will confer to select the arbitrator. The selection shall be made by the Association and the Employer alternately eliminating names. The last name remaining shall be the arbitrator. The parties shall flip a coin to determine who shall strike the first name. If the Employer fails or refuses to strike a name from the list, the Association may request that the FMCS or the AAA unilaterally appoint an arbitrator to hear the matter. Once an arbitrator is either selected by the parties or appointed by the FMCS or AAA, the arbitrator shall have full jurisdiction.
4. The decision of the arbitrator shall be based upon the facts established by the testimony and documents presented in the case. The arbitrator shall have no power to add to, subtract from, alter, or modify any of the terms of the Agreement; but, the arbitrator may give appropriate interpretation or application to such terms and provide appropriate relief. The arbitrator shall not have authority to make an award, which includes a fine or other punitive damages or award of attorney's fees.
5. The arbitrator's decision shall be final and binding on the parties. In arbitrations challenging a disciplinary action, the Employer shall have the burden of proof by a preponderance of the evidence. In arbitrations where the Association alleges a contractual violation or dispute over a working condition, the Association shall have the burden of proof by a preponderance of the evidence.
6. Each party shall pay one-half of the arbitrator's fees and expenses.

7. Nothing in this section shall prohibit a party from appealing an arbitration award pursuant to the New Mexico Uniform Arbitration Act in a court of competent jurisdiction.

Section 36 PROBATION PERIOD

Probationary employees are not covered by this Agreement. It is understood and agreed by both parties to this Agreement that the probationary period for sworn employees includes the period of time from the date of hire as a permanent full-time employee for a period of twelve (12) months, which may be extended for up to 6 months, due to work related performance or work related injury.

It is understood and agreed by both parties to this Agreement that the probationary period for civilian employees shall be in accordance with Rule 4 section 4.51 of the Human Resources Rules and Regulations.

Personnel shall not receive a promotion or pay increase until successful completion of the probationary period, except for those increases approved by the Governing Body.

Section 37 FILLING OF VACANCIES

A. PERMANENT VACANCIES

1. Merit Principles

A. The Parties adopt the following merit standards and shall govern in all Department personnel policies and procedures:

1. Recruiting, selecting, and advancing employees will be on the basis of their ability, knowledge and skill, including open consideration of qualified candidates for initial employment;
2. Equitable and adequate compensation will be provided;
3. employees will be trained as needed to assure high-quality performance;
4. employees will be retained on the basis of the adequacy of their performance, and provisions will be made for correcting inadequate performance and separating employees whose inadequate performance cannot be corrected;
5. fair treatment of candidates and employees in all aspects of human resources administration without regard to race, color, religion, sex, national origin, political affiliation, age, handicap, or other non-merit

factors, and with proper regard for their primary and constitutional rights as citizens, will be assured, and;

6. employees will be informed of their political rights and prohibited practices under the Hatch Act.

2. Posting of Vacancies

- a. All POA vacancies shall be publicly advertised for a minimum of ten (10) calendar days by the office manager or designee. Qualified Union applicants may be given initial consideration for the applied position; however, the most qualified applicant will be selected. (This section will not affect requirements set by the New Mexico Law Enforcement Academy).
- b. The position vacancy posting shall contain the classification of the position, the testing requirement for applicants, the minimum qualifications for the position, the FLSA and Union Status; the work location of the vacancy; a description of working conditions; a general description of the position; examples of work; the pay schedule of the position; the location where applications are to be filed; the opening and closing dates; and the time frames for accepting applications.

3. Filing

- a. All applications for positions in the Department shall be made on forms prescribed by the Human Resources Director. Such applications shall include information, which the Human Resources Director may deem necessary or is mandated by City, State and Federal law, regulations and guidelines. All applications shall be signed, dated and the truth of all statements contained therein certified by the applicant's signature.
- b. No question on any form or application shall be so worded as to elicit information concerning the sex, age, race, physical or mental handicap, national or ethnic origin, political or religious opinions or affiliation of any applicant except that information required to assist with equal employment opportunity efforts, nor shall inquiry be made concerning such origin, opinions or affiliation during any interview, and all such disclosures thereof shall be disregarded.

4. Examinations

- a. Examinations of applicants shall consist of testing devices that will establish and confirm the qualifications of applicants required by the class and/or the rank for which applicants are being examined.
- b. Examinations to measure the qualifications of candidates shall be conducted by the Human Resources Director and his/her staff, or by persons designated by the Human Resources Director to assist.

5. Character

- a. Testing for a position vacancy and/or higher rank in the Department may be accomplished by a combination of the following types of tests: written tests, training and experience, oral tests, assessment center, performance tests, or any other appropriate selection device. A minimum of two (2) types of tests shall be used.
- b. New tests will be developed in accordance with established professional techniques and relevant federal laws, regulations and guidelines with the intent of measuring critical or important knowledge, skills, abilities, job duties, work behaviors, or work necessary for successful job performance.
- c. No test shall be administered by the Department to an applicant candidate for employment without such test having been approved by the Human Resources Director.

6. Administration

- a. The Human Resources Director shall publish the dates and location of the scheduled test.
- b. The Human Resources Director may designate such proctors and oral examiners of recognized professional competence in the area to be tested as may be necessary for the proper administration of tests, may provide for their compensation, and may arrange for the use of facilities in which to administer the tests.
- c. Oral tests will be administered by oral examiners, appointed by the Human Resources Director, who do not hold any political office and who do not make the final hiring decisions at the Department level for the position in question. A testing specialist from the Human Resources Department will proctor all oral tests.

- d. The Human Resources Director shall assign an identification number to each examinee, and this number shall be used to identify all of an examinee's papers.
- e. If the conduct of any examinee is improper during any phase of a test, the proctor may remove such examinee from the test. Such conduct will be brought to the attention of the Human Resources Director who may bar the examinee from future tests. The Human Resources Director may require any examinee to retest if there is reason to believe the examinee has received prior knowledge of confidential information about the test content, has made false representations at the test administration, or whose conduct during test administration was such as to obtain an unfair advantage.

7. Scoring

- a. The Human Resources Director shall compute a final score using acceptable testing practices. Where a combination of testing procedures is used, failure on any part of the procedures may constitute failure for the entire test.
- b. The observed (raw) score shall be used to rank the candidates.

8. Notice of Results

Notification of test results shall be in writing and made within 30 calendar days of the test date.

9. Confidentiality

The Human Resources Director shall maintain the security of all tests. Written tests, oral test questions, performance tests, rating formulas or any related material that would compromise the content of a test shall be confidential, except as otherwise prescribed under the Federal Freedom of Information Act.

10. List of Eligibles

The Human Resources Director shall maintain an official roster of applicants eligible for appointment to a class and/or rank.

11. Establishment

A separate list of eligibles shall be established and maintained for each class and/or rank in the City.

12. Names

The names of applicants with passing test scores shall be placed on an appropriate list of eligibles. For promotional consideration, in rank order of final test scores achieved, and seniority of the employee in cases of tie scores.

13. Supplemental Registers

The Human Resources Director shall periodically make a review of existing lists of eligibles to determine whether there are an adequate number of applicants available to meet the needs of the Department. When it is determined by the Human Resources Director that the particular list of eligibles is inadequate or may become inadequate in a short period of time, the Human Resources Director shall order recruitment and testing for that class and/or rank.

14. Duration of Names

An applicant's name shall be retained on a list of eligibles for twelve (12) months from the date the applicant is placed on the list of eligibles.

15. Requests for Hire

Whenever a vacancy or an anticipated vacancy occurs in a position, or when a list of eligibles is twelve (12) months old, and the Department desires to fill the vacancy with a promotion, a request for a list of eligibles shall be submitted to the Human Resources Director on the prescribed forms, unless otherwise provided for by the Human Resources Director.

16. General

- a. Selection for appointment to a position in the Department shall be made from a list of eligibles.
- b. Upon selection by the Department, a recommendation will be made to the City Manager through the Human Resources Director to which the City Manager must concur before the selection is approved.

- c. Should the higher ranked applicant (s) not be selected, he/she will be given the reason(s) prior to the Department's recommendation to the City Manager and Human Resources Director, as to why he/she was not selected and the opportunity to meet with the Chief to discuss the non-selection. The Chief shall also provide the City Manager and Human Resources Director with the reasons why the higher ranked applicant(s) were not selected. The applicant (s) not selected are given the opportunity to present in writing relevant facts to the City Manager within forty-eight (48) hours after the notification of non-selection. The City Manager shall review the Chief's and the applicant's submission and shall make a finding of justifiable cause for the non-selection. Justifiable cause can include:
 1. Unsatisfactory work performance.
 2. Inability to perform duty due to mental, physical or emotional difficulties that are clinically documented and that directly affect the work performance of the individual.
 3. Lack of specialized knowledge for the position.

B. TEMPORARY VACANCIES

1. A job will be considered vacant when the employee holding the job has quit, is discharged, demoted, promoted, transferred to another department, or when it is a newly created job. All other vacancies shall be considered temporary.
2. Should the Employer choose to fill a temporary vacancy, notice of the temporary vacancy shall be posted on the Department Special Orders for ten (10) calendar days. Any employee desiring consideration for the temporary vacancy shall file a *Memorandum of Interest* within the posting period. *Memorandums of Interest* shall be submitted to the office of the Chief.
3. If more than one (1) qualified employee submits a *Memorandum of Interest*, the temporary vacancy will be filled by the employee that best meets the qualifications, skills, and abilities required by the vacant position, provided disciplinary records are otherwise equal.
4. Management may assign an employee to fill the vacant position during the posting or in the absence of any *Memorandums of Interest* by a qualified employee. Employees temporarily assigned or transferred to a lower-paid job in the Department or in a different department within the City, shall receive their regular rate of pay.

5. When a vacant position has been filled as a temporary vacancy for thirty (30) or more consecutive workdays, the employee filling the vacancy shall receive all pay and benefits pertaining to that job classification.
6. Notwithstanding any provision to the contrary, employees may be assigned or transferred temporarily for a period of time not to exceed six (6) months without a permanent vacancy being created as a result.

C. ASSIGNMENTS AND TRANSFERS

The Employer retains the right to assign, transfer, and retain employees in positions, including assignment of employees to specific positions and the determination of job content and/or job duties.

1. Notice of a vacant position shall be posted in the Department Special Orders for ten (10) calendar days. Any qualified employee desiring consideration for the position shall file a *Memorandum of Interest* within the posting period. *Memorandums of Interest* shall be submitted to the office of the Chief.
 - a. If an employee is away from work for an extended period of time (i.e. annual leave or training), the employee may submit a memorandum to the Chief expressing interest in a particular position or unit should a vacant position become available during the employee's absence. These memorandums shall include the date the employee will be away from work and the date the employee is expected to return to work, and shall only be valid between those specified dates.
 - b. If more than one (1) qualified employee submits a *Memorandum of Interest*, the vacant position may be filled by the employee that best meets the qualifications, skills and abilities required by the position, provided disciplinary records are otherwise equal, at the discretion of the Chief. If there are two equally qualified candidates, seniority will be used to break the tie.
 - c. If only one (1) qualified employee submits a *Memorandum of Interest*, but the Employer determines that his or her selection is not in the best interest of the Department (e.g. the employee is currently serving in a position where his or her talents are needed and cannot easily be replaced), the employer may select another qualified employee to fill the vacant position.
 - d. Nothing in this section shall prohibit the Employer from making disciplinary lateral transfers in accordance with Section 34 of this Agreement. The non-disciplined employee displaced by the disciplinary

transfer shall be given the first opportunity to return to his/her prior position when an opening becomes available.

- e. Nothing in this section shall prohibit a lateral transfer wherein both employees request in writing to switch positions stating the reasons for the requests and the request is approved through the chain of command with the Chief having the final approval.

Section 38 EDUCATIONAL INCENTIVE PAY

- A. The employer shall pay an educational incentive at the rate set forth below only for the highest level degree achieved by the employee:

Associates Degree	\$ 50.00 per month
Bachelor's Degree	\$ 100.00 per month
Master's Degree	\$ 150.00 per month

- B. To be eligible for educational incentive pay, an employee must:
 - 1. Have successfully completed his/her probationary period
 - 2. Have received a degree from a fully-accredited college or university verified by a certified official transcript

Section 39 STAFFING

Subject to the right of the Employer to set and determine the number of employees to be carried in each job classification, the Employer will meet and consider input from the Association prior to changes in staffing that decreases the number of union positions in an attempt to ensure that sufficient personnel and resources are available to allow employees to accomplish their duties in a timely and safe manner.

Section 40 LABOR MANAGEMENT COMMITTEE

The parties shall establish a Labor Management Committee (hereinafter referred to as "LMC") which shall be a standing committee for the duration of this Agreement. The LMC shall meet at least every other month at a mutually agreed upon time and place on paid status for all members. The Association and the Employer shall each appoint four members unless mutually agreed to the contrary. The LMC shall be free to address any topic of mutual interest or concern which affects working conditions of employees to include issues of health and safety. It is understood and agreed that while the parties shall not be restricted in the topics to be addressed other than set forth above, neither the discussions, nor the outcome thereof shall be considered or treated as constituting a binding agreement. This committee is not empowered to negotiate or resolve any

changes in the collective bargaining agreement or formal grievances, but if an agreement can be reached on an issue of mutual interest or concern, the LMC will give the information to the City and the Association, and if both agree, a Memorandum of Understanding can be implemented.

Section 41 CITY OF SANTA FE AND POLICE DEPARTMENT RULES AND REGULATIONS

- A. The Employer may amend or expand current rules and regulations which directly affect or may affect employees, provided provisions of this contract or any Memorandum of Understanding are not altered or affected. The Employer will provide a written or electronic copy of current or amended rules and regulations, or policies and procedures to each employee, within ten (10) calendar days of implementation.
- B. The Employer will provide the Association President with a written or electronic copy of proposed Employer rules, regulations, policies or amendments and will provide the Association with an opportunity to provide input in writing prior to implementation, unless the change is due to an emergency situation.

- 1. The Employer will provide training when deemed necessary.

Section 42 CONTRACT INCLUDES ENTIRE AGREEMENT

The parties understand that this Agreement is the only existing Agreement between the parties and replaces any and all previous Agreements. The Employer and the Association may upon mutual agreement and negotiation place in effect a Memorandum of Understanding (MOU), which may interpret or clarify the provisions of this contract. A Memorandum of Understanding may not be used to make a substantive change to this agreement. If the parties mutually desire to substantively change or add provisions to this agreement, then the parties will meet in negotiations and attempt to negotiate the amendment. Any amendment will be submitted to the membership for ratification and to the governing body for contract amendment approval. The Employer and Association agree to furnish each employee, at a shared cost, with a copy of an MOU or any contract amendments and each employee is responsible for becoming familiar with the MOU or contract amendment.

Section 43 SAVINGS CLAUSE

Should any part of this Agreement or any provision contained herein be declared invalid by any court, state board, or tribunal of competent jurisdiction, the validity of the remaining portions shall not be affected. Should this occur, the parties will immediately meet to negotiate a suitable provision or replace the provision held invalid.

Section 44 TERMS OF AGREEMENT

THIS AGREEMENT is to be effective on the date of signature, except where a different date is indicated within any specific provision of this agreement, and will expire June 30, 2025. However, the continuation of this Agreement, or any successor Agreement, is contingent upon the presence of express statutory authorization for public sector collective bargaining.

Any Agreement provision by the Employer and the Association that requires the expenditure of funds shall be contingent upon the specific appropriation for wages and benefits by the Governing Body and the availability of funds. Any article of this Agreement which is dependent upon the authorization and appropriation of funds by the Governing Body shall be a topic of collective bargaining in successive years.

Negotiations of sections for fiscal year 2022/2023, 2023/2024, 2024/2025 or a successor agreement agreed to by the parties shall begin following submission of written notice to the Employer by the Association no later than August 1st. Negotiations shall begin no later than August 15th unless otherwise agreed by the parties.

The Association recognizes that it may be necessary for the Employer to increase compensation in order to recruit and retain qualified police officers. Thus, during the term of this Agreement, the Employer and the Association, upon mutual agreement, may reopen any provision of this Agreement. In addition, each party reserves the right to reopen up to three (3) sections for subsequent negotiation years.

Section 16: Compensation, in its entirety, shall be subject of re-negotiation each successive year of this Agreement. Should an agreement to Section 16: Compensation not be reached prior to the commencement of the new fiscal year, those provisions outlined in Section 16: Compensation shall be continued at the previously agreed compensation rate until a new Agreement is reached by the parties and approved by the Governing Body.

APPENDIX A

AN ACT

RELATING TO LAW ENFORCEMENT; CREATING THE PEACE OFFICER'S EMPLOYER-EMPLOYEE RELATIONS ACT.

BE IT ENACTED BY LEGISLATURE OF THE STATE OF NEW MEXICO;

Section 1. SHORT TITLE.-- Sections 1 through 11 of this act may be cited as the "PEACE OFFICER's Employer-Employee Relations Act."

Section 2. FINDINGS AND PURPOSE. --

- A. The legislature finds and declares that effective law enforcement is dependent upon the maintenance of stable relations between PEACE officers and their employers. Moreover, the existence of stable relations between PEACE officers and their employers will enhance law enforcement services provided to the citizens of New Mexico.
- B. The purpose of the PEACE OFFICER's Employer-Employee Relations Act is to prescribe certain rights for PEACE officers, particularly when they are placed under investigation by their employer.
- C. Provisions of this act only apply to administrative actions and shall not apply to criminal investigations of a PEACE OFFICER except as provided in Section 8 of this act.

Section 3. DEFINITION. -- As used in the PEACE OFFICER's Employer-Employee Relations Act, "PEACE OFFICER" or "OFFICER" means any employee of a police or sheriff's department that is part of or administered by the state or any political subdivision of the state who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the state.

Section 4. INVESTIGATIONS OF PEACE OFFICERS--REQUIREMENTS--When any PEACE OFFICER is under investigation by his employer for alleged actions that could result in administrative sanctions being levied against the OFFICER, the following requirements shall be adhered to:

- A. Any interrogation of an OFFICER shall be conducted when the OFFICER is on duty or during his normal working hours, unless the urgency of the investigation requires otherwise;
- B. Any interrogation of an OFFICER shall be conducted at the employer's facility, unless the urgency of the investigation requires otherwise;
- C. Prior to commencement of any interrogation session:
 - (1) an OFFICER shall be informed of the name and rank of the person in charge of the interrogation and all other persons who will be present during the interrogation;

- (2) an OFFICER shall be informed of the nature of the investigation, and the names of all known complainants shall be disclosed to the OFFICER unless the chief administrator of the OFFICER's employer determines that the identification of the complainant shall not be disclosed because it is necessary for the protection of an informant or because disclosure would jeopardize or compromise the integrity of security of the investigation; and
 - (3) a reasonable attempt shall be made to notify the OFFICER's commanding OFFICER of the pending interrogation;
- D. During the interrogation session, the following requirements shall be adhered to:
- (1) each interrogation session shall not exceed two hours unless the parties mutually consent to continuation of the session;
 - (2) there shall not be more than two interrogation sessions within a twenty-four hour period, unless the parties mutually consent to additional sessions, provided that there shall be at least a one-hour rest period between the sessions;
 - (3) the combined duration of an OFFICER's work shift and an interrogation session shall not exceed fourteen hours within a twenty-four hour period, unless the urgency of the investigation requires otherwise;
 - (4) there shall not be more than two interrogators at any given time;
 - (5) an OFFICER shall be allowed to attend to physical necessities as they occur in the course of an interrogation session; and
 - (6) an OFFICER shall not be subjected to offensive language or illegal coercion by his interrogator in the course of an interrogation session;
- E. Any interrogation of an OFFICER shall be recorded, either mechanically or by a stenographer, and the complete interrogation shall be published as a transcript; provided that any recesses called during the interrogation shall be noted in the transcript; and
- F. Any accurate copy of the transcript or tape shall be provided to OFFICER, upon his written request, no later than fifteen working days after the investigation has been completed.

Section 5. POLYGRAPH EXAMINATIONS.--After reviewing all the information collected in the course of an investigation of a PEACE OFFICER, the chief administrator of the OFFICER's employer may order the OFFICER to submit to a polygraph examination administered by a licensed polygraph examiner, provided that:

- A. All other reasonable investigative means have been exhausted; and
- B. The OFFICER has been advised of the administrator's reasons for ordering the polygraph examination.

Section 6. INVESTIGATION OF ADMINISTRATIVE MATTERS.-- When any PEACE OFFICER is under investigation for an administrative matter, the OFFICER shall be permitted to

produce any relevant documents, witnesses or other evidence to support his case he may cross-examine any adverse witnesses during any grievance process or appeal involving disciplinary action.

Section 7. PERSONNEL FILES.--

- A. No document containing comments adverse to a PEACE OFFICER shall be entered into his Personnel file unless the OFFICER has read and signed the document. When an OFFICER refuses to sign a document containing comments adverse to him, the document may be entered into an OFFICER's Personnel file if;
 - (1) The OFFICER's refusal to sign is noted on the document by the chief administrator of the OFFICER's employer; and
 - (2) the notation regarding the OFFICER's refusal to sign the document is witnessed by a third party.
- B. A PEACE OFFICER may file a written response to any document containing adverse comments entered into his Personnel file and the response shall be filed with the OFFICER's employer within thirty days after the document was entered into the OFFICER's Personnel file. A PEACE OFFICER's written response shall be attached to the document.

Section 8. CONSTITUTIONAL RIGHTS--NOTIFICATION.--When any PEACE OFFICER is under administrative investigation, he shall be immediately notified of the investigation and shall be afforded all the protections set forth in the bill of rights of the United States and New Mexico constitutions.

Section 9. FORCED DISCLOSURE OF FINANCIAL STATUS PROHIBITED.--A PEACE OFFICER shall not be required by his police or sheriff's department employer to disclose information regarding his financial status, unless all other reasonable investigative means have been exhausted or except as otherwise required by law.

Section 10. POLITICAL ACTIVITY.--

- A. A PEACE OFFICER shall not be prohibited by his police or sheriff's department employer from engaging in any political activity when the OFFICER is off duty, except as otherwise required by law.
- B. Notwithstanding the provisions of Subsection A of this section, any PEACE OFFICER employed by the New Mexico state police department shall be governed by the provisions of regulations adopted by the department regarding political activity.

Section 11. EXERCISE OF RIGHTS -- A PEACE OFFICER shall not be subjected to any retaliation by his employer due to the OFFICER's lawful exercise of his rights under the PEACE OFFICER's Employer-Employee Relations Act.

Section 12. EFFECTIVE DATE--The effective date of the provisions of this act is July 1, 1991.

APPENDIX B

Car Plan

- I. Officer Assigned Vehicle Program:
 - A. Participation in this program shall be totally voluntary on the part of the officer. However, the right to deny participation in this program for just cause is reserved to the Chief.
 - B. An officer may be denied participation in the program regardless of his/her assignment if, in the judgment of the Chief, the officer's duties and responsibilities will not justify the assignment of a vehicle.
 - C. Officers volunteering to participate in this program agree to abide by all rules and regulations governing this program.
 - D. This program will be reviewed and may be modified at the discretion of the Chief. If, in the opinion of the Chief, the vehicle program for the Department, as covered by this agreement, proves unworkable in practice, the Chief shall have the option of revising or terminating the Agreement upon one-hundred twenty (120) days written notice of intent to the Association, and the Employer will meet and attempt to solve problems relating to the program; otherwise, said notice shall be final.
- II. General Regulations:
 - A. No one other than a sworn Santa Fe Police Officer will be permitted to drive a police vehicle. Officers will not presume any special privileges with a City vehicle while off-duty. As an example, an officer living in an apartment complex will park the vehicle in the designated area at all times, not in a reserved or no parking area.
 - B. Non-sworn employees (i.e.) Animal Services; Public Safety Aides; Crime Scene Technicians; and Property-Fleet Manager, will be permitted to drive an assigned vehicle, and may have their assigned vehicle privilege suspended/revoked for just cause. Non-sworn employees will not presume any special privileges with a City vehicle while off-duty. As an example, a non-sworn employee living in an apartment complex will park the vehicle in the designated area at all times, not in a reserved or no parking area. This agreement will not prevent the chief from assigning a vehicle to any other non-sworn employee.
 - C. Unattended vehicles of off-duty officers or non-sworn employees must be locked at all times.

- D. Officers or non-sworn employees will not operate an assigned vehicle within less than eight hours after consuming any alcoholic beverages.
- E. No officer participating in the Officer Assigned Vehicle Program will be authorized to transport any passenger except under the following conditions:
 - 1. Approved Ride-Along.
 - 2. Children for day care only when an emergency arises, and a supervisor is notified.
- F. The Department vehicle will not be utilized for carrying heavy or excessive loads, and will not have objects protruding from the trunk or windows.
- G. During vacations of five consecutive days or more when the officer or non-sworn employee will be out of their approved take home recorded address, or when an officer or non-sworn employee is on sick leave, or injury time for five days or more, the City vehicle will be turned in at the police department and or designated area, locked up, and will not be used except in an emergency. The officer or non-sworn employee will be reassigned the vehicle upon return to the City, or return to normal duty. The vehicle may, at the Commander's discretion, be parked at a designated official; City of Santa Fe facility instead of the police department.
- H. In the event any officer is placed on light duty status they:
 - 1. Shall not be allowed to drive a marked unit.
 - 2. Will turn in the marked unit.
 - 3. May be issued an unmarked unit until such time as he/she is back to full duty, subject to availability of an unmarked unit.

III. Vehicle Operation Regulations:

- A. Officers and non-sworn employees will not utilize vehicles more than fifty-five (55) radius miles from the City of Santa Fe municipal limits, except on official business.
- B. All officers or non-sworn employees assigned a City Vehicle will exercise good judgment and will not operate the vehicle in a manner so as to generate unfavorable comment, or reflect discredit on the Department.
- C. Officers, while off-duty and operating a City vehicle, will be appropriately attired and have in his/her possession badge, ID, and sidearm to effectively perform a police function while, at the same time, presenting a favorable image. Officers

will wear (slacks or jeans) and a shirt while operating the vehicle; cut-offs, shorts, t-shirts and tank tops will be considered inappropriate attire.

- D. Officers and non-sworn employees shall be allotted a set amount of fuel per week for their assigned police vehicle(s) in accordance with the below listed table. Officers and non-sworn employees shall be responsible for assuring their assigned vehicle has a sufficient amount of fuel to perform their job duties, to include routine patrol.

<u>Personnel</u>	<u>Gallons per Vehicle per Week</u>
Sworn Personnel – Uniformed (Patrol, Traffic)	40 gallons
Sworn Personnel - Plain Clothes (to include Under Cover (UC) Vehicles)	30 gallons
Sworn Personnel – Administrative (Training, Crime Prevention, Recruiting)	25 gallons
Civilian Personnel – Uniformed (Animal Services)	40 gallons
Civilian Personnel – Uniformed (Public Safety Aides)	30 gallons
Civilian Personnel - Plain Clothes (Crime Scene Technicians; Fleet Manager)	20 gallons

The allotted amount of fuel shall not be cumulative nor shall any past week's balance carry over to the following week's allotment. Officers assigned to official Department or City business, such as training or meetings outside the city limits or outside the state shall be exempt from the fuel allotment for that particular incident and/or event. Higher fuel consumption due to special circumstances will be considered an exception to the designated allotment.

- E. An officer using the City vehicle, while off-duty will not be required to go in and out of service but if he/she is near a priority one call, he/she must advise the dispatcher.
- F. The safety of passengers rests solely with the officers operating the City vehicle.
- G. Emergency runs will not be made while the vehicle is occupied by passengers other than Department members, except for Department approved Ride-Alongs.

- H. When responding to calls for service while off-duty, the officer may be required to handle the call in order to best preserve and handle evidence and maintain continuity. In such cases, the officer shall be compensated with overtime pay consistent with Department regulations and the Association Agreement.
- I. Officers are responsible for enforcing traffic laws while operating a marked patrol unit off-duty; this is intended to be for flagrant, dangerous violations.

IV. Maintenance Regulations:

- A. The officer and non-sworn employees assigned to a City vehicle shall be fully responsible for seeing that the general maintenance and proper care of the vehicle is performed (The Employer shall perform and pay for the maintenance), and shall refrain from:
 - 1. Making anything but minor adjustments
 - 2. Altering the body, general design, appearance, markings, mechanical, or electrical systems. The addition or modifications of light to a vehicle will require prior approval from the Chief of Police. This section also prohibits the addition of bumper stickers or license plates that promote a commercial enterprise or that present a theme which may be controversial among varying segments of the community.
 - 3. Making any repairs, or having any repairs made to the vehicle, other than at the authorized Department garage
 - 4. Using fuel, oil, lubricant, or other liquid additives in the vehicle, other than those issued at authorized motor pool fuel depots
 - 5. The Employer assumes no financial responsibility for stolen, damaged or lost personal electronic devices, purchased and/or installed by the employee.
- B. Officers and non-sworn employees will be responsible for the appearance and cleanliness of their vehicles, both interior and exterior.
- C. Officers and non-sworn employees will wash the vehicle at their own expense and wax it at least once every six months.
- D. Officers and non-sworn employees will change flats, when on-duty or off-duty. Repairs to the tires will be made by the authorized city warehouse employee(s). The flat tire will be delivered to the warehouse.

- E. Officers and non-sworn employees will be required to have all maintenance and service work done on their assigned vehicle. A work order must be submitted for all maintenance, repairs and service work.
- F. All vehicles will be inspected bi-monthly by the immediate supervisor of the vehicle operator. The inspection shall include:
 - 1. Cleanliness -- interior and exterior
 - 2. Maintenance -- performed at the proper interval
 - 3. Equipment – Inventoried and in good working order

Random audit inspections will be conducted by the Captains and/or above as deemed necessary by the Chief or designee. Inspections will be administered on a scientifically random number selection basis.

- G. Officers and non-sworn employees shall, at all times, drive the vehicle with reasonable prudence in order to maintain it at the highest degree of operating efficiency.
- H. Negligence, on the part of the officer or non-sworn employees, in the care and operation of the vehicle, or failure to follow these procedures, may be cause for the vehicle to be taken away from an officer or non-sworn employees.
 - 1. Take-home car privileges may be revoked for up to 30 days upon a first infraction of any of these rules governing the plan and up to 180 days for any subsequent infraction. Unit Commanders may request an extension of these time periods for serious infractions. Officers or non-sworn employees will be notified by letter of the suspension of their take-home privileges.
- I. All suspensions of car privileges under this provision must be approved by the Chief prior to the suspension being enforced. Any administrative action resulting in more than the suspension of the take home car privilege is subject to the provision delineated in Section 34 of this agreement. Any documentation of revocation of take home car privileges not combined with a disciplinary action will be maintained by the office of the Chief; however, such documentation will not be added to an employee's personnel file. The take home car plan is a privilege not a right and may be revoked at the sole discretion of the Chief.
- J. If it becomes necessary for a permanently assigned City vehicle to be out of service for extended repairs, the officer may be assigned a loaner vehicle for use if there is a sufficient number of loaner vehicles available.

APPENDIX C

**CITY OF SANTA FE
RESOLUTION NO. 1988-11
INTRODUCED BY:
A RESOLUTION**

SUPERSEDING RESOLUTION NO. 1987-41; ESTABLISHING A WORKERS COMPENSATION POLICY FOR CITY EMPLOYEES

WHEREAS, each municipality employing workers shall become liable to, and shall pay to and shall pay to any such worker injured by accident arising out of and in the course of employment, and, in case of death being occasioned thereby, to such person as may be appointed by the court to receive the same for the benefit of dependants, compensation in the manner and amount at the times herein required...., and

WHEREAS, the purpose of the workers compensation legislation is to provide a humanitarian and economical system of compensation for injured worker; and

WHEREAS, it is in the intent of the City of Santa Fe not only to comply with state statutes, but also to ensure that employees who sustain an accidental injury arising out of and in the course and scope of their employment with the City are provided an impartial and equitable system of compensation for said injury; and

Whereas, it is further the intent of the City of Santa Fe that whenever possible employees be encouraged to work toward their recovery and the City advocates "limited" or "light duty" for recovering employees.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SANTA FE that:

Section 1. The first seven days of absence following an employee's accidental injury arising out of and in the course of the employee's employment with the City be considered "injury leave" to be paid out of the appropriate department's budget with all the usual deductions made; and

Section 2. After the first seven days of injury, the employee will be continued on injury leave at full salary up to but no exceeding six months (180 days).

Section 3. During this period of time mentioned in Section 2, infra, the employee will be allowed to accrue sick leave and annual leave at the normal rate and PERA contributions will be matched "dollar for dollar" while the employee is on injury leave so that full PERA credit would continue.

Section 4. If the employee will be out more than six months he/she can petition the Worker's Compensation Claims Review Committee who will, on a case-by-case basis, review each case and, if compensation is to be continued, establish compensation at the rates of Worker's Compensation.

Section 5. During the period mentioned in Section 4, infra, the employee will be allowed to accrue sick leave and annual leave at a pro-rated basis. PERA will also be paid on a pro-rated basis.

Section 6. The employee is encouraged whenever possible to return to "light" or "limited duty" as an incentive toward rehabilitation.

PASSED, APPROVED AND ADOPTED this 24th day of February, 1988

APPENDIX D

DRUG AND ALCOHOL TESTING POLICY FOR THE CITY OF SANTA FE POLICE DEPARTMENT

SECTION 1. POLICY

It is the goal and policy of the City of Santa Fe ("City") and the Santa Fe Police Officers Association ("SFPOA") for the employees of the Police Department to maintain a drug and alcohol free work environment through the use of a reasonable employee drug and alcohol testing program. The following reasons support this Policy:

- A. **PUBLIC SAFETY:** Public safety and policing are responsibilities that have dangers not present in other governmental functions. These dangers include the potential and actual use of firearms and other weapons; the use of force including the possible use of deadly force; the operation of emergency vehicles; the prevention of escape; the keeping of order and the enforcement of rules of conduct; and similar responsibilities. These responsibilities have inherent dangers not present in most other governmental functions. An agency charged with these kinds of responsibilities cannot tolerate any kind of conduct on the part of employees which would impair their judgment or skills and thus create an unreasonable risk of harm to the public and other employees.
- B. **PUBLIC TRUST AND INTEGRITY:** The public has the right to demand that those who are charged with enforcing the law obey the law. Since the use of controlled substances (hereinafter simply "drugs") violates the law, public trust is compromised when those who enforce the law violate the law. Courts have repeatedly said that there is no other government agency in which the public must have more confidence than its public safety and correctional agencies.
- C. **WITNESS IMPEACHMENT:** Often the most important weapon in the criminal justice arsenal is the word of an employee or officer. An employee who engages in conduct which violates the law potentially places his or her credibility on the line. If an employee has used drugs in violation of the law, it may cast a fatal shadow over the employee's judgment and performance when they are issues in court.
- D. **EMPLOYEE MORALE/SAFETY:** Employees must be able to depend on their co-workers being reliable, effective, alert, and co-operative. Employees must work together in sometimes very close quarters and in tense situations with great potential for harm to the public, prisoners and other employees. Conduct on the part of employees, which impairs their ability to perform their duties places the safety of their co-workers in jeopardy. It may also have a bad effect on the morale of other employees because of a lack of trust in those who use controlled substances. Such conduct interferes with the mission and responsibilities of the Police Department.

- E. **LOSS OF PRODUCTIVITY:** The abuse of drugs and/or alcohol may lead to poor performance and increased rates of absenteeism. It also increases the risk of on the job injuries with the resultant increase in workers' compensation and other related costs.

SECTION 2. PURPOSE

The purpose of this Policy is to offer guidelines to ensure an employee's drug-free status as a condition of employment and to provide procedures for drug/alcohol testing.

SECTION 3. DEFINITIONS

ALCOHOL means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol's including methyl and isopropyl alcohol.

APPLICANT is an individual who is seeking to be employed in a position with the Police Department.

CONTROLLED SUBSTANCE is marijuana, cocaine, opiates, amphetamines, phencyclidine, and Anabolic-Androgenic Steroid.

DRUG TEST is a urinalysis test to detect drugs administered under approved medical conditions and procedures.

DRUG ALCOHOL PROGRAM MANAGER is a city employee responsible for administering the drug and alcohol-testing program.

EMPLOYEE refers to any individual employed by the City of Santa Fe Police Department regardless of probationary status, union status, position, or rank.

MEDICAL REVIEW OFFICER (MRO) means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the City's drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result together with the individual's medical history and any other relevant biomedical information.

SAFETY SENSITIVE EMPLOYEE means an employee who performs the duties of a safety-sensitive position as identified in this policy.

SAFETY SENSITIVE POSITION means a position which requires the employee to perform duties which impact the safety of the public and which expose the employee to hazardous conditions and requires responsibility for the physical safety of others. The City of Santa Fe has identified the following positions to be Safety Sensitive:

1. All commissioned police officers, regardless of rank
2. Public Safety Aides

SUBSTANCE ABUSE PROFESSIONAL is a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance related disorders.

VERIFIED NEGATIVE TEST means a drug/alcohol test result reviewed by a medical review officer and determined not to contain alcohol or prohibited drugs or their metabolites above the cutoff standards established for laboratories approved to conduct Department of Transportation (“D.O.T.”) testing.

VERIFIED POSITIVE TEST means a drug/alcohol test result reviewed by a medical review officer and determined to contain alcohol or prohibited drugs or their metabolites above the cutoff standards established for laboratories approved to conduct D.O.T. testing.

SECTION 4. PROHIBITIONS AND RESPONSIBILITIES

A. Each employee covered by this Policy is:

1. Prohibited from possessing, selling, purchasing, manufacturing or transferring any controlled substance in violation of city, state or federal law, whether on or off duty.
2. Prohibited from any use of any controlled substance in violation of city, state or federal law, whether on or off duty.
3. Prohibited from consuming or possessing alcoholic beverages on duty, except where its use is required and documented pursuant to a case plan and the standard operating procedures.
4. Prohibited from consuming alcoholic beverages while operating a city vehicle or four hours (4) prior to operating such vehicle.
5. Prohibited from the consumption of alcohol within four (4) hours of the employee's scheduled time to report to work, or within eight (8) hours following an accident or until the employee takes a post-accident alcohol and/or drug test, whichever occurs first.
6. Required to submit to reasonable suspicion alcohol and/or drug testing when directed by the City of Santa Fe; and prohibited from tampering or attempting to tamper with such alcohol and/or drug test.

B. Each employee, under this Policy:

1. Shall be responsible for informing his/her supervisor when being prescribed medication that may impair on-the-job performance or affect their ability to perform work duties safely and efficiently.
2. Shall use medically authorized drugs or over the counter medications in a manner which will not impair on-the-job performance or affect their ability to perform work duties safely and efficiently. Employees may be required to provide proof of lawful prescription.
3. Shall promptly report to his/her supervisor whenever he/she observes or has knowledge of another employee who poses a hazard to the safety and welfare of others.
4. May be temporarily re-assigned to other duties during the time he/she is required to take prescribed medication which has the potential to impair on-the-job performance or affect their ability to perform work duties safely and efficiently.
5. Any employee who unintentionally ingests, or is made to ingest, a controlled substance shall immediately report the incident to his or her supervisor so that appropriate medical steps may be taken to ensure the officer's health and safety. *A Supervisor's First Report of Accident* shall be completed within 24 hours of the incident.

SECTION 5. EDUCATION

Every employee will receive a copy of this Policy, and will receive a minimum of sixty (60) minutes of training regarding this Policy and the effects of prohibited drug use and alcohol misuse that impacts an individual's biological, emotional, and psychosocial well being. The effects of misuse can be seen in an individual's work performance, attitude and social interaction. Training shall be provided to each employee within 60 days of adoption of this Policy for current employees, and within 60 days of a new employee's date of hire.

All supervisory personnel responsible for determining whether reasonable suspicion exists to require an employee to undergo alcohol and/or drug testing will also receive a minimum of one hundred and twenty (120) minutes of training on the physical, behavioral, speech, and performance indicators, of probable prohibited drug use and alcohol misuse.

SECTION 6. SUBSTANCES TESTED

A. Alcohol

Employees subject to alcohol testing will have a sample of their breath tested for the presence of the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol. A breath alcohol level of 0.04 or greater constitutes a positive test result. A confirmation test will be given if an employee's initial breath alcohol test level exceeds 0.04.

Any refusal to submit to an alcohol test, and all positive alcohol tests, will be reported immediately by the testing facility to the City of Santa Fe Drug and Alcohol Program Administrator.

B. Drugs

Employees subject to drug testing will have a sample of their urine tested for the presence of six (6) drugs, as follows:

1. Marijuana
2. Cocaine
3. Opiates
4. Amphétamines
5. Phencyclidine
6. Anabolic-Androgenic Steroid

All drug tests will be reported by the testing laboratory to a medical review officer (MRO) who will evaluate the results. After evaluation and interpretation, all verified positive test results will be reported by the MRO to the employee and to the City of Santa Fe Drug and Alcohol Program Administrator. Any refusal to submit to a drug test will be immediately reported by the collection site to the City of Santa Fe Drug and Alcohol Program Administrator.

With respect to verified positive drug tests, employees will be notified by the MRO that they have seventy-two (72) hours following this notification in which they can request, at their own expense, that split urine specimen be tested by another Department of Health and Human Services (DHHS) certified testing laboratory. In the event that the split sample test is negative, the employee will be reimbursed for the test.

Failure to request testing of the split specimen within seventy-two (72) hours of being notified of a positive test by the MRO will result in the test results from the original specimen being accepted as the final test results.

SECTION 7. TYPES OF TESTING

The following tests will be required of all employees in accordance with the alcohol and drug testing procedures set forth in this Policy:

- A. Pre-employment tests
- B. Post-accident tests
- C. Random tests
- D. Reasonable suspicion tests
- E. Return to duty/Follow-up tests

SECTION 8. ALCOHOL AND DRUG TESTING PROCEDURES

This Policy incorporates the following federal regulations for alcohol and drug testing procedures required for transportation workplace drug testing programs:

49 CFR PART 40

Subpart A

40.3 Definitions

Subpart B – Drug Testing

40.21 The drugs.

40.23 Preparation for testing.

40.25 Specimen collection procedures.

40.27 Laboratory Human Resources.

40.29 Laboratory analysis procedures.

40.31 Quality assurance and quality control.

40.33 Reporting and review of results.

40.35 Protection of employee records.

40.37 Individual access to test and laboratory certification results.

40.39 Use of DHHS – certified laboratories.

Subpart C – Alcohol Testing

40.51 The breath alcohol technician.

40.53 Devices to be used for breath alcohol tests.

40.55 Quality assurance plans for EBT's.

40.57 Locations for breath alcohol testing.

40.59 The breath alcohol testing form and log book.

40.61 Preparation for breath alcohol testing.

40.63 Procedures for screening tests.

40.65 Procedures for confirmations tests.

40.67 Refusal to test and uncompleted tests.

40.69 Inability to provide and adequate amount of breath.

40.79 Invalid tests.

40.81 Availability and disclosure of alcohol testing information about individual employees.

40.83 Maintenance and disclosure of records concerning EBTs and BATs.

It is the intent of this Policy that Police Department employees subjected to testing will be provided with the same *testing procedures*, safeguards, confidentiality, chain of custody provisions and integrity of the testing process provided to transit employees pursuant to the federal regulations.

SECTION 9. PRE-EMPLOYMENT TESTING

- A. Applicants selected for hire will be required to undergo pre-employment testing. Applicants will be informed that they are subject to pre-employment drug testing at the time they apply for a position. Once a conditional job offer is made, the applicant shall have a urine sample collected and tested for evidence of the substances listed in Section 6. The time, date and location of the physical examination and drug test will be announced in advance of the test. Applicants for or employees transferred into specialized units, which require the safety sensitive employee to have direct involvement in drug interdiction, will also be subjected to drug testing prior to joining the unit.
- B. Disqualification from Employment
 - 1. Applicants for initial hire will be disqualified from employment if they:
 - a. fail to appear for the physical examination and urine collection on the designated day unless excused by the City for good and verifiable cause; or
 - b. refuse to provide a urine sample; or
 - c. attempt to alter, taint or otherwise provide a false sample; or
 - d. test positive for the presence of one of the substances listed in Section 6.

SECTION 10. POST-ACCIDENT TESTING

All employees in safety-sensitive positions as identified in this policy will be subject to post-accident alcohol and drug testing in accordance with the City's alcohol and drug testing procedures.

- A. A City of Santa Fe safety representative, supervisor or other qualified person shall be responsible for making a determination whether a post-accident drug and alcohol test is required at the time any covered employee is involved in an accident where a fatality or serious injury has occurred.
- B. The City of Santa Fe will also test any safety-sensitive employees whose performance could have contributed to the accident.
- C. Employees required to submit to post-accident drug and alcohol testing will be tested as soon as possible (in all cases drug tests shall be conducted within thirty- two (32) hours following the accident and alcohol tests shall be conducted within eight (8) hours of the accident).
- D. An employee required to submit to a post-accident drug and alcohol test will be transported by the City to the collection site and will be required to sign a medical

authorization for an administrative alcohol and drug test. The employee must provide a urine and breath sample unless it is determined by medical personnel present that the employee is medically unable to provide the required samples. Following the test, the employee will be relieved of duty with pay pending the City's receipt of the results of the tests from the MRO.

- E. It is the City of Santa Fe's policy that employees who are required to submit to a post accident drug and alcohol test will be subject to discipline in accordance with Section 16 of this policy if they:
 - 1. refuse to sign a medical authorization for an administrative alcohol and drug test or refuse to provide a breath and/or urine sample (such a refusal shall constitute a verified positive drug and/or alcohol test result); or
 - 2. attempt to alter, taint, or otherwise provide a false sample; or
 - 3. test positive for the presence of one or more of the substances listed in Section 6 of this policy.

- F. Safety sensitive employees must be readily available for post-accident testing. If an employee fails to remain readily available, e.g., notifying supervisor where employee can be located if employee leaves scene of the accident prior to submitting to testing, the employee will be deemed to have refused to submit to testing which shall constitute a verified positive drug and/or alcohol test result. The requirement to immediately report for post-accident testing is stayed while an employee assists in resolution of an accident or receives medical attention following an accident. In such cases, the employee shall report for post-accident testing immediately after the employee completes provision of necessary post-accident assistance or after necessary medical attention is provided.

SECTION 11. VOLUNTARY TESTING

The City shall provide any employee an opportunity to voluntarily submit to a drug and/or alcohol screening test, at the City's expense, immediately following any incident, which may result in allegations of misconduct against the employee (s) or the department.

SECTION 12. RANDOM TESTING

- A. The City of Santa Fe will maintain a list of all employees in safety sensitive positions in the Police Department. During each calendar year, alcohol and/or drug tests will be administered to these employees on a scientifically random number selection basis. Under the random selection process each employee will have an equal chance of being selected for testing based on neutral criterion such as social security numbers. This process means that alcohol and drug tests are unannounced. Selected employees are required to report immediately for testing after notification of selection. The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year. All employees will remain in the random pool

even after being selected for testing. Thus, it is possible for an employee to be selected for testing more than once within a given time period.

1. Selected employees who are off duty or on regularly scheduled days off shall be notified of their selection upon their return to work and are required to report immediately for testing after notification of selection.
- B. At least 50% of the total number of safety sensitive employees shall annually be randomly tested for drugs, and at least 10% of the total number of safety sensitive employees shall annually be randomly tested for alcohol.
- C. Safety sensitive employees in the following specialized units will be included in a separate pool for random selection in addition to the pool described in Paragraph A above:
1. all safety sensitive employees of the Special Operations and K9 units.
 2. all safety sensitive employees assigned to the Narcotics unit or "Region 3 Drug Task Force."
 3. safety sensitive employees of any other unit whose function is the detection and interdiction of illegal drugs.

At least 50% of the total number of safety sensitive employees in this pool shall be randomly tested for drugs on a quarterly basis.

- D. Employees selected for random alcohol and/or drug tests will be provided with transportation and will immediately report to the collection site where they will be required to provide a breath and/or urine sample.
- E. It is the City of Santa Fe's policy that employees will be subject to discipline in accordance with Section 16 of the Policy if they:
1. do not appear and complete a random drug and/or alcohol test immediately following notification to appear for such tests, refuse to sign a medical authorization for an administrative alcohol and drug test or refuse to provide a breath and/or urine sample (such a refusal shall constitute a verified positive drug and/or alcohol test result); or
 2. attempt to alter, taint, or otherwise provide a false sample; or
 3. test positive for the presence of one or more of the substances listed in Section 6 of this policy.

SECTION 13. REASONABLE SUSPICION TESTING

- A. All employees may be required to submit to a reasonable suspicion alcohol and/or drug test.
- B. Employees who are reasonably suspected by a supervisor of violating this Policy will be required to submit to an alcohol and/or drug test in accordance with this Policy. A trained supervisor who makes a determination that a test is required will complete a form indicating the grounds for such determination. Reasonable suspicion must be based on a belief by a trained supervisor that an employee is using or has used drugs or alcohol in violation of this Policy and is drawn from specific objective and articulated facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:
 - 1. observable phenomena, such as direct observation of alcohol or drug use and/or the physical symptoms or manifestations of being under the influence of alcohol or a drug such as appearance, speech or body odors;
 - 2. abnormal conduct or erratic behaviors while at work, excessive absenteeism, tardiness, or deterioration in work performance;
 - 3. an arrest for drug related charges.
- C. An employee who is required to submit to an alcohol and/or drug test under this section must sign a medical authorization for an administrative alcohol and drug test.
- D. Employees will be transported by the City to the collection site and will be required to provide a breath and/or urine sample. Following completion of the test, employees will be transported home and relieved of duty with pay pending the City's receipt of the results of the test from the MRO.
- E. It is the City of Santa Fe's policy that employees will be subject to discipline in accordance with Section 16 of this Policy if they:
 - 1. refuse to sign a medical authorization for an administrative alcohol and drug test or refuse to provide a urine and/or breath sample (which refusal shall constitute a verified positive drug and/or alcohol test result); or
 - 2. attempt to alter, taint, or otherwise provide a false sample; or
 - 3. test positive for the presence of one or more of the substances listed in Section 6 of this Policy.

SECTION 14. RETURN TO WORK TESTING

Employees who self-referral, in accordance with Section 18 of this Policy, prior to returning to work, will be required to take a return to duty alcohol and/or drug test with a verified negative result in accordance with this Policy.

SECTION 15. FOLLOW-UP TESTING

Employees who self-referral, in accordance with Section 16 and 18 of this Policy, upon return to work, shall be subject to a minimum of six (6) unannounced drug and/or alcohol follow up tests during the first twelve (12) months following the employee's return to work, and further testing as recommended by the substance abuse professional for up to a maximum of sixty (60) months.

SECTION 16. CONSEQUENCES OF THE MISUSE OF DRUGS AND ALOCHOL

Any employee testing positive for any of the drugs specified in Section 6(B) of this Policy, or who has a breath alcohol concentration of 0.04 or greater, will be immediately removed from his/her position and placed on leave with pay status pending disciplinary action. Employees testing positive will be provided with information from the City's employee assistance program (EAP) regarding alcohol and/or substance abuse and the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs. The City will have no responsibility to pay for any necessary treatment on the part of the employee.

A. Consequences of a Positive Drug or Alcohol Test

1. Any job applicant who tests positive for drugs will not be hired.
2. Conditional Retention

If an employee, before selection for drug or alcohol testing, voluntarily admits that he/she is using drugs or has a problem with alcohol and is not otherwise subject to termination under Section 16(A)(3) of this Policy, will be offered conditional retention of employment if the employee:

- (a) submits to an evaluation by a substance abuse professional approved by the City's EAP; and
- (b) signs a conditional retention of employment agreement; and
- (c) is determined by a substance abuse professional to require assistance in resolving problems associated with drug abuse and/or alcohol misuse (the employee must agree to attend a City of Santa Fe approved treatment program and sign a monitoring agreement with the City's EAP to ensure successful completion of the treatment program specified by the substance abuse professional); and

- (d) upon release to return to work by the substance abuse professional, is subject to a return to duty drug and/or alcohol test and follow-up tests.

The employee who is conditionally retained must fully comply with the conditions of retention of employment, including successful completion of the treatment program specified by the substance abuse professional. Upon notification of self-referral the employee will be relieved of his duties until released to return to work by the substance abuse professional. The employee may utilize any accrued comp time, annual and sick leave, and authorized leave under the Family Medical Leave Act (“FMLA”) until exhausted to cover the necessary leave.

3. Termination

Employees will be terminated with due process if the employee:

- (a) uses, possesses, sells, purchases, manufactures or transfers any controlled substances in violation of city, state or federal law, whether on or off duty, or consumes or is in possession of alcohol on duty (and such consumption or possession is not authorized per Section 4(A)(3)).
- (b) consumes alcoholic beverages while operating a city vehicle; or four hours (4) prior to operating such vehicle; or within four (4) hours of the employee’s scheduled time to report to work; or within eight (8) hours following an accident involving a city vehicle or until the employee takes a post-accident alcohol and/or drug test, whichever occurs first.
- (c) refuses to submit to an alcohol and/or drug test when so directed by the City of Santa Fe, or tampers or attempts to tamper with an alcohol and/or drug test; or,
- (d) tests positive and was involved in an accident resulting in death, serious injury or extensive property damage; or
- (e) does not appear and complete a follow-up drug and/or alcohol test within two (2) hours following notification to appear for such tests, refuses to sign a medical authorization for an administrative alcohol and drug test or refuses to provide a breath and/or urine sample; or
- (f) has a confirmed positive drug or alcohol test

SECTION 17. CONFIDENTIALITY

All testing will be conducted in accordance with the federal regulations to ensure test results are accurate and reliable. Further, the City will carry out this Policy in a manner that respects the dignity and confidentiality of those involved. No laboratory reports or test results shall appear in the employee's employment history unless they are a part of a disciplinary action taken. Laboratory reports and test results shall be placed in a special locked file maintained by the Drug Abuse Coordinator. Files relating to laboratory reports or test results maintained by the Drug Abuse Coordinator must be kept confidential and shall be disclosed only by consent of the patient. Test information, however, shall be released to the employee, the employer, or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a certified positive drug test. Upon request, an employee is entitled to obtain copies of any records pertaining to the employee's use of prohibited drugs, including any records pertaining to the employee's drug tests.

SECTION 18. EMPLOYEE ASSISTANCE PROGRAMS/SELF-REFERRAL

The City of Santa Fe takes seriously its commitment to provide safe conditions to the public and its employees. Recognizing this commitment, the City maintains employee assistance programs that can provide access to professional services in an effort to aid any employee who has an alcohol or chemical dependency problem. Participation in this program is voluntary and all records regarding self-referral or acknowledgement will be kept confidential to the extent required by law.

All employees who suspect they may have alcohol or substance abuse problems are strongly encouraged to utilize employee assistance program resources before the problem affects their employment status. There will be no disciplinary action involved. Voluntary self-referral, however, shall not relieve the employee from responsibility for adequate job performance. Self-referral after notification of a required drug or alcohol test will not eliminate the requirement to take such a test and will not preclude the taking of disciplinary action against an individual who fails a required drug or alcohol test.

Any costs for counseling or rehabilitation shall be the responsibility of the employee. Questions about the City of Santa Fe's employee assistance programs should be addressed to the City's Safety Officer, who serves as the drug and alcohol program administrator.

SECTION 19. APPEALS

Any employee subject to discipline as a result of drug/alcohol testing will have the right to grieve the discipline pursuant to their respective collective bargaining agreement.

SECTION 20. LEGAL ISSUES

This rule or regulation is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety of care. Violations of this policy, if proven, can only form the basis of a complaint by this Department, and then only in an administrative setting.

Because chemical testing is not testimonial, compulsory urinalysis or breath alcohol tests do not implicate or violate the Fifth Amendment privilege against self-incrimination. See *Schmerber v. California*, 384 U.S. 757, 761 (1966); see also *State v. Richardson*, 87 N.M. 437 (Ct. App. 1975) (the privilege against self-incrimination applies to disclosures that are communicative or testimonial, and the criminal defendant was not compelled to testify against himself by the drawing of blood from his body). Nevertheless, nothing in this policy shall be deemed a waiver of an employee's constitutional protections or privileges afforded in *Garrity v. New Jersey*, 385 U.S. 493 (1967). Any statements written or verbal regarding illegal drug or alcohol use made by employees while in the course and scope of complying with the requirements of this policy shall be deemed compelled and may not be used for criminal prosecution.

IN WITNESS THEREOF, the parties have signed their names and affixed the signature of their authorized representatives on this _____ day of _____, 2022.

Alan M. Webber, Mayor

ATTEST:

Kristine M. Bustos-Mihelcic, City Clerk

APPROVED AS TO FORM:

Christopher W. Ryan
Christopher W. Ryan (May 26, 2022 11:52 MDT)

Senior Assistant City Attorney

Santa Fe Police Officers Association:

Tony Trujillo, President