



City of Santa Fe

AGENDA

REGULAR MEETING OF
THE FINANCE COMMITTEE
JANUARY 17, 2023
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. **PRESENTATION**
 - a. Audit Update for FY21. (Emily Oster, Finance Director: ekoster@santafenm.gov, 505-629-3411)
6. **ACTION ITEMS: CONSENT**

- a. Request for Approval of the January 3, 2023 Finance Committee Meeting Minutes. (Emily Oster, Finance Director, 505-629-3411, ekoster@santafenm.gov).

Committee Review:

Finance Committee: 01/17/2023

- b. Request for Approval of Contract with MISCOWater/TW Associates to Purchase and Install Two Polymer Dosing Systems in the Total Amount of \$71,113.75. (P.Fred Heerbrandt, P.E., Engineer Supervisor: pfheerbrandt@santafenm.gov)

1. Request for Approval of a Budget Adjustment Resolution from the Wastewater Management Division Cash Balance In the Amount of \$71,113.75.

Committee Review:

Public Works and Utilities Committee: 01/09/2023

Finance Committee: 01/17/2023

Governing Body: 01/25/2023

- c. Request for Approval to Purchase a Vactor Ace Easement Machine for the Wastewater Collections Division with Pete's Equipment Repair in the Total Amount of \$111,506.25. (Benjamin Sandoval, Wastewater Collections Manger: basandoval@santafenm.gov, 505-955-4632)

1. Request for Approval of a Budget Adjustment Resolution from the WWMD Cash Balance in the Amount of \$111,506.25.

Committee Review:

Public Works and Utilities Committee: 01/09/2023

Finance Committee: 01/17/2023

Governing Body: 01/25/2023

- d. Request for Approval of Telecommunications Agreement with Century Link/Lumen Amendment No. 1 to SPA #20-361-0021-04390 to Add the City of Santa Fe to the SPA for Network Security, Bandwidth and Content Filtering in the Total Amount of \$430,884.00 for Thirty Six Months. (Manuel Gonzales, ITT Department)

Director, mmgonzales@santafenm.gov, 505-955-5576)

Committee Review:

Finance Committee 01/17/2023

Quality of Life Committee 01/18/2023

Governing Body 01/25/2023

- e. Request for Approval of Amendment No. 1 to American Rescue Plan Act (ARPA) Recovery Funds Subrecipient Contract No.22-0477 in the Total Amount of \$900,000 for Early Childcare Job Development Services with the Santa Fe Community College Early Childhood Education Center of Excellence (SFCC-ECCOE). (Julie Sanchez, Youth and Family Services Division Director: jjsanchez@santafenm.gov, 505-955-6678).

Committee Review:

Finance Committee: 1/17/2023

Quality of Life Committee: 1/18/2023

Governing Body: 1/25/2023

- f. Request for Approval of Agreement to Terminate Power Purchase Agreements between the City of Santa Fe and Dissigno Holdings, LLC. (Caryn Grosse, Project Administrator: clgrosse@santafenm.gov; 505-955-5938)
1. Request for Approval of a Budget Adjustment Resolution (BAR) in the Amount of \$51,221 from Wastewater Operations Administration to Solar Projects CIP for Repairs to Compost Array.
 2. Request for Approval of a Budget Adjustment Resolution (BAR) in the Amount of \$51,221 from Civic Convention Center Operations to Solar Projects CIP for Repairs to Convention Center Array.

Committee Review:

Finance Committee: 01/17/2023

Public Works and Utilities Committee: 01/23/2023

Governing Body: 01/25/2023

- g. Request for Approval of Memorandum of Agreement No. 2022-0233-CSD/MM with Santa Fe County to Receive \$100,000 in County American Rescue Plan Act (ARPA) Funding for Prevention and Intervention Programs to Address Youth and Community Violence Through a

Collaborative Violence Prevention Unit. (Julie Sanchez, Youth and Family Services Director: jjsanchz@santafenm.gov, 505-955-6678 and Sophie Andar, Youth and Family Services Program Manager: sxandar@santafenm.gov, 505-955-6236)

Committee Review:

Finance Committee: 01/17/2023

Quality of Life Committee: 01/18/2023

Governing Body: 01/25/2023

- h. Request for the Approval of State of New Mexico Aging and Long Term Services Department Grant Agreement in the Total Amount of \$268,841.12 for the Foster Grandparent, Senior Companion, and Retired Senior Companion Volunteer Programs, Term Ending June 30, 2023 (Anya Alarid, Senior Services Program Manager: aalarid@santafenm.gov, 505-955-4744).

Committee Review:

Finance Committee: 1/17/2023

Quality of Life: 1/18/2023

Governing Body: 1/25/2023

- i. CONSIDERATION OF RESOLUTION NO. 2022-___. (Councilor M. Garcia, Councilwoman Villarreal and Mayor Webber)
A Resolution Adopting a Strategy for Donating or Selling, at Below-Market Value, a Property Identified as “Las Estrellas Tract 6A” to a Developer Certified as a “Qualifying Grantee” Under the New Mexico Affordable Housing Act to Develop Santa Fe Homes Program Homes, Low-Priced Dwelling Units, or Units Price-Restricted Through Another Affordable Housing Subsidy; and Approving an Announcement to Sell the Remaining Seven Las Estrellas Lots with a Local Preference. (Terry Lease, Asset Development Manager: tjlease@santafenm.gov)

Committee Review:

Governing Body (Introduced): 11/30/2022

Community Development Commission: 12/07/2022

Economic Development Advisory Committee: 12/14/2022

Quality of Life Committee: 01/04/2023

Public Works and Utilities Committee: 01/09/2023

Finance Committee: 01/17/2023

Governing Body: 01/25/2023

- j. CONSIDERATION OF RESOLUTION NO. 2023-___. (Mayor Webber, Councilor Chavez, Councilor Romero-Wirth, Councilor Cassutt and Councilor Lindell)

A Resolution Relating to Firearms; Recognizing that Certain City Properties are Used for School-Related Activities, Which Makes the Carrying of a Deadly Weapon on Such Properties a Fourth-Degree Felony Pursuant to NMSA 1978, Section 30-7-2.1; and Directing the City Manager to Work with Staff to Post Notice on Such Facilities. (Kyra Ochoa, Community Health and Safety Department Director: krochoa@santafenm.gov)

Committee Review:

Governing Body (Introduced): 11/30/2022

Quality of Life Committee (Postponed): 12/7/2022

Quality of Life Committee: 01/04/2023

Public Works and Utilities Committee: 01/09/2023

Finance Committee: 01/17/2023

Governing Body: 01/25/2023

- k. CONSIDERATION OF RESOLUTION NO. 2023-___. (Councilor Cassutt)
A Resolution Approving the Updated Santa Fe Trails Agency Safety Plan and Directing its Submission to the Federal Transit Administration. (David Chapman, Technical and Grant Writer: dachapman@santafenm.gov, 505-955-6824)

Committee Review:

Governing Body (Introduced): 01/11/2023

Public Works and Utilities Committee: 01/23/2023

Governing Body: 01/25/2023

7. ACTION ITEMS: DISCUSSION

- a. CONSIDERATION OF BILL NO. 2022-27. (Councilor M. Garcia, Councilor Cassutt)

An Ordinance Relating to Electric Bicycles; Amending Section 12-1-6 of the Uniform Traffic Ordinance (“UTO”) to Include Electric Bicycles in the Definition of Bicycle; Amending Section 12-1-40 of the UTO to Delineate Electric Bicycles From Motor Vehicles; Amending Section 12-1-88 of the

UTO to Specify That an Electric Bicycle is a Vehicle; Amending Section 12-8-1 of the UTO to Prohibit Anyone Under the Age of Sixteen From Riding a Class 3 Electric Bicycle; Amending Section 12-8-10 of the UTO to Regulate and Establish a Speed Limit for Electric and Manually-Propelled Bicycles on City Sidewalks; Amending Section 12-8-15 of the UTO to Remove the Prohibition for Bicycles to Ride on a Street Adjacent to a Sidewalk or Path When Bicycles are Required to Use the Sidewalk or Street; Creating a New Section 12-8-18 of the UTO to Make it an Offense to Enhance the Speed Capabilities of an Electric Bicycle; Amending Section 12-8-23 of the UTO to Raise the Maximum Fine for Violation of Certain Provisions from Twenty-Five Dollars to One Hundred Dollars; and Amending SFCC 1987 Section 23-5.1 to Amend the Definition of Bicycle to Include Electric Bicycles, and to Regulate the Use of Electric Bicycles on City Roads. (Romella Glorioso-Moss; Project Administrator: rsglorioso-moss@santafenm.gov, 505-955-6623; Kevin Nault, Assistant City Attorney: klnault@santafenm.gov)

Committee Review:

Governing Body (Introduced): 08/31/2022
Governing Body (Public Comment): 09/14/2022
Bicycle and Pedestrian Advisory Committee: 10/13/2022
Quality of Life Committee: 10/19/2022
Bicycle and Pedestrian Advisory Committee: 11/10/2022
Quality of Life Committee: 12/7/2022
Public Works and Utilities Committee: 12/12/2022
Finance Committee: 01/03/2023 (Postponed)
Finance Committee: 01/17/2023
Governing Body (Public Hearing): 02/08/2023

8. **MATTERS FROM STAFF**
9. **MATTERS FROM THE COMMITTEE**
10. **MATTERS FROM THE CHAIR**
11. **NEXT MEETING: Monday, January 30, 2023**
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.



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REGULAR MEETING OF
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1. **CALL TO ORDER**

Meeting started at 5:04 pm.

2. **ROLL CALL**

Members Present:

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

Members Excused:

None

Others Attending:

Emily Oster, Finance Director

Finance Committee Members present: Councilors Cassutt, Lindell, Rivera, Villarreal, Romero-Wirth.

Staff present: Emily Oster, Finance Director.



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3. APPROVAL OF AGENDA

MOTION: Councilor Cassutt moved, seconded by Councilor Villarreal, to approve the agenda as presented.

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor Lindell, Councilor Cassutt, Councilor Rivera

Against: None

Abstain: None

A motion was made by Councilor Cassutt and second by Councilor Lindell to remove item K from the agenda and to be heard at Finance Committee Meeting on January 17, 2023. After discussion Councilor Cassutt made a motion to withdraw the motion to remove item K as second by Councilor Lindell. The item to be heard at this meeting.

4. APPROVAL OF CONSENT AGENDA

MOTION: Councilor Villarreal moved, seconded by Councilor Cassutt, to approve the consent agenda as amended. Items g, i, j, k, l pulled for discussion.

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor Lindell, Councilor Cassutt, Councilor Rivera

Against: None

Abstain: None

5. ACTION ITEMS: CONSENT

- a. Request for Approval of the November 28, 2022 Finance Committee Meeting Minutes. (Emily Oster, Finance Director, 505-629-3411,



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ekoster@santafenm.gov).

MOTION: Councilor Villarreal moved, seconded by Councilor Cassutt, to approve the minutes as presented.

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor Lindell, Councilor Cassutt, Councilor Rivera

Against: None

Abstain: None

- b. Request for Approval to Purchase a Ferrera Rescue Pumper for the City of Santa Fe Fire Department from 411 Equipment LLC in the Total Amount of \$687,800. (Brian Moya, Fire Chief: bjmoya@santafenm.gov, 505-955-3111)

Committee Review:

Public Works and Utilities Committee 12/12/2022

Finance Committee 01/3/2023

Governing Body 01/11/2023

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

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor Lindell, Councilor Cassutt, Councilor Rivera

Against: None

Abstain: None

c.



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Request for Approval of Purchase of a Digester Sludge Transfer Progressive Cavity Pump #2 with VFD Controller and Installation Services with Miscowater Intermountain/TW Associates in the Total Amount of \$74,595 Term Ending June 30, 2023. (Fred Heerbrandt, Engineer Supervisor: pfheerbrandt@santafenm.gov)

1. Request for Approval of a Budget Adjustment Resolution (BAR) In the Amount of \$74,595.

Committee Review:

Public Works and Utilities Committee: 12/12/2022

Finance Committee: 01/03/2023

Governing Body: 01/11/2023

MOTION: Councilor Villarreal moved, seconded by Councilor Cassutt, to approve the purchase as presented.

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor Lindell, Councilor Cassutt, Councilor Rivera

Against: None

Abstain: None

- d. Request for Approval to Purchase Seven (7) Pinch Valves and Five (5) Rotork Valve Actuators Including Installation Services with Miscowater Intermountain/TW Associates In the Total Amount of \$142,512 Excluding NMGRT, Term Ending June 30, 2023. (Fred Heerbrandt, Engineer Supervisor: pfheerbrandt@santafenm.gov)

1. Request for Approval of a Budget Adjustment Resolution (BAR) In the Amount of \$142,512.

Committee Review:

Public Works and Utilities Committee: 12/12/2022

Finance Committee: 01/03/2023



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Governing Body: 01/11/2023

MOTION: Councilor Villarreal moved, seconded by Councilor Cassutt, to approve the purchase as presented.

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor Lindell, Councilor Cassutt, Councilor Rivera

Against: None

Abstain: None

- e. Request for Approval of Amendment No. 6 to Original On-Call Contract No. 19-0234 with Carollo Engineers for an Increase of \$440,260 Excluding NMGRT. (Fred Heerbrandt, Engineer Supervisor: pfheerbrandt@santafenm.gov)

1. Request for Approval of a Budget Adjustment Resolution (BAR) from the WWMD Cash Balance in the Amount of \$505,738.84

Committee Review:

Public Works and Utilities Committee: 12/12/2022

Finance Committee: 01/03/2023

Governing Body: 01/11/2023

MOTION: Councilor Villarreal moved, seconded by Councilor Cassutt, to approve the contract amendment as presented.

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor Lindell, Councilor Cassutt, Councilor Rivera

Against: None

Abstain: None



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- f. Request for Approval of a Budget Adjustment Resolution (BAR) for the Water Division Operating Budget from the Water Enterprise Fund Cash Balance in the Total Amount of \$215,488. (Jesse Roach, Water Division Director, jdroach@santafenm.gov)

Committee Review:

Public Works and Utilities Committee: 11/07/2022

Finance Committee: 01/03/2023

Governing Body: 01/11/2023

MOTION: Councilor Villarreal moved, seconded by Councilor Cassutt, to approve the budget adjustment resolution (BAR) as presented.

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor Lindell, Councilor Cassutt, Councilor Rivera

Against: None

Abstain: None

- g. Request for Approval of a General Services Contract with the Kiwanis Club of Santa Fe to Plan, Coordinate and Execute Celebrations for New Year's Eve and Dia de los Muertos for Four Years in the Total Amount of \$300,000 Including NMGRT. (Randy Randall, Executive Director of TOURISM Santa Fe: rrandall@santafenm.gov, 505-955-6209)

Committee Review

Public Works and Utilities Committee: 12/12/2022

Finance Committee: 01/03/2023

Governing Body: 01/11/2023

MOTION: Councilor Lindell moved, seconded by Councilor Cassutt, to approve the contract as presented on discussion.

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



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For: Councilor Romero-Wirth, Councilor Lindell, Councilor Cassutt

Against: Councilor Villarreal, Councilor Rivera

Abstain: None

- h. Request for the Approval of State of New Mexico Aging and Long Term Services Department Capital Appropriation Project Grant Agreement A20E5289 in the Total Amount of \$358,865 for the Plan and Design of a Senior Center, Term Ending June 30, 2024. (Anya Alarid, Senior Services Program Manager, aalarid@santafenm.gov, 505-955-4744).

Committee Review:

Finance Committee: 01/03/2023

Quality of Life Committee: 01/04/2023

Governing Body: 01/11/2023

MOTION: Councilor Villarreal moved, seconded by Councilor Cassutt, to approve the grant as presented.

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor Lindell, Councilor Cassutt, Councilor Rivera

Against: None

Abstain: None

- i. Request for Approval of Recovery Funds Subrecipient Project Participation Agreement in the Total Amount of \$2,000,000 of American Rescue Plan Act (ARPA) Funds to Underwrite the Acquisition of the Lamplighter Inn – This Agreement Falls Under the First Statutory Category, to Respond to the COVID-19 Public Health Emergency or its Negative Economic Impacts; Bella Luz Apartments 2022 LLP. (Cody Minnich, Housing Grant Manager: cjminnich@santafenm.gov, 505-955-6574)



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Committee Review:

Finance Committee: 01/03/2023

Quality of Life: 01/04/2023

Governing Body: 01/11/2023

MOTION: Councilor Lindell moved, seconded by Councilor Villarreal, to approve the contract as presented on discussion.

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor Lindell, Councilor Cassutt, Councilor Rivera

Against: None

Abstain: None

- j. Request for Approval of Midyear Budget Amendment Resolutions (BAR's) Utilizing FY22 (Prior Year) Gross Receipts and Lodgers' Tax Revenue, Above Budgeted Estimates, to Fund a Package of Priorities that Include the Southside Teen Center, Police Department Administration, Tourism Santa Fe, Public Safety Radio System and Regional Emergency Communication Center Recording System Totaling \$983,873. (Emily K. Oster, Finance Director, ekoster@santafenm.gov)

Committee Review:

Finance Committee: 01/03/2023

Quality of Life: 01/04/2023

Governing Body: 01/11/2023

MOTION: Councilor Cassutt moved, seconded by Councilor Villarreal, to approve the budget adjustment resolution (BAR) as presented on discussion.

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor



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Lindell, Councilor Cassutt, Councilor Rivera

Against: None

Abstain: None

- k. CONSIDERATION OF RESOLUTION NO. 2022-___. (Mayor Webber, Councilor Cassutt, Councilor Chavez)
A Resolution Adopting the Midtown Community Development Plan for the Midtown Redevelopment Project. (Lee Logston, Midtown Asset Development Manager: llogston@santafenm.gov, 505-995-6914)

Committee Review:

Governing Body (Introduced): 11/09/2022 (Postponed)

Governing Body (Introduced): 11/30/2022 (Postponed)

Governing Body (Introduced): 12/14/2022

Finance Committee: 01/03/2023

Community Development Commission: 01/04/2023

Quality of Life Committee: 01/04/2023

Public Works and Utilities Committee: 01/09/2023

Economic Development Advisory Committee: 01/11/2023

Governing Body: 01/11/2023

MOTION: Councilor Cassutt moved, seconded by Councilor Rivera, to approve the resolution as presented on discussion.

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor Cassutt, Councilor Rivera

Against: Councilor Lindell

Abstain: None

- I. CONSIDERATION OF BILL NO. 2022-___. (Councilor M. Garcia, Councilor Cassutt)
An Ordinance Relating to Electric Bicycles; Amending Section 12-1-6 of the Uniform Traffic Ordinance ("UTO") to Include Electric Bicycles in the



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Definition of Bicycle; Amending Section 12-1-40 of the UTO to Delineate Electric Bicycles From Motor Vehicles; Amending Section 12-1-88 of the UTO to Specify That an Electric Bicycle is Not a Vehicle; Amending Section 12-8-1 of the UTO to Prohibit Anyone Under the Age of Sixteen From Riding a Class 3 Electric Bicycle; Amending Section 12-8-10 of the UTO to Regulate and Establish a Speed Limit for Electric and Manually-Propelled Bicycles on City Sidewalks; Amending Section 12-8-15 of the UTO to Remove the Prohibition for Bicycles to Ride on a Street Adjacent to a Sidewalk or Path When Bicycles are Required to Use the Sidewalk or Street; Creating a New Section 12-8-18 of the UTO to Make it an Offense to Enhance the Speed Capabilities of an Electric Bicycle; Amending Section 12-8-23 of the UTO to Raise the Maximum Fine for Violation of Certain Provisions from Twenty-Five Dollars to One Hundred Dollars; and Amending SFCC 1987 Section 23-5.1 to Amend the Definition of Bicycle to Include Electric Bicycles, and to Regulate the Use of Electric Bicycles on City Roads. (Romella Glorioso-Moss; Project Administrator: rsglorioso-moss@santafenm.gov, 505-955-6623; Kevin Nault, Assistant City Attorney: klnault@santafenm.gov)

Committee Review:

Governing Body (Introduced): 08/31/2022
Governing Body (Public Comment): 09/14/2022
Bicycle and Pedestrian Advisory Committee: 10/13/2022
Quality of Life Committee: 10/19/2022
Bicycle and Pedestrian Advisory Committee: 11/10/2022
Quality of Life Committee: 12/7/2022
Public Works and Utilities Committee: 12/12/2022
Finance Committee: 01/03/2023
Finance Committee: 01/17/2023
Governing Body (Public Hearing): 01/25/2023

MOTION: moved, seconded by , to postpone the bill until the January 17, 2023 Finance Committee Meeting.

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor Lindell, Councilor Cassutt, Councilor Rivera

Against: None



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Abstain: None

Councilors need the bill amended and caption corrected for the next Finance Committee Meeting

- m. CONSIDERATION OF RESOLUTION NO. 2023-___. (Mayor Webber)
A Resolution Rescinding Resolution No. 2022-2 Relating to the Open Meetings Act; and Adopting Annual Notice Requirements for 2023. (Kristine Bustos Mihelcic, City Clerk: kmmihelcic@santafenm.gov, 505-955-6521)

Committee Review:

Special Governing Body (Introduced): 12/21/2022

Finance Committee: 1/3/2023

Governing Body: 01/11/2023

MOTION: Councilor Villarreal moved, seconded by Councilor Cassutt, to approve the resolution as presented.

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

For: Councilor Villarreal, Councilor Romero-Wirth, Councilor Lindell, Councilor Cassutt, Councilor Rivera

Against: None

Abstain: None

6. PRESENTATION

- a. FY21 Audit Update (Emily Oster, Finance Director: ekoster@santafenm.gov, 505-629-3411)

Finance Director, Emily Oster presented the FY21 Audit update. Six CliftonLarsenAllen (CLA) team members assisting on seventy new requested items, due Monday by Carr Riggs & Ingram, new Audit firm. Month end close expected to be completed in January 17, 2023.



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- b. Overview of Accounting Standards and Rules. (Emily Oster, Finance Director, 505-629-3411, ekoster@santafenm.gov)

Finance Director, Emily Oster presented an overview of Accounting and Standards and Rules. An attachment is provided on PrimeGov.

7. **MATTERS FROM STAFF**
8. **MATTERS FROM THE COMMITTEE**
9. **MATTERS FROM THE CHAIR**
10. **NEXT MEETING: January 17 2023**
11. **ADJOURN**

Meeting adjourned 8:13 p.m.

Liaison

Chair



THE CITY OF
SANTA FE

MEMORANDUM

DATE: December 12, 2022

TO: Governing Body
Finance Committee
Public Utilities Committee

VIA: EMILY OSTER, FINANCE DIRECTOR
JOANN LOVATO, PURCHASING
SHANNON JONES, PUBLIC UTILITIES DEPARTMENT DIRECTOR 
MIKE DOZIER, WWM DIVISION DIRECTOR 

FROM: P. Fred Heerbrandt, P.E., Engineer Supervisor, WWMD 

ITEM:

Request approval of award of BID #23/20/B and the contract with MISCOWater/TW Associates to purchase and install two polymer dosing systems, inclusive of NMGRT, for a total of \$71,113.75. Request approval of a BAR / Increase in the amount of \$71,113.75 from the WWMD Cash Balance.

BACKGROUND

The Wastewater Management Division uses polymers to assist in the thickening and dewatering of sewage sludge produced at the Paseo Real Wastewater Reclamation Facility. These chemicals are drawn from bulk containers and prepared for use by utilizing skid mounted dosing systems. These systems dilute the polymer emulsion with water and use mixing or agitation to activate the chemical solution prior to injecting the proper dose of the diluted and activated chemical into the sludge. These two polymer feed skid mounted systems will be used with the Dissolved Air Flotation (DAF) units, which are used to thicken secondary sludge prior to addition to the anaerobic digesters. Two bids were received. One bid, from D & H Water Systems, was determined to be non-compliant with the specifications included in the bid documents. The second bid, from MISCOWater/TW Associates was determined to be compliant and recommended for award. This expense was not anticipated during the budget process, and was put out for bid during the current FY.

PROCUREMENT METHOD:

ITB #23/20/B

MUNIS CONTRACT #:

3203833

FUNDING SOURCE:

Fund WWMD Enterprise / 500

ORG WWMD Collections/ 5000362

OBJ Repair Maintenance Mach. Equip. / 520400

PL # WWM2050001

RECOMMENDED ACTION

PUD respectfully requests approval bid #23/20/B and contract with MISCOWater\TW Associates in the amount of \$71,113.75 and a BAR in the amount of \$71,113.75.

Log # (Finance use <u>only</u>):	
Journal # (Finance use <u>only</u>):	

City of Santa Fe, New Mexico BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME				DATE	
Public Utilities Department / Wastewater Management Division				12/12/2022	
ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
<u>EXPENDITURES</u>				<i>{enter as positive #}</i>	<i>{enter as negative #}</i>
WWMD Collections/ Repair Maint Machine Equip.	5000362	520400	WWM2050001	71,114	
<u>REVENUES</u>				<i>{enter as negative #}</i>	<i>{enter as positive #}</i>

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

	\$	71,114	\$	-
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To fund a contract with MISCOWater/TW Associates for two polymer dosing systems, including installation. Increase from WWMD cash balance.

<i>{Complete section below if BAR results in a net change to ANY Fund}</i>	
	Fund Balance
Fund(s) Affected	Increase/(Decrease)
500	(71,114)
TOTAL:	(71,114)

P. Fred Heerbrandt, P.E.	12/12/2022	<i>{Use this form for Finance Committee/ City Council agenda items ONLY}</i>	<i>Andy Hopkins</i>	12/15/22	
Prepared By <i>{print name}</i>	Date	CITY COUNCIL APPROVAL	Budget Officer	Date	
<u><i>Michael Dozier</i></u>	12/14/22		City Council		
Division Director Signature <i>{optional}</i>	Date		Approval Date	Finance Director <i>{≤ \$5,000}</i>	Date
<u><i>Shannon Jones</i></u>	12/14/22		Agenda Item #:	City Manager <i>{≤ \$60,000}</i>	Date
Department Director Signature	Date				

Item# _____
Munis Contract# 3203833

**CITY OF SANTA FE
GENERAL SERVICES CONTRACT**

DAF System Polymer Feed Equipment

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and **TW Associates, LLC./dba MISCOwater**, herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Definitions

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "You" and "your" refers to **TW Associates, LLC./dba MISCOwater** . "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. Scope of Work

The Contractor shall perform the following work:

A. Contractor shall supply and install (2) two Polymer Chemical feed systems for the Dissolved Air Floatation (DAF) thickening system at the Paseo Real Wastewater Reclamation Facility (PRWRF). The scope of supply includes all labor and materials required to install and start-up the two new polymer feed units. The Polymer Dosing System shall be a UGSI Polyblend M-series.

- 1) Each skid mounted polymer feed system shall include all labor and materials necessary for the supply and installation of the two units, including:**
 - a. Submittals and Owner and Maintenance (O&M) Manuals
 - b. Freight to site
 - c. The Warranty will at least be for a period of twelve (12) months from the date of final acceptance of the installation by the Engineer at the WWTP.
 - d. Site measurements to ensure proper installation
 - e. Placement and installation of two polymer blending skids at PRWWTP.

- f. Piping connections including any necessary fittings to connect to polymer, water, and discharge solution piping to existing water, polymer, and solution PVC piping. All new pipe and fittings shall be Sch 80 PVC to match the existing piping material
- g. The polymer skids shall be provided with a standard 120V electrical cord which will be connected to existing power outlets on the wall.

POLYMER DOSING SYSTEM FOR LIQUID POLYMER

- A. System shall be designed for the preparation, aging, and dosing of up to 240 GPH of polymer solution having an active polymer concentration between 0.05 and 0.25 %. The actual size of the polymer system depends on the specified type of sludge, maximum capacity, and polymer consumption.
- B. The polymer station shall be self-contained with pumps, piping, fittings, and accessories, and shall be factory assembled and tested to eliminate field assembly work and therefore to minimize installation and start up time. The frame shall be 304 stainless steel and the piping SCH. 80 PVC.
- C. Multi-Zone Mixing Chamber.
 - 1) Polymer and water shall be mixed in a chamber designed to create sufficient mixing energy.
 - a. High shear zone of the mixing chamber shall have a mechanical mixing impeller for successful initial activation and the low shear zone shall not have a mixing impeller to avoid damaging polymer molecules.
 - b. Solution shall undergo a tapered mixing intensity slope as it exits the initial high shear zone and passes through a second low shear zone, isolated by a baffle.
 - c. The design shall have primary mixing and post-dilution to maximize the value of breaker surfactant present in emulsion polymer, as per the AWWA Standard for Polyacrylamide (ANSI/A WWA B453-06).
 - d. Polymer activation efficiency shall be consistent over the dilution water range.
 - 2) Mixing chamber shall be transparent to allow viewing of mixing intensity. Opaque mixing chambers shall not be accepted.
 - 3) Impeller shall be driven by a ½ HP washdown duty motor.
 - a. Motor shall be 115/230V, 1 Ph, 60 Hz
 - b. Motor shall be TEFC.
 - c. Impeller speed shall be 3450 rpm, minimum.
 - d. Motor shall be direct-coupled to impeller shaft.

- 4) Mixing chamber shall include a stainless steel injection check valve.
- 5) In order to quantify the mixing intensity in the mix chamber, the applied horsepower shall be defined by measuring the difference in torque when the mix chamber is empty versus being full of water. This value shall be the basis of determining the mixing intensity defined as "G" value.
- 6) The G-value in the high shear mixing zone shall exceed $14,000 \text{ sec}^{-1}$ to effectively disperse polymer gels to prevent fisheye formation.
- 7) The G-value in the low shear mixing zone shall be lowered to $3,500 \text{ sec}^{-1}$ to avoid damaging polymer chains.

D. Dilution Water Control

- 1) Contractor shall provide a potable water connection for the dilution of the polymer in the polymer tank. The water piping to the polymer blend system shall include a minimum $\frac{3}{4}$ " inlet (NPT female).
- 2) Dilution water shall be split into two streams.
 - a. Primary water shall supply the mixing chamber.
 - b. Secondary water flow shall be used to post-dilute the activated polymer stream.
 - c. These two streams shall be completely blended by a static mixer prior to exiting the unit.
- 3) Unit shall have an electric solenoid valve for on/off control of total dilution water flow.
- 4) Flow indicators and flow control valves shall be provided for each dilution water stream.
- 5) Dilution water and solution output connections shall include 304 stainless steel unions connected to the chassis.

E. Neat Polymer Metering Pump

- 1) Pump shall be Seepex 2.0 GPH, progressive cavity pump.
- 2) Rotor shall be 316 stainless steel.
- 3) Stator shall be Viton.
- 4) Pump shall have mechanical seal.
- 5) Pump shall be driven by $\frac{1}{2}$ HP, AC motor.

F. Control Panel: Skid mounted NEMA 4X FRP enclosure, 120 VAC, 60 Hz, 1 PH service.

- 1) Operator interface – discrete selector switch (system ON/OFF/REMOTE); constant speed mechanical mixer; pump stroke frequency display, pump flow rate display.

- 2) Status / Alarm indicators: system running indication; LCD display of metering pump rate (on metering pump); low pressure switch alarm
 - 3) Inputs: remote start / stop (discrete dry contact); pacing signal from main control panel (4-20mA)
 - 4) Outputs: system running (discrete dry contact); remote mode (discrete dry contact); low flow alarm (discrete dry contact)
- J. The pressure side of the polymer system shall be connected through a minimum 3/4" diameter PVC pipeline with a static mixer.
- K. The Polymer Dosing System shall be a UGSI Polyblend M-series.

3. **Compensation**

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

2 - UGSI Polyblend M-series, Polymer Dosing System	\$55,950.00
Installation of Two Polymer Dosing Systems	\$14,000.00
NMGRT	\$ 1,163.75
Total	\$71,113.75

4. **Payment Provisions**

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

- A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the City shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the City, the City shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the City shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.
- B. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the

Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The City agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

5. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on date approved by the City, and end on June 30, 2023. The City reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of four years in accordance with NMSA 1978, §§ 13-1-150 through 152.

6. **Default and Force Majeure**

The City reserves the right to cancel all or any part of any orders placed under this contract without cost to the City, if the Contractor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. **Termination**

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

B. **Notice; City Opportunity to Cure.**

1) Except as otherwise provided in Paragraphs 7.A and 17, the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2) Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Agreement upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

8. Amendment

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. Status of Contractor

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. Assignment

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

11. Subcontracting

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve

the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

12. **Non-Collusion**

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

13. **Inspection of Plant**

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. **Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the legislature, this Agreement, and any orders placed under it, shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an

amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

18. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

19. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the City.

20. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

21. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

22. **Scope of Agreement; Merger**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

23. **Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

25. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

26. **New Mexico Tort Claims Act**

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort

Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

27. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-2. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

28. **Limitation of Liability**

The Contractor's liability to the City, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the City's, claim. The foregoing limitation does not apply to paragraph 25 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

29. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

30. **Workers' Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination

for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

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

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- (2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

- (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
- (2) terminate the contract for default.

33. **Insurance**

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

A. **Commercial General Liability** insurance shall be written on an occurrence basis and be a broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be

endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

B. 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.

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:

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

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

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

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

or,

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

38. **Survival**

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

39. **Disclosure Regarding Responsibility**

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

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

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

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the

determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

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

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

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

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

41. **Notification**

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

To the City:

P. Fred Heerbrandt, P.E.
73 Paseo Real
Santa Fe, NM 87507
505-955-4623
pfheerbrandt@santafenm.gov

To the Contractor:

Nick Lucas
TW Associates
dba MISCO Water
651 Corporate Circle #100
Golden, CO 80401
720-526-7397
303-309-6150
nlucas@miscowater.com

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

42. **Succession**

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

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

CITY OF SANTA FE:

CONTRACTOR:
TW Associates, LLC./dba MISCOwater

JOHN BLAIR, CITY MANAGER

NAME Richard C. Nani

DATE: _____

TITLE SR. PROJECT MANAGER

DATE: 12/7/2022
CRS# 0248520003

Registration # 233223

ATTEST:

KRISTINE BUSTOS MIHELIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Dec 7, 2022 09:33 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

EMILY OSTER, CPA, CGMA, CPO
FINANCE DIRECTOR
5000362.520400 AH
Org.Name/Org.# AH



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # _____

Contractor: MISCOwater/TW Associates

Description: Two - Skid mounted polymer feed systems

Contract Agreement Lease / Rent Amendment

Term Start Date: City Approval Term End Date: 6/30/2022

Approved by Council Date: _____

Contract / Lease:

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)

3. Procurement History: _____

JoAnn Lovato
JoAnn Lovato (Dec 23, 2022 11:03 MST)

Dec 23, 2022

Purchasing Officer Review: _____

Date: _____

Comment & Exceptions: Procured via ITB. Procurement on file

4. Funding Source: _____ Org / Object: 5000362.520400

Andy Hopkins
Andy Hopkins (Dec 22, 2022 17:11 MST)

Dec 22, 2022

Budget Officer Approval: _____

Date: _____

Comment & Exceptions: _____

Staff Contact who completed this form: P. Fred Heerbrandt, P.E. Phone # 505-955-4623

Email: pfheerbrandt@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: MISCOwater/TW Associates

Procurement Title: Polymer Feed System

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/WWMD Staff Name P. Fred Heerbrandt, P.E.

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 checked="" type="checkbox"/> | <input type="checkbox"/> | ITB |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Bib Tab |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Quotes (3 valid current quotes) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Cooperative Agreement |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Sole Source Request and Determination Form |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Contractors Exempt Letter |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Purchasing Officers approval for exempt procurement |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | BAR |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | FIR |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Executed Contract, Agreement or Amendment |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Current Business Registration and CRS numbers on contract or agreement |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Summary of Contracts and Agreements form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Certificate of Insurance |
| <input type="checkbox"/> | <input type="checkbox"/> | All documentation presented to Committees |
| <input type="checkbox"/> | <input type="checkbox"/> | Other: |

P. Fred Heerbrandt, P.E. Engineer Supervisor December 12, 2022

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

JoAnn Lovato Contracts Supervisor Dec 23, 2022
JoAnn Lovato (Dec 23, 2022 11:03 MST)

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



December 1, 2022

JoAnn D. Lovato, CPO
Interim Chief Procurement Officer
City of Santa Fe
jlovato@santafenm.gov

Subject: City of Santa Fe Paseo Real WWTP
DAF System Polymer Feed Equipment
ITB # 23/20/B

Dear Ms. Lovato:

MISCO Water is pleased to offer the City of Santa Fe a complete furnish and installation quotation for new polymer feed equipment for the DAF thickening system at the Paseo Real WWTP. The scope of supply includes all labor and materials required to install and start-up the two new polymer feed units. The scope of supply is outlined in further detail in the table below.

Item	Description
1	UGSI Polyblend® MM240-P2AA Polymer Blending System (Qty 2) - See enclosed scope description and cut sheet
2	Submittals and O&M Manual
3	Freight to site
4	All labor and materials needed for Installation of Supplied UGSI Polyblend® MM240-P2AA Polymer Blending System including: <ul style="list-style-type: none">- Site measurements to ensure proper installation- Placement and installation of two polymer blending skids- Piping connections including any necessary fittings to connect to polymer, water and discharge solution piping to existing water, polymer and solution PVC piping on the wall. All new pipe and fittings will be SCH80 PVC to match the existing piping material.- The Polymer Skids will be provided with a standard 120V electrical cord which will be connected to existing power outlets on the wall.- On-site start-up by MISCO Water



- Seismic calculations or Seismic Upgrades
- Third party inspection or testing
- Hazardous material handling or disposal
- Bonds
- New Mexico Gross Receipts tax on equipment

The quoted scope of work is based on standard wage rates and insurance policies. MISCO Water reserves the right to reprice our scope of work, should additional wage, insurance requirements or bonds be deemed necessary by the City.

We appreciate the opportunity to offer the UGSI Polyblend® polymer blending offering for this application, as well as MISCO Water's furnish and installation capability. We believe that our offering provides a unique benefit to the City of Santa Fe, allowing for a superior polymer blending solution at a competitive total installed cost with superior equipment delivery and start-up lead times. We trust that you will find this offering complete, but please let me know if you have any additional questions regarding the proposed scope and pricing.

Thank you for your consideration and we look forward to discussing this offering with City staff in more detail in the future.

Nick Lucas
MISCO Water
TW Associates
720-526-7397
nlucas@miscowater.com

CC: Stefan Oreshkov MISCO Water/TW Associates



SCOPE OF WORK BY UGSI CHEMICAL FEED, INC. ('SELLER')

The following equipment and services are included in Seller's scope of work. All equipment will be manufactured in accordance with Seller's standard equipment specifications and installed in a non-hazardous area.

No.	Item Description	Qty.
1.	Polyblend® MM240-P2AA Polymer Activation System, including: <ul style="list-style-type: none"> • Patented UGSI Mixing Chamber with Brass Impeller • Constant Speed: 1/2 HP, 3450 RPM, 115/230 V, 1 PH, 60 Hz (Wash-Down) • 36.40" x 26.00" x 47.35" Stainless Steel Frame 	2.0
2.	Dilution Water Inlet, including: <ul style="list-style-type: none"> • 3/4" PVC Piping for 240 GPH of Flow • Diaphragm Check Valve: 1/2" PVC • Globe Valve: 1/2" PVC • Solenoid Valve: 3/4" Parker Valve • Flowmeters: 2 GPM BLUE & WHITE • Secondary Dilution 	2.0
3.	Polymer Pump, including: <ul style="list-style-type: none"> • Seepex 2.0 GPH, Progressive Cavity Pump w/ Mechanical Seal, 316SS Rotor, & Viton Stator • 1/2" PVC Piping for 2.0 GPH Progressive Cavity Polymer Pump 	2.0
4.	Calibration Column, including: <ul style="list-style-type: none"> • Calibration Cylinder Kit: 	2.0
5.	Solution Outlet, including: <ul style="list-style-type: none"> • 3/4" Static Mixer 	2.0
6.	Power Assembly, including: <ul style="list-style-type: none"> • 120/60/1 Power Supply 	2.0
7.	Electrical Control Panel, including: Skid-Mounted Electrical Control Panel, including: [A CONTROLS] <ul style="list-style-type: none"> • On-Off-Remote" switch • "Run" indicator light • "Pump Stroke Frequency" display • "Pump Flow Rate" display • Remote Start contact • "Run" output contact • "Loss of Water Flow" output contact 	2.0

PolyBlend® Polymer Feed System

M Series

The PolyBlend® M Series liquid polymer feed system is the best product available to handle your liquid/solid separation needs. The M Series combines proven motorized mixing technology with precise controls to provide superior polymer preparation. In addition, the M Series can be configured with a variety of pump offerings, variable speed mixing and automatic dosage control with constant solution strength to meet a wide range of polymer feed application requirements. The M Series units are also available for classified area environments including Class 1, Division 1 and Class 1, Division 2 areas.

The M Series is engineered for quick easy service and is built to last. The open frame design permits quick and easy maintenance and the M Series is engineered to handle the harshest environments.

The M Series is designed to handle new polymer developments, ultra-high molecular weights, different charge densities, and even totally new chemistries. A constant speed motor is standard on the M Series and optional variable speed drives are available to accommodate application or technology. Optional advanced controls provide precise and consistent solution strength. Whether you adjust the M Series output remotely via 4-20 mA signal or right at the unit, water flow and polymer feed increase or decrease together. Primary and secondary dilution water are also kept at the same ratio as the output is adjusted.

A variety of models are available covering output ranges from 0.1 to 200 USGPM (0.4 to 757.9 LPM). Choose between diaphragm, gear, or progressive cavity polymer pumps for your application.

Key Benefits

- Improved polymer efficiency providing maximum polymer activation
- Open-frame design for easy access
- Reliable and consistent direct drive mixing
- Optional advanced controls to meet your application needs

Specifications

Power	115-230 VAC / 60 Hz / 1 Phase 230-460 VAC / 60 Hz / 3 Phase
Dimensions (W x H x D)	914.4 x 1041.4 x 508 m 36" x 41" x 20"
Polymer pump	Diaphragm, Gear, or Progressive Cavity
Material	304 SS Frame / PVC
Controls	PolyBlend® A, B, or C



Technical Data

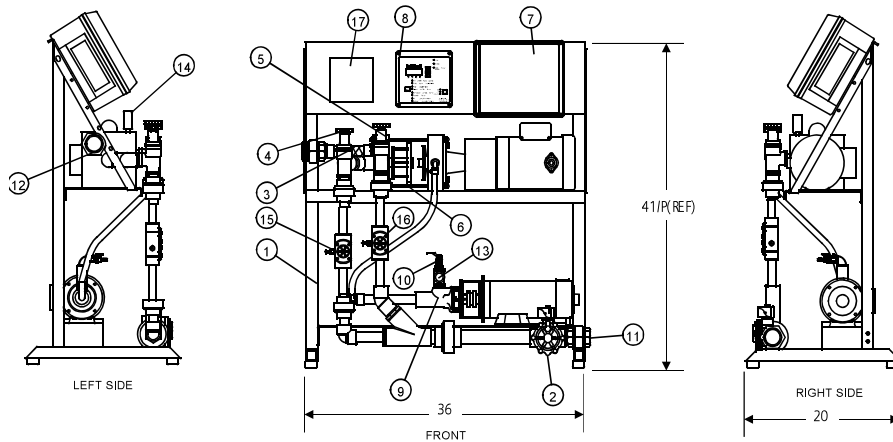
M Series Model Numbering Guide

The model numbers for the M-Series can be generated as follows:

EXAMPLE: M 2400 - P - 10 AB - V

Water Flow Rate in GPH (LPH)			Options
240 / (912)			V - Variable speed mixer
600 / (2280)			
1200 / (4540)			Controls
2400 / (9120)			A - On-Off Remote
6000 / (380 LPM)			B - Microcontroller
12,000 / (760 LPM)			C - Flow Proportional
Pump Type and Output in LPH (GPH)			Voltage
Diaphragm	Gear	Progressive Cavity	A - 115 VAC / 60 Hz / 1 ph
D.4/(1.5)	G18/(68)	P5/(19)	B - 460 VAC / 60 HZ / 3 ph
D1/(3.8)	G36/(137)	P10/(38)	C - 230 VAV / 60 Hz / 1 ph
D2.5/ 9.5)	G60/(228)	P30/(114)	
D4/(15.2)	G200/(760)	P50/(190)	
D10/(38)	G660/(2508)		
* Model number is "601"			

General Layout



Key Description

Key	Description
1	Base Assembly
2	Solenoid Valve
3	Static Mixer
4	Primary Dilution Control Valve
5	Secondary Dilution Control Valve
6	Mix Chamber
7	Motor Control Panel
8	Micro-Controller
9	Pump, Progressive Cavity
10	Pump, Priming Port
11	Water Inlet
12	Solution Discharge
13	Polymer Inlet
14	Pressure Gauge (Mix Chamber)
15	Primary Dilution Water Sensor
16	Secondary Dilution Water Sensor
17	Operators Instructions

UGSI Chemical Feed, Inc.
 1901 West Garden Road
 Vineland, NJ 08360
 Toll Free: 855-669-3845
 Local: 856-896-2160
 Fax: 856-457-5920
 Email: info@ugsichemicalfeed.com
 Website: www.ugsichemicalfeed.com

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 Subject to change without prior notice.
 Literature No. CF.480.310.MAO.PS.0714

Polyblend® is a trademark of UGSI Chemical Feed, Inc.

The information provided in this literature contains merely general descriptions or characteristics of performance which in actual case of use do not always apply as described or which may change as a result of further development of the products. An obligation to provide the respective characteristics shall only exist if expressly agreed in the terms of a written contract.

**MISCOWATER – TW ASSOCIATES
TERMS & CONDITIONS OF SALE**

1. ACCEPTANCE

When the Buyer signifies acceptance of this quotation by submission of a Purchase Order or signed MISCOWATER Quotation, it shall become a binding contract when accepted and signed by an authorized signer of the Seller (MISCOWATER). Any changes or amendments to this proposal made by the Buyer must have MISCOWATER's approval in writing to become a part of this contract.

2. DELIVERY

Any shipment or delivery date recited represents our best estimate, but no liability, direct or indirect, is assumed by MISCOWATER for failure to ship or deliver on such dates. Unless otherwise directed, MISCOWATER shall have the right to make early or partial shipments and invoices covering the same to Buyer shall be due and payable in accordance with payment terms hereof. FOB shall be origin.

3. APPROVAL DRAWINGS

Any preliminary drawings or literature attached to our quotation are for illustration purposes only to show approximate arrangements. Specific drawings and submittal data will be furnished for approval as required after receipt and acceptance of the Buyer's order. Fabrication of products or equipment ordered will not begin until approval and direction to proceed is received in writing.

4. PAYMENT

Payment terms, upon credit approval, are Net 30 Days from the date of each invoice issued for each partial or final shipment. Flowdown provisions are not accepted. Retention is not allowed. In the event any payment becomes past due, a charge of 1.5% will be assessed monthly.

5. TAXES AND BONDS

Taxes and bonds are NOT included in our pricing. Any applicable taxes or bonds will be added to the price and shown separately on each invoice.

6. CLAIMS AND BACKCHARGES

Buyer agrees to examine all materials immediately upon delivery and report to Seller (MISCOWATER) in writing any defects or shortages noted no later than 10 days following the date of receipt. The parties agree that if no such claim is made within said time, it shall be considered acceptable and in good order with respect to any defect or shortage which would have been revealed by such an inspection. In no event will MISCOWATER be responsible for any charge for modification, servicing, adjustment or for any other expense without written authorization from MISCOWATER prior to the performance of any such work.

7. SECURITY INTEREST & TITLE

Until all amounts due MISCOWATER have been paid in full, Seller shall retain a security interest in the product and have all rights of a secured party under the California Uniform Commercial Code, including the right to repossess the product or equipment without legal process.

8. WARRANTY

MISCOWATER warrants that the product furnished will be free from defects in material and workmanship when installed, operated and maintained under design conditions and in accordance with the manufacturer's written instructions. Warranties will expire (18) months after shipment or twelve (12) months after start-up, whichever occurs first. Expandable items such as filter or scrubber media are excluded from this warranty.

THIS WARRANTY, INCLUDING THE STATED REMEDIES, IS EXPRESSLY MADE BY SELLER AND ACCEPTED BY PURCHASER IN LIEU OF ALL OTHER WARRANTIES. SELLER MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF MERCHANTABILITY, FITNESS OR OTHERWISE, WHICH EXTEND BEYOND THE DESCRIPTION OF THE PRODUCT HEREIN. SELLER WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR LIQUIDATED DAMAGES, AND IN NO EVENT SHALL BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE PURCHASE PRICE OF THE PRODUCT PURCHASED ON THIS ORDER.

The foregoing is Seller's only obligation and Buyer's exclusive remedy for breach of warranty, and, except for gross negligence and willful misconduct, the foregoing is Buyer's exclusive remedy against Seller for all claims arising hereunder or relating hereto. Buyer's failure to submit a timely claim as provided shall specifically waive all claims for damages or other relief.

9. CANCELLATION

Should this order be cancelled, Buyer shall be obligated to pay for the level of work performed and products shipped. Work performed includes any engineering, calculations, preparation of submittals, drawings, and/or travel to job site in relation to this order.

10. FIELD WORK

Unless specifically stated on our quotation, installation, start-up service, supervision, operation and training are not included in our pricing of product.

11. COMPLETE AGREEMENT

These terms are intended by the parties as a final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement. No course or prior dealings between the parties and no usages of the trade shall be relevant to supplement or explain any term used in this agreement. This agreement supersedes all prior representations and agreements with respect to the matters set forth herein and may be modified only by a written agreement to and signed by each of the parties.

MISCOWATER: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

City of Santa Fe

Invitation to Bid

DAF System Polymer Feed Equipment

ITB # 23/20/B

NIGP Commodity Code: 82032 – Chemical Feed Systems

Bid Due Date and Time: Thursday, December 1, 2022

Bidder MUST complete as applicable and sign the following in order for the Invitation to Bid (Bid) to be valid (type or print clearly):

Company Name: TW Associates, LLC
dba (if applicable): MISCOWater
Co. Email: nlucas@miscowater.com
Co. Phone No.: 949-458-5555
NM Gross Receipts Tax # (CRS) 02485250003

Address: 27101 Burbank, Suite B
Foothill Ranch, CA 92610
Federal Tax ID # 94-2317088

Payment terms: Net 30 (e.g., Net 30. Discount will not be considered in computing the low bid, see “Terms and Conditions”)

F.O.B. Point must be Destination, unless otherwise indicated in the Invitation to Bid.

Contractor’s Delivery: FOB - Destination (May be considered in the award)

Authorized Signature: 
Signatory Email: smarshall@miscowater.com

Print or type name: Scott Marshall
Phone No: (303) 309-6150

* It is your responsibility as a bidder to ensure your bid is correct and accurate.

No amendment will be issued later than three (3) days prior to the date for receipt of bids, except an amendment withdrawing the bids or one which includes postponement of the date for receipt of bids.

If applicable, Bidder acknowledges receipt of the following amendment(s):
Amendment No. ___ Dated: ___ Amendment No. ___ Dated: ___

Bids are subject to the “Terms and Conditions” shown on the attached pages of this document, and any additional bidding instructions or requirements. NOTE: if you decide not to bid, do not return this document.

Terms and Conditions

(Unless otherwise specified)

1. **General:** When the City of Santa Fe's Chief Procurement Officer (CPO) or his/her designee approves a purchase document in response to the bid, a binding contract is created.
2. **Variation in Quantity:** No variation in the quantity of any item called for by this order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in manufacturing process and then only to the extent, if any, specified in this order.
3. **City Furnished Property:** City furnished property shall be returned to the City upon request in the same condition as received except for ordinary wear, tear and modifications ordered hereunder.
4. **Discounts:** Prompt payment discounts will not be considered in computing the low bid.
5. **Inspection:** Final inspection and acceptance will be made at the destination. Tangible Personal Property (goods) rejected at the destination for nonconformance with specifications shall be removed at the Contractor's risk and expense, promptly after notice of rejection.
6. **Commercial Warranty:** The Contractor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Contractor gives for such to any customer for such supplies or services. The rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. **Contractor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.**
7. **Taxes:** Price shall not include State gross receipts tax or local option tax. Such tax or taxes shall be added at time of invoicing at current rate and shown as a separate item to be paid by the Requesting Department.
8. **Packing, Shipping, and Invoicing:**
 - a. The City's purchasing document number and the Contractor's name, Requesting Department's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The Requesting Departments' count will be accepted by the Contractor as final and conclusive on all shipments not accompanied by a packing ticket.
 - b. The Contractor's invoice shall be submitted duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit price and extended totals. Separate invoices shall be rendered for each and every complete shipment.
 - c. Invoices must be submitted to the Requesting Department and NOT to the City Chief Procurement Officer.
10. **Non-Collusion:** In signing this bid the Contractor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the CPO or his/her designee.
11. **Nondiscrimination:** Contractor doing business with the City must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act (Rev. 1979) and the Americans with Disabilities Act of 1990 (Public Law 101-336).
12. **Penalties:** Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.
13. **Payment Provisions:** All payments under this Agreement are subject to the following provisions.
 - A. **Acceptance -** In accordance with Section 13-1-158 NMSA 1978, the City shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the City, the City shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the City shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

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

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

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

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

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

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

Important Bidding Information

Submission of Bid: Due Date – Thursday, December 1, 2022 at 2:00 P.M. (MST/MDT) at which time the sealed Bids will be recorded as received and opened.

The Bid is to be delivered to:

Submissions of all Invitation to Bids must be accomplished via email to: purchasing_ITB@santafenm.gov.

BID OPENING

Join Zoom Meeting

<https://santafenm-gov.zoom.us/j/87141576476?pwd=YnhNaXA0TmtkZVBFNkl3MlhiNUZqZz09>

Meeting ID: 871 4157 6476

Passcode: 998912

One tap mobile

+17193594580,,87141576476#,,,,*998912# US

+12532158782,,87141576476#,,,,*998912# US (Tacoma)

Dial by your location

+1 719 359 4580 US

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)
+1 669 444 9171 US
+1 669 900 6833 US (San Jose)
+1 386 347 5053 US
+1 507 473 4847 US
+1 564 217 2000 US
+1 646 931 3860 US
+1 689 278 1000 US
+1 929 205 6099 US (New York)
+1 301 715 8592 US (Washington DC)
+1 309 205 3325 US
+1 312 626 6799 US (Chicago)
+1 360 209 5623 US
Meeting ID: 871 4157 6476
Passcode: 998912
Find your local number: <https://santafenm-gov.zoom.us/j/87141576476>

All Bids received after the due date and time will be rejected.

Chief Procurement Officer (CPO): If you are an individual with a disability and you require accommodations such as a hearing interpreter to attend our bid openings, please contact the CPO or his/her designee at least five (5) working days prior to the scheduled bid opening.

Any inquiries or requests regarding clarification of this solicitation shall be submitted to the CPO or his/her designee in writing.

CPO Designee contact information is:

JoAnn D. Lovato, CPO
Interim Chief Procurement Officer
City of Santa Fe
jlovato@santafenm.gov

Bidders may contact ONLY the CPO or his/her designee regarding the terminology stated in the solicitation. Other City employees do not have the authority to respond on behalf of the City.

Bidders shall promptly notify the CPO or his/her designee of any ambiguity, inconsistency, or error which they may discover upon examination of the bid. Any response made by the City will be provided in writing to all contractors by addendum, no verbal responses shall be authoritative.

All Bidders must notify the CPO or his/her designee if any employee(s) of the requesting Department or the office of CPO have a financial interest in the Bidder:

No financial interest **Yes financial interest**

If yes specify by name: _____

Rejection of Bids: The CPO or his/her designee shall have the right to reject any or all bids, and in particular to reject a bid not accompanied by the data required by this bidding document, or a bid which is in any way incomplete or irregular.,

Brand Name or Equal: Where a brand name or equal is indicated, it is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to restrict competition. "No substitute" specifications may be authorized ONLY if required to match existing equipment.

If bidding "equivalent" bidders must be prepared to furnish "complete data" upon request, preferably with bid, to avoid delay in award.

Prohibit Bidding: If any Bidder is of the opinion that the specifications as written preclude him from submitting a bid on this ITB, it is requested that his opinion be made known to the CPO or his/her designee, in writing, at least seven (7) days prior to the bid opening date.

Responsible Bidder: Bidders must, upon request of the CPO or his/her designee, provide information and data to prove that the financial resources, production of service facilities, service reputation and experience are adequate to make satisfactory delivery of the materials and/or services. The CPO or his/her designee reserves the right to require a Bidder to furnish a Performance Bond prior to award, where the Bidder is unable to furnish the required information or data, or for other reasons which would insure proper performance by the Bidder.

Samples: Unless otherwise indicated in the bid specifications, samples of the items, when required, shall be free of expense to the City. Samples not destroyed or mutilated in testing will be returned upon request, at Bidders expense. Each sample must be labeled to clearly show the bid number and item number that it pertains to. Unsolicited bid samples or descriptive literature, which is submitted at the Bidder's risk, will not be returned.

Awards

Determination of Lowest Bidder – Following determination of product acceptability, if any is required, bids will be evaluated to determine which Bidder offers the lowest cost to the City in accordance with the specifications and terms & conditions set forth in the Bid. The City reserves the right to award this Bid in total; by groups of items; on the basis of individual items; any combination of these which could result in a multiple award; or as otherwise specified in bid specifications; whichever, in his/her judgment, best serves the interest of the City.

The CPO or his/her designee shall have the right to waive technical irregularities, and to award to the Bidder whose bid is deemed to be in the best interest of the City.

Special Notice – To preclude any possible errors and/or misinterpretations, bid prices must be affixed legibly in ink or typewritten. Corrections or changes must be signed or initialed by Bidder prior to the scheduled bid opening; failure to do so will be just cause for rejection of bid.

Bids may be withdrawn upon receipt of written request, prior to scheduled bid opening for the purpose of making any corrections and/or changes; such corrections must be properly identified and signed or initialed by Bidder. Resubmittal must be prior to scheduled bid opening for consideration.

After bid opening, no modifications on bid prices or other provisions of bid shall be permitted. A low Bidder alleging a material mistake of fact after bids have been opened may be permitted to withdraw the bid upon written request prior to award at the discretion of the CPO or his/her designee.

F.O.B. Destination – Means goods are to be delivered to the destination designated by the Requesting Department which is the point at which the Requesting Department accepts ownership or title of the goods. Laws of New Mexico specifically prohibit acceptance of ownership of goods in transit. Any exception to F.O.B. Destination may cause bid to be declared nonresponsive.

Statement of Work

Orders:

Under the terms and conditions of this Agreement the City may issue orders for items described herein. The terms and conditions shall form a part of each order issued hereunder.

The items to be ordered shall be as listed in the Price Schedule. All orders issued hereunder will bear both an order number and the Purchase Order Number.

Only written signed orders are valid.

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

The prices quoted herein represent the total compensation to be paid by the City for the goods provided including any and all labor, equipment, tools, materials, taxes, permits, licenses, or other costs necessary to complete the services or goods provided.

Shipping and Billing Instructions

Contractor shall ship in accordance with the following instructions: Shipment shall be made only against specific orders which the Requesting Department may place with the Contractor during the term; The Contractor shall enclose a packing list with each shipment listing the order number, Agreement number and the commercial parts number (if any) for each item; delivery shall be made as indicated by the Requesting Department. If contractor is unable to meet stated delivery the CPO or his/her designee must be notified.

Specifications:

DAF System Polymer Feed Equipment

The City of Santa Fe (The City) is soliciting bids for the supply and installation of quantity (2) two Polymer Chemical feed systems for the Dissolved Air Flootation (DAF) thickening system at the Paseo Real Waste Water Treatment Plant (PRWWTP). The scope of supply includes all labor and materials required to install and start-up the two new polymer feed units. The Polymer Dosing System shall be a UGSI Polyblend M-series, or *approved equal*. In order to be an *approved equal* the equipment must meet or exceed the stated Specifications listed in this price agreement. The City may request further clarification and documents to make this or approved equal determination. If not determined an approved equal, the City will send a letter to the bidder on the reasoning. (See K.1 below). Refer to NMSA 13-1-167 and NMSA 13-1-168 for further information on Brand Name Specifications.

This will be a single vendor award.

This agreement will expire 6/30/23.

1. The unit cost for each skid mounted polymer feed system shall include all labor and materials necessary for the supply and installation of the two units, including:

- Submittals and Owner and Maintenance (O&M) Manuals
- Freight to site/FOB Destination
- The Warranty will at least be for a period of twelve (12) months from the date of final acceptance of the installation by the Engineer at the WWTP. This warranty period shall continue and be in effect beyond the expiration date of the agreement for any covered warranty work needed.

Note: The City realizes that damage from makeup water particles can occur and will *not* be considered a warrantable item and will be the responsibility of the City.

- Site measurements to ensure proper installation
- Placement and installation of two polymer blending skids at PRWWTP.
- Piping connections including any necessary fittings to connect to polymer, water, and discharge solution piping to existing water, polymer, and solution PVC piping. All new pipe and fittings shall be Sch 80 PVC to match the existing piping material
- The polymer skids shall be provided with a standard 120V electrical cord which will be connected to existing power outlets on the wall.

POLYMER DOSING SYSTEM FOR LIQUID POLYMER

- A. System shall be designed for the preparation, aging, and dosing of up to 240 GPH of polymer solution having an active polymer concentration between 0.05 and 0.25 %. The actual size of the polymer system depends on the specified type of sludge, maximum capacity, and polymer consumption.

B. The polymer station shall be self-contained with pumps, piping, fittings, and accessories, and shall be factory assembled and tested to eliminate field assembly work and therefore to minimize installation and start up time. The frame shall be 304 stainless steel and the piping SCH. 80 PVC.

C. Multi-Zone Mixing Chamber.

1. Polymer and water shall be mixed in a chamber designed to create sufficient mixing energy.
 - a. High shear zone of the mixing chamber shall have a mechanical mixing impeller for successful initial activation and the low shear zone shall not have a mixing impeller to avoid damaging polymer molecules.
 - b. Solution shall undergo a tapered mixing intensity slope as it exits the initial high shear zone and passes through a second low shear zone, isolated by a baffle.
 - c. The design shall have primary mixing and post-dilution to maximize the value of breaker surfactant present in emulsion polymer, as per the AWWA Standard for Polyacrylamide (ANSI/AWWA B453-06).
 - d. Polymer activation efficiency shall be consistent over the dilution water range.
2. Mixing chamber shall be transparent to allow viewing of mixing intensity. Opaque mixing chambers shall not be accepted.
3. Impeller shall be driven by a ½ HP washdown duty motor.
 - a. Motor shall be 115/230V, 1 Ph, 60 Hz
 - b. Motor shall be TEFC.
 - c. Impeller speed shall be 3450 rpm, minimum.
 - d. Motor shall be direct-coupled to impeller shaft.
4. Mixing chamber shall include a stainless steel injection check valve.
5. In order to quantify the mixing intensity in the mix chamber, the applied horsepower shall be defined by measuring the difference in torque when the mix chamber is empty versus being full of water. This value shall be the basis of determining the mixing intensity defined as "G" value.
6. The G-value in the high shear mixing zone shall exceed $14,000 \text{ sec}^{-1}$ to effectively disperse polymer gels to prevent fisheye formation.
7. The G-value in the low shear mixing zone shall be lowered to $3,500 \text{ sec}^{-1}$ to avoid damaging polymer chains.

D. Dilution Water Control

1. Contractor shall provide a potable water connection for the dilution of the polymer in the polymer tank. The water piping to the polymer blend system shall include a minimum ¾" inlet (NPT female).
2. Dilution water shall be split into two streams.
 - a. Primary water shall supply the mixing chamber.
 - b. Secondary water flow shall be used to post-dilute the activated polymer stream.
 - c. These two streams shall be completely blended by a static mixer prior to exiting the unit.
3. Unit shall have an electric solenoid valve for on/off control of total dilution water flow.

4. Flow indicators and flow control valves shall be provided for each dilution water stream.
5. Dilution water and solution output connections shall include 304 stainless steel unions connected to the chassis.

E. Neat Polymer Metering Pump

1. Pump shall be Seepex 2.0 GPH, progressive cavity pump.
2. Rotor shall be 316 stainless steel.
3. Stator shall be Viton.
4. Pump shall have mechanical seal.
5. Pump shall be driven by ½ HP, AC motor.

F. Control Panel: Skid mounted NEMA 4X FRP enclosure, 120 VAC, 60 Hz, 1 PH service.

1. Operator interface – discrete selector switch (system ON/OFF/REMOTE); constant speed mechanical mixer; pump stroke frequency display, pump flow rate display.
2. Status / Alarm indicators: system running indication; LCD display of metering pump rate (on metering pump); low pressure switch alarm
3. Inputs: remote start / stop (discrete dry contact); pacing signal from main control panel (4-20mA)
4. Outputs: system running (discrete dry contact); remote mode (discrete dry contact); low flow alarm (discrete dry contact)

J. The pressure side of the polymer system shall be connected through a minimum 3/4” diameter PVC pipeline with a static mixer.

K. The Polymer Dosing System shall be a UGSI Polyblend M-series, or approved equal.

1. Alternate suppliers seeking approval, shall submit request and supporting documentation outlining full specification compliance in writing ten business days prior to bid deadline for review and approval by City of Santa Fe staff.

Price Schedule:

Item	Approx. QTY	Unit	Article and Description	Unit Price
1	2	EA	Polymer Dosing System shall be a UGSI Polyblend M-series, or <i>approved equal</i> as described in above section (A-K)	\$ 27,975.00
2	1	LS	Services/Installation at Paseo Real Waste Water Treatment Plant (PRWWTP) as outlined in (1.)	\$ 14,000.00
3	1	LS	Applicable GRT Taxes on Services/Installation (Line 2) – Lump Sum	\$ 1,163.75
			Total Bid Cost	\$ 71,113.75

CITY OF SANTA FE
(DRAFT) GENERAL SERVICES CONTRACT

Dewatered Sewage Sludge Hauling

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the “City”, and **<Enter Contractor Name>** herein after referred to as the “Contractor.”

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Definitions

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. “You” and “your” refers to **(Contract Name). “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:

3. Compensation

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

Deliverable item:	U/I (unit of issue)	Price
01		\$
02		\$

The total compensation under this Agreement shall not exceed [Insert Dollar Amount] [CHOICE #1- excluding New Mexico gross receipts tax. CHOICE #2 - including New Mexico gross receipts tax.]

4. **Payment Provisions**

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

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

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

5. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on date approved by the City, and end on [REDACTED]. The City reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of four years in accordance with NMSA 1978, §§ 13-1-150 through 152.

6. **Default and Force Majeure**

The City reserves the right to cancel all or any part of any orders placed under this contract without cost to the City, if the Contractor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. **Termination**

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

B. **Notice; City Opportunity to Cure.**

1) Except as otherwise provided in Paragraphs 7.A and 17, the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2) Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Agreement upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

8. **Amendment**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. **Status of Contractor**

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. **Assignment**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

11. **Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

12. **Non-Collusion**

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

13. **Inspection of Plant**

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. **Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement.

If sufficient appropriations and authorization are not made by the legislature, this Agreement, and any orders placed under it, shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

18. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

19. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the City.

20. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and,

during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other

remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

21. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

22. **Scope of Agreement; Merger**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

23. **Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

25. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

26. **New Mexico Tort Claims Act**

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

27. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-2. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

28. **Limitation of Liability**

The Contractor's liability to the City, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the City’s, claim. The foregoing limitation does not apply to paragraph 25 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

29. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor’s best and final offer; and (3) the Contractor’s response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses

to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

30. **Workers' Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

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

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the

necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

- (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
- (2) terminate the contract for default.

33. **Insurance**

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

A. Commercial General Liability insurance shall be written on an occurrence basis and be 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. 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.

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:

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

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

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

38. **Survival**

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

39. **Disclosure Regarding Responsibility**

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

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

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

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

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

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

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

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed)

and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

41. **Notification**

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

To the City:

To the Contractor:

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

To the Contractor:

42. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties. IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

CONTRACTOR:

CITY MAYOR/MANAGER

NAME

DATE: _____

TITLE

DATE: _____

CRS# _____

Registration # _____

ATTEST:

KRISTINE BUSTOS MIHELICIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster, CPA, CGMA, CPO
FINANCE DIRECTOR

Org.Name/Org.#



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
07/22/2022

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 Aon Risk Services, Inc of Florida 1001 Brickell Bay Drive Suite 1100 Miami FL 33131 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105 E-MAIL ADDRESS:														
INSURED TW Associates, LLC dba MISCOWater 27101 Burbank, Ste B Foothill Ranch CA 92610 USA	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Federal Insurance Company</td> <td>20281</td> </tr> <tr> <td>INSURER B: Hartford Fire Insurance Co.</td> <td>19682</td> </tr> <tr> <td>INSURER C: Hartford Casualty Insurance Co</td> <td>29424</td> </tr> <tr> <td>INSURER D: Lloyd's Syndicate No. 2001</td> <td>AA1128001</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Federal Insurance Company	20281	INSURER B: Hartford Fire Insurance Co.	19682	INSURER C: Hartford Casualty Insurance Co	29424	INSURER D: Lloyd's Syndicate No. 2001	AA1128001	INSURER E:		INSURER F:	
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INSURER D: Lloyd's Syndicate No. 2001	AA1128001														
INSURER E:															
INSURER F:															

COVERAGES CERTIFICATE NUMBER: 570094635988 REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	SUBROGATION WAIVED	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	<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:	Y	Y	84CESOF9030	03/01/2022	03/01/2023	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	7362-65-82	03/01/2022	03/01/2023	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
C	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION			84XSON2127	03/01/2022	03/01/2023	EACH OCCURRENCE	\$5,000,000
							AGGREGATE	\$5,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y	71751236	03/01/2022	03/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT	\$1,000,000
			N/A				E.L. DISEASE-EA EMPLOYEE	\$1,000,000
							E.L. DISEASE-POLICY LIMIT	\$1,000,000
D	Env Prof (E&O)			HPL210443 Claims-Made SIR applies per policy terms & conditions	07/23/2021	09/30/2022	Per Occurrence SIR Aggregate	\$2,000,000 \$50,000 \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 RE: Santa Fe Paseo Real WWTP Primary Sludge Pump Replacement, 73 Paseo Real, Santa FE NM 87507. City of Santa Fe is included as Additional Insured in accordance with the policy provisions of the General Liability and Automobile Liability policies. General Liability and Automobile Liability policies evidenced herein are Primary Non-Contributory to other insurance available to an Additional Insured, but only in accordance with the policy's provisions. A waiver of Subrogation is granted in favor of City of Santa Fe in accordance with the policy provisions of the General Liability, Automobile Liability and workers' Compensation policies. Should the General Liability and workers' Compensation policies be cancelled before the expiration date thereof, the policy provisions will govern how notice of cancellation may be delivered to certificate holders in accordance

CERTIFICATE HOLDER CANCELLATION

City of Santa Fe 801 W. San Mateo Rd. Santa Fe NM 87507 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	---

Holder Identifier :

Certificate No : 570094635988



ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services, Inc of Florida		NAMED INSURED TW Associates, LLC dba	
POLICY NUMBER See Certificate Number: 570094635988			
CARRIER See Certificate Number: 570094635988	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

Additional Description of Operations / Locations / Vehicles:

with the policy provisions of each policy.



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

BUSINESS REGISTRATION

Business Name: TW ASSOCIATES, LLC
DBA: MISCOWATER

Business Location: 27101 BURBANK STE. B
FOOTHILL RANCH, CA 92610

Owner: TW ASSOCIATES, LLC

License Number: 233223

Issued Date: July 25, 2022

Expiration Date: July 25, 2023

CRS Number: 02485250003

License Type: Business License - Renewable

Classification: Out of Jurisdiction Business License

Fees Paid: \$10.00

TW ASSOCIATES, LLC
27101 BURBANK STE/ B
FOOTHILL RANCH, CA 92610

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

Signature: *P. Fred Heerbrandt, P.E.*

P. Fred Heerbrandt, P.E. (Dec 14, 2022 15:03 MST)



Email: pfheerbrandt@santafenm.gov

City of Santa Fe, New Mexico

memo

Date: December 7, 2022

To: Governing Body
Finance Committee
Public Utilities Committee

Via: John Blair, City Manager
Emily Oster, Finance Director
Joann Lovato, Procurement Officer
Shannon Jones, Public Utilities Director 
Michael Dozier, Wastewater Division Director 

From: Benjamin Sandoval, Wastewater Collections Manager 

ITEM AND ISSUE:

Request for approval to purchase a Vactor Ace Easement Machine for the Wastewater Collections Division in the total amount of \$ 111,506.25 through Cooperative Procurement with Sourcewell. The vendor chosen for the sale of this equipment is Pete's Equipment Inc 1412 Broadway NE Albuquerque NM 87102. Request approval of a BAR/Increase from the WWMD Cash Balance in the amount of \$111,506.25

BACKGROUND AND SUMMARY:

The Wastewater Collections Division needs an Easement machine to access sewer manholes/lines around the city to do routine Maintenance where our large Vactors trucks cannot get access into. The Los Lovato's, Rio Chamiso, Casa Alegre, and Camino Capitan are just a few areas where there is limited space and, in some places, rough terrain in arroyos where this easement machine will help keep the city sewer lines clean and clear from debris that may prevent backup issues and future property damage costs. This easement machine can also be used at the Quail Run Subdivision where there are city sewer lines that run along their golf turf. In the past Quail Run Subdivision would not let us drive on their golf turf due to damage from the size and weight of our Vactor trucks, this easement machine would help eliminate this problem in the future.

PROCUREMENT METHOD:

The Wastewater Collections Division is utilizing the Federal Signal Sourcewell Contract for best pricing with Pete's Equipment Repair Inc 1412 Broadway NE Albuquerque NM 87102., Vendor # 1488.
Sourcewell Contract # 101221-VTR
Sourcewell Membership number #97348

FUNDING SOURCE:

Funding for this Equipment will be available upon approval of BAR/Increase from the WWMD Cash Balance to the Operating Fund for \$111,506.25

Fund Name/Number: WWMD Enterprise Fund/ 500

Munis Org Name/Number: WW Collections/5000362 ^{AH}

Munis Object Name/Number: WW Vehicles < 1.5 Tons 570950

ACTION REQUESTED:

The Wastewater Division respectfully requests your review and approval for this purchase and the BAR in the total amount of \$111,506.25.

ATTACHMENTS:

- Quote: Pete's Equipment Repair Inc
- Vactor Ace Easement Machine Information worksheet
- Sourcewell Contract Documents from Pete's Equipment Repair Inc.

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

City of Santa Fe, New Mexico BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME					DATE	
Public Utilities Department/Wastewater Management Division					12/8/2022	
ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE	
<u>EXPENDITURES</u>				<i>{enter as positive #}</i>	<i>{enter as negative #}</i>	
Vehicles < 1.5	5000362	570950		111,507		
<u>REVENUES</u>				<i>{enter as negative #}</i>	<i>{enter as positive #}</i>	

JUSTIFICATION: *(use additional page if needed)*
 --Attach supporting documentation/memo
 Increase from WWMD Enterprise Fund Cash balanceto to purchase this Vactor Ace Easement machine for the collections section.

	\$ 111,507	\$ -
--	------------	------

<i>{Complete section below if BAR results in a net change to ANY Fund}</i>	
	Fund Balance
Fund(s) Affected	Increase/(Decrease)
500	(111,507)
TOTAL:	(111,507)

Maya Martinez 12/8/2022
 Prepared By *{print name}* Date

*{Use this form for Finance Committee/
 City Council agenda items ONLY}*

Signature: *Andy Hopkins* 3
Email: ajhopkins@ci.santa-fe.nm.us

Division Director Signature *{optional}* Date

CITY COUNCIL APPROVAL

City Council
 Approval Date

Finance Director { ≤ \$5,000} Date

Signature: *Shannon Jones*
Shannon Jones (Dec 8, 2022 16:52 MST)
Email: swjones@santafenm.gov

Agenda Item #

City Manager { ≤ \$80,000} Date

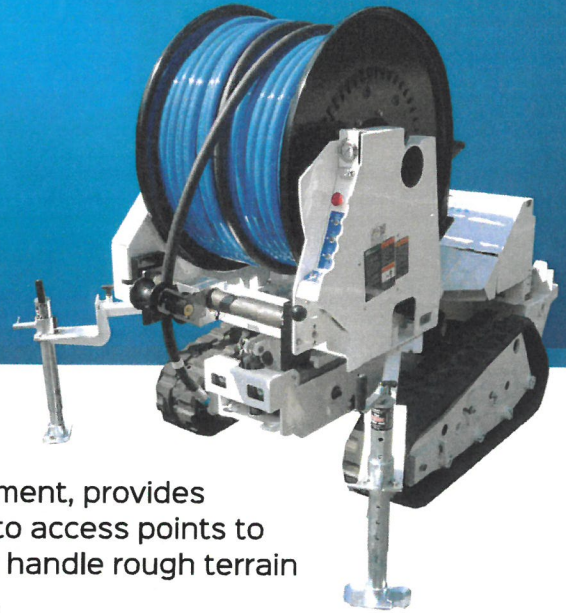


City of Santa Fe, Vactor Easement Machine, Date: 12/06/2022

1		9" Wide High Flotation Rubber Track Propel System w/Independent Drive	\$78,743.75	
1	STD	20.8 HP Honda Gas Engine	\$0.00	
1	STD	2 Speed Operation, 1.4 MPH Low; 2.8 MPH High	\$0.00	
1	STD	Pendant Adjustable Tracks 34.5" - 46.5"	\$0.00	
1	STD	Gated Manual Level Win	\$0.00	
1	STD	Electric Speed Controls	\$0.00	
1	STD	Black Frame	\$0.00	
1	STD	Hydraulic Release Park Lock	\$0.00	
1	STD	Low Profile Design with fixed Reel	\$0.00	
1	STD	High Performance Hydraulic Oil Cooler	\$0.00	
1	STD	Direct Drive Hose Reel manual pivot left and right	\$0.00	
1	STD	500' of 1" Hose	\$0.00	
1	STD	4 Gal Hydraulic Reservoir with Premium Filtration	\$0.00	
1	STD	4 Gal Fuel Tank	\$0.00	
1	STD	Electric Pendant Control for Propel Functions	\$0.00	
1	STD	Engine Hour Meter	\$0.00	
1	STD	Hydraulic Guages	\$0.00	
1	STD	Hydraulic Reel Manual Base Rotation Left and Right	\$0.00	
1	STD	LED Lighting on each side of machine	\$0.00	
1	STD	Powder Coating	\$0.00	
1	STD	Reel Based out Riggers with Manual Adjustments	\$0.00	
1		Easement Machine Tandem Axle Trailer	\$12,468.75	
1		Remote Option for Propel and Track Extension/Retraction	\$3,931.25	
1		Manual Footage Counter on Reel	\$993.75	
1		Auto Level Wind Assembly	\$7,868.75	
		RAMJET Trailer Total	\$104,006.25	\$104,006.25
1	Freight	Freight	\$5,000.00	\$5,000.00
1	PDI D&T	PDI Delivery and Training	\$2,500.00	\$2,500.00
		City of Santa Fe 2023 Vactor Easement Machine Total Sourcewell Price		\$111,506.25

Quote Good for 30 days from today's date, December 6, 2022

VACTOR[®] ACE

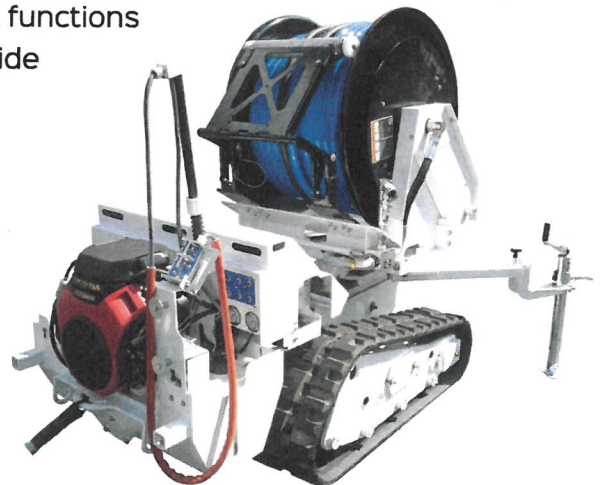


Vactor ACE Easement Machine

The ACE works with truck or trailer mounted jetting equipment, provides additional rodder hose capacity to help you to get closer to access points to clean out pipes, drains, sewers and culverts. The ACE can handle rough terrain and get to places you cannot take your whole jetting unit.

Features:

Length:	84"
Width:	34"
Height:	64"
Weight:	2500 lbs w/ hose
Powertrain:	22 HP v-twin engine
Drive System:	Dual hydraulic drive with low/high speed
Drive Method:	Dual 9" tracks with heavy duty drive and idler pulleys
Track System:	Adjustable track widths from 35" to 46"
Hose Reel:	Hydraulic pay-in / pay-out Hydraulic rotating reel, 180° rotation from side to side Hydraulic tilt reel 15° fore and after
Hose Reel Capacity:	500' of 1" rodder hose
Controls:	Electric over hydraulic controls Handheld electric pendant for transport functions Hose reel functions mount to the frame
Warranty:	1 year limited warranty
Options:	Wireless remote for transport functions Hydraulic tilt reel 14° side to side Tool circuits Safety lights Work lights Headlights Auto-wind guide





**SOURCEWELL
STATE OF MINNESOTA**

Member Zylka moved the adoption of the following Resolution:

RESOLUTION TO APPROVE SOLICITATION AND/OR RE-SOLICITATION OF CATEGORIES

Resolution No. 2021-16

WHEREAS, Sourcewell desires to issue a solicitation, and is seeking permission from the Board to issue a solicitation, for the categories listed on Appendix A, which is attached and incorporated.

WHEREAS, through the Sourcewell Procurement Policy, the Board designated the Chief Procurement Officer to administer Sourcewell's cooperative purchasing and contracting program; and

WHEREAS, the Chief Procurement Officer recommends approval of categories detailed above.

NOW THEREFORE BE IT RESOLVED that the Board of Directors hereby approves the solicitation of categories.

The motion for the adoption of the foregoing resolution was duly seconded by Member Thomas

and the following voted in favor: (list names here)
Wilson, Zylka, Veronen, Thomas, Thiel, Kircher

and the following voted against: (list names here or "NONE")
None

whereupon said resolution was declared duly passed and adopted.

ATTEST:

DocuSigned by:
SARAT NAGP
CF62F09F8AFC4BB...
Clerk to the Board of Directors



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Pete's Equipment Inc

Procurement Title: Heavy Equipment

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 PUD/Wastewater Staff Name Benjamin Sandoval

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 checked="" type="checkbox"/> | <input 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 checked="" type="checkbox"/> | <input type="checkbox"/> | BAR |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | FIR |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Executed Contract, Agreement or Amendment |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Current Business Registration and CRS numbers on contract or agreement |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Summary of Contracts and Agreements form |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Certificate of Insurance |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | All documentation presented to Committees |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other: |

Benjamin Sandoval Wastewater Collections Manager 12/8/2022

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

Purchasing Officer (attesting that all information is reviewed)	Title	Date
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Include all other substantive documents and records of communication that pertain to the procurement and contract.



Solicitation Number: RFP #101221

CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Vactor Manufacturing, a division of Federal Signal, 1621 South Illinois St., Streator, IL 61364 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires November 29, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.
- C. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be

returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Change Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell

contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be negotiated directly between the Participating Entity and the Supplier. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. PRIMARY ACCOUNT REPRESENTATIVE. Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. **BUSINESS REVIEWS.** Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. **CONTRACT SALES ACTIVITY REPORT.** Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. **ADMINISTRATIVE FEE.** In consideration for the support and services provided by Sourcewell, the Supplier will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased

by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. **WAIVER.** Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. **CONTRACT COMPLETE.** This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
 - a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
 - b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.
2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers,

resellers, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. Use; Quality Control.

- a. Neither party may alter the other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
- b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's trademarks only in good faith and in a dignified manner consistent with such party's use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. As applicable, Supplier agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Supplier in violation of applicable patent or copyright laws.

5. Termination. Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. PUBLICITY. Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. MARKETING. Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. ENDORSEMENT. The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. **REQUIREMENTS.** At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for Products-Completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms

no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance.* During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Network Security and Privacy Liability Insurance.* During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is

primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. **WAIVER OF SUBROGATION.** Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. **UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. **LAWS AND REGULATIONS.** All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. **LICENSES.** Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 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 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 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. Supplier 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.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation

and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier not use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by an Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

22. CANCELLATION

Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

Vactor Manufacturing,
a division of Federal Signal

DocuSigned by:
Jeremy Schwartz
By: C0FD2A139D06489...
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 12/20/2021 | 11:51 AM CST

DocuSigned by:
David Panizzi
By: 67407721F3A64A7...
David Panizzi
Title: Business Development Manager
Date: 12/20/2021 | 11:57 AM PST

Approved:

DocuSigned by:
Chad Coauette
By: 7E42B8F817A64CC...
Chad Coauette
Title: Executive Director/CEO
Date: 12/20/2021 | 2:05 PM CST




City of Santa Fe, New Mexico


Memorandum



DATE: December 8, 2022

TO: Governing Body
Finance Committee
Quality of Life Committee

VIA: John Blair, City Manager
Emily Oster, Finance Department Director
Joann Lovato, Contracts Supervisor
Manuel Gonzales, ITT Department Director 
MG

FROM: Michelle A. Gurule, Contracts Administrator 

ITEM AND ISSUE:

ITT Department Request for the Approval of Telecommunications Agreement in the Total Amount of \$430,884.00 for thirty six months \$11,969.00 per month for Network Security, Bandwidth and Content Filtering; (Century Link/Lumen);(Manuel Gonzales, mmgonzales@santafenm.gov 505-955-5576.

BACKGROUND AND SUMMARY:

The City ITT Department has engaged Lumen Technologies to provide an upgrade that utilizes a cloud solution with 24/7 monitoring, support, and updates. The current network Firewalls are nearing End of Life and lack the latest enterprise level security controls. Failure of any one network link would allow all current services to continue working without disruption. Century Link (DBA Lumen) has drafted this agreement as an amendment to their State Wide Price Agreement with the State of New Mexico to include the City of Santa Fe with agreement #20-361-0021-04390.

PROCUREMENT METHOD:

The procurement method is the New Mexico State Price Agreement #20-361-0021-04390.

CONTRACT NUMBER:

The FY23 Munis contract number is 3203805.

FUNDING SOURCE:

The funding source is:

Fund Name/Number: Services of Other Departments/Fund 650

Munis Org Name/Number: ITT ISV/6203650

Munis Object Name/Number: Communications/514100

ACTION REQUESTED:

ITT respectfully requests your review and approval.

1.

State of New Mexico
New Mexico Department of Information Technology ("DoIT")
(Using SPA 20-361-0021-04390)
ORDER AMENDMENT

This **AMENDMENT TO CUSTOMER ORDER** ("Amendment") is entered into as of the last date of signature below (the "Amendment Effective Date"), by and between **CenturyLink Communications, LLC dba Lumen Technologies Group** ("Lumen") and **City of Santa Fe** ("Customer"), and modifies the Customer Order attached to this Amendment as Exhibit A. Lumen and Customer may be referred to herein collectively as the "Parties" and individually as a "Party."

WHEREAS the Parties wish to modify the Customer Order to incorporate revised terms applicable to the same.

NOW THEREFORE, the Parties agree to modify the Customer Order in the following limited respects:

1. **Order Submittal.** Customer places the Customer Order by signing (including electronically or digitally) or otherwise acknowledging (in a manner acceptable to Lumen) this document and returning it to Lumen.
2. **SPA 20-361-0021-04390.** The Services identified in Exhibit A will be governed by and subject to the contract number 20-361- 0021-04390 between State of New Mexico and CenturyLink Communications, LLC Dba Lumen Technologies Group ("the Price Agreement"). Customer agrees to the terms and conditions set forth in the Price Agreement and hereby confirms that it will follow the state contract purchasing requirements set out by the Price Agreement.
3. **Limitation.** This Amendment shall apply to the Customer Order and shall have no applicability to any other Customer Order(s) that Customer may have submitted or may submit to Lumen in the future, except as expressly stated above. Execution of the Order and this Amendment does not waive either Party's rights or obligations under any other order or contract, including but not limited to Order **SM10140730**

These terms and conditions have been read, are understood, and are hereby accepted as of the Amendment Effective Date.)

**CENTURYLINK COMMUNICATIONS, LLC DBA
LUMEN TECHNOLOGIES GROUP ("Lumen")**

**City of Santa Fe
("Customer")**

By: Alex Khanin
Alex Khanin (Nov 22, 2022 08:27 MST)

By: _____

Name: Alex Khanin

Name: _____

Title: Manager Offer Management

Title: _____

Date: Nov 22, 2022

Date: _____

Opportunity 58400816 / OMR R395279

OMR #:

This Order Amendment resulted from the awarded NM State Pricing Agreement (SPA 20-361-0021-04390) Pramata 2270689 (OMR # 326394).

Customer Information and Contract Specifications

Customer Name: City of Sante Fe - NM
Account Number: 3-A72803

Currency: USD
Monthly Recurring Charges (MRC): \$11,969.00
Non Recurring Charges (NRC): 0
 Total for thirty six months \$430,884.00

Service Order

Service Address	Description	Order Type	Term (Months)	Qty	Unit MRC	Unit NRC	Total MRC	Total NRC
North America	Adaptive Network Security - Bandwidth = 2000 - Service Level = Premium - Content Filtering = Yes - Anti-Malware = Yes Subtotal	New	36	1	\$10,841.00	\$0.00	\$10,841.00	\$0.00
North America	Adaptive Network Security - Mobility - Concurrent Users = 200 Subtotal	New	36	1	\$1,128.00	\$0.00	\$1,128.00	\$0.00
	Totals						\$11,969.00	\$0.00

*If the Service Address column above is blank, no Service Address is required for the Service or the Service Address is identified as a data center in the Description column.

SLED Terms and Conditions Governing This Order

1. "Lumen" is defined for purposes of this Order as CenturyLink Communications, LLC d/b/a Lumen Technologies Group or its affiliated entities providing Services under this Order. This Order is subject to the applicable state or municipal public records laws governing Customer and is non-binding until accepted by Lumen, as set forth in section 4. Customer places this Order by signing (including electronically or digitally) or otherwise acknowledging (in a manner acceptable to Lumen) this document and returning it to Lumen. Pricing is valid for 90 calendar days from the date indicated unless otherwise specified.
2. Prior to installation, Lumen may notify Customer in writing (including by e-mail) of price increases due to off-net vendors or increased construction costs. Customer has 5 business days following notice to terminate this Order without liability; or otherwise, Customer is deemed to accept the increase.
3. If a generic demarcation point (such as a street address) is provided, the demarcation point for on-net services will be Lumen's Minimum Point of Entry (MPOE) at such location (as determined by Lumen). Off-net demarcation points will be the off-net vendor's MPOE. If this Order identifies aspects of services that are procured by Customer directly from third parties, Lumen is not liable for such services.
4. The service(s) identified in this Order (the "Service(s)") is/are subject to the current, unexpired services agreement

between Customer and Lumen ("Existing Agreement") provided that, if a service attachment describing the Services is not included in the Existing Agreement, then the current standard applicable Lumen Service Attachment(s) will apply in addition to the Existing Agreement. If Customer and Lumen do not have a current Existing Agreement, then the current applicable Lumen Master Service Agreement(s), State, Local and Education Government Agencies Version, Public Safety Version for public safety services, or E-Rate Version for E-Rate eligible services (each, a "Lumen MSA"), and applicable Service Attachment(s) for the Services described in this Order will govern, copies of which are available upon request. Customer will accept and pay all charges indicated on invoices for the Services.

Notwithstanding anything in any Existing Agreement to the contrary, Lumen will notify Customer of acceptance of requested Service in this Order by delivering (in writing or electronically) the date by which Lumen will install Service (the "Customer Commit Date"), by delivering the Service, or by the manner described in a Service Schedule. Lumen will deliver a written or electronic notice that the Service is installed (a "Connection Notice"), at which time billing will commence. At the expiration of the Service Term, Service will continue month-to-month at the existing rates, subject to adjustment by Lumen on 30 days' written notice. If the Existing Agreement governs and does not include early termination charges and if Customer cancels or terminates Service for any reason other than Lumen's uncured default or if Lumen terminates due to Customer's uncured default, then Customer will pay Lumen's standard early termination liability charges as identified in the Ancillary Fee Schedule at: <http://www.lumen.com/ancillary-fees>.

5. Neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement service, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Order. Customer's sole remedies for any nonperformance, outages, failures to deliver or defects in Service are contained in the service levels applicable to the affected Service.

6. All transport services ordered from Lumen will be treated as interstate for regulatory purposes. Customer may certify transport service as being intrastate (for regulatory purposes only) in a format as required by Lumen, but only where the transport services are sold on a stand-alone basis, the end point's for the service are located in the same state and neither end point is a Lumen provided IP port ("Intrastate Services"). Where Customer requests that services be designated as Intrastate Services, Customer certifies to Lumen that not more than 10% of Customer's traffic utilizing the Intrastate Services will be originated or terminated outside of the state in which the Intrastate Services are provided. Such election will apply prospectively only and will apply to all Intrastate Services stated in this Order.

7. Charges for certain Services are subject to (a) a monthly property tax surcharge and (b) a monthly cost recovery fee per month to reimburse Lumen for various governmental taxes and surcharges. Such charges are subject to change by Lumen and will be applied regardless of whether Customer has delivered a valid tax exemption certificate. For additional details on taxes and surcharges that are assessed, visit <http://www.lumen.com/taxes>.

8. Customer will pay Lumen's standard: (a) expedite charges (added to the NRC) if Customer requests a delivery date inside Lumen's standard interval duration (available upon request or in Control Center at <https://www.centurylink.com/business/login/>) and (b) unless otherwise set forth in a Service Attachment, the ancillary charges for additional activities, features or options as set forth in the Ancillary Fee Schedule, available at <http://www.lumen.com/ancillary-fees>. If Lumen cannot complete installation due to Customer delay or inaction, Lumen may begin charging Customer and Customer will pay such charges.

9. For certain services, equipment provided by Lumen to be located in Customer's premises ("CPE") is subject to the terms of the Customer Premise Equipment Addendum. A copy of the CPE Addendum and a list of services to which it applies is available upon request. For colocation, data center and/or hosting services, pre-arranged escorted access may be required at certain locations, and cross connect services are subject to whether facilities are available at the particular location to complete the connection.

10. Compliance with Laws. The parties comply with all laws and regulations applicable to the execution of this Order and

to the provision of Services by Lumen, including, as applicable, procurement laws or regulations regarding cumulative purchases of Services by Customer.

11. E-Rate and/or RHC/HCF Funding. If Customer applies for or seeks E-Rate and/or RHC/HCF funding for the Service(s) to be provided under this Order, Customer's Service(s) will be governed by a current eligible Existing Agreement, or if Customer and Lumen do not have a current eligible Existing Agreement, the Lumen E-Rate MSA or Lumen SLED MSA with the E-Rate and/or RHC/HCF Program Addendum will apply and must be executed contemporaneously with this Order.

12. If your network service utilizes TDM technologies, then the following apply: (a) During the Service Term and on 60 days' prior written notice, Lumen may re-provision Customer's off-net TDM services ("Service Re-provision"). If Customer objects to the Service Re-provision, Customer may terminate the affected service by notifying Lumen in writing within 30 days of the date of the Service Re-provision notification; and (b) During the Service Term, Lumen may increase rates for off-net TDM services. Lumen will provide Customer 60 days' prior written notice before implementing the increase ("Rerate Notice"). If Customer objects to the increase, Customer must notify Lumen in writing within 30 days of the date of the Rerate Notice whether Customer will (i) receive the affected service on a month-to-month basis or (ii) terminate the affected service, subject to early termination liability charges. Under subsection (ii), Customer's requested disconnect date must be within 90 days of the Rerate Notice. Unless Customer so notifies Lumen, the affected service will continue to be provided at the increased rates.

Additional Order Terms

Invoices

Single prices shown above for bundled Services, or for Services provided at multiple locations, will be allocated among the individual services for the purpose of applying Taxes and regulatory fees and also may be divided on Customer's invoice by location served.

Activation Support

If requested by Customer, and for an additional charge, Lumen will provide assistance with activating and/or configuring equipment on Customer's side of the Demarcation Point ("Activation Support").

Signature Block

Customer: City of Sante Fe - NM
Signature:
Name:
Title:
Date:

Customer and the individual signing above represent that such individual has the authority to bind Customer to this Agreement.

Document Generation Date: 09-08-2022

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

Alex Khanin

NAME

DATE: _____

Manager Offer Management

TITLE

DATE: Nov 22, 2022

CRS# _____

Registration # _____

ATTEST:

KRISTINE MIHELICIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Nov 10, 2022 14:26 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED:

EMILY OSTER, FINANCE DIRECTOR

Org.Name/Org.#
ITT ISV 6203650-514100 AH
AH



State of New Mexico General Services Department

Price Agreement

Awarded Vendor:
0000006161
CenturyLink Communications, LLC
Db a Lumen Technologies Group
400 Tijeras NW Ste 410
Albuquerque, NM 87102

Email: dan.sullivan@lumen.com
Telephone No.: (505) 596-2496

Price Agreement Number: 20-36100-21-04390

Payment Terms: See Contract

F.O.B.: Destination

Delivery: See Contract

Ship To:
New Mexico Department of Information Technology
715 Alta Vista St
Santa Fe, NM 87505

Procurement Specialist: Theresa Mendibles *TM*

Telephone No.: (505) 795-1894

Email: theresa.mendibles@state.nm.us

Invoice:
As Requested

For questions regarding this contract please contact:
Philip Bachicha (505) 476-3469

Title: **Multiple Award Schedule (MAS) – IT Software and Services (GSA #47QTCA20D0077)**

Term: **October 20, 2021 thru March 11, 2025**

This Price Agreement is made subject to the “terms and conditions” shown on the reverse side of this page, and as indicated in this Price Agreement.

Accepted for the State of New Mexico

Valerie Paulk
Mark Hayden, New Mexico State Purchasing Agent

Date: 10/18/2021

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

JJL

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 20-36100-21-04390

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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.
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 sales, use, and excise 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, except that the State will be responsible for accrued but unpaid charges prior to date of termination including any third-party costs and/or construction charges incurred. The vendor will have 30 days to cure the default. The Vendor shall not be liable for any excess costs if failure to

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 20-36100-21-04390

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perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor, such causes include but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights 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. **-Quotes will be presented in the current manner that Lumen presents quoting.**

19. **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.

20. **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.

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 20-36100-21-04390

Page 4

New Mexico Employees Health Coverage

- A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agrees to maintain for the term of the contract, health insurance for its New Mexico Employees and offer that health insurance to its New Mexico Employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceeds \$250,000 dollars.
- B. Contractor agrees to maintain a record of the number of its New Mexico Employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Contractor agrees to advise all of its New Mexico Employees of the availability of State publicly financed health care coverage programs by providing each of its New Mexico Employees with, as a minimum, the following web site link to additional information: <https://bewellnm.com>.
- D. For purposes of this Paragraph, the following terms have the following meanings:

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

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

Department Price Agreement

Article I – Statement of Work

Under the terms and conditions of this Price Agreement, the using agency 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 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 either the New Mexico State Purchasing Agent 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 issued.

Article II – Term

The term of this Price Agreement for issuance of orders shall be as indicated in 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 instructions of this form. Shipment shall be made only against specific orders which the user may place with the contractor during the term indicated in Article II – 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 must be notified.

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 20-36100-21-04390

Page-5

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. The Agency will remain liable for all charges for services accrued but unpaid as of the termination date, including any third-party costs and/or construction charges incurred by Contractor up to the termination date.

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 for in the bid and price agreement specifications.

Article VII - Issuance or Orders

Only written signed orders are valid under this Price Agreement.

Article VIII - Packing (if applicable)

Packing shall be in conformance with standard commercial practices.

Article IX - Price Schedule

Prices as listed in the price schedule hereto attached are firm.

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 20-36100-21-04390

Establish a Statewide Price Agreement based on GSA Contract # **47QTCA20D0077** for **Multiple Award Schedule (MAS)**.

This Price Agreement may be extended if the GSA Contract is extended, upon approval of all parties.

Contract orders shall be issued only to vendor(s) shown under this Price Agreement. Prices shall be equal to or less than the price stipulated under the above listed GSA Contract.

Agencies must verify that items being purchased, rented, etc., are listed on the above referenced GSA. Only those items listed may be placed on contract orders under this Price Agreement. A complete copy of the GSA catalog must be retained by the using agency for auditing purposes. Trade-ins are not allowed under this Price Agreement.

Vendors under this Price Agreement are required to furnish a complete copy of the GSA catalog to the using agency upon request. Vendors must certify upon request that only those products, supplies or services accepted by the federal government are included in GSA price list.

State and local government catalogs are not acceptable.

Note: all terms and conditions established in the referenced GSA and by the New Mexico State Purchasing Agent shall prevail.

The Contractor agrees to provide a utilization report to the agreement administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
September 30	October 31
December 31	January 31
March 31	April 30
June 30	July 31

Sample Reports can be found at:

<http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors>

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

The periodic report shall include the gross total sales for the period subtotaled by procuring agency name. The report shall be accompanied with a check payable to the State Purchasing Division for an amount equal to three quarters of one percent (**0.75%**) of the total sales for the period. The Contractor shall indicate the contract number **20-36100-21-04390** on the check.

This agreement is not intended to be used to procure "Open Market" items.

Article and Description
<u>Multiple Award Schedule GSA #47QTCA20D0077</u>

Certificate Of Completion

Envelope Id: A4CBCEA535CC45509D8B5F81FBDC23B6	Status: Completed
Subject: Please DocuSign: GSA 20-36100-21-04390_MAS IT Software and Services	
Source Envelope:	
Document Pages: 6	Signatures: 1
Certificate Pages: 5	Initials: 2
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Theresa Mendibles
Time Zone: (UTC-07:00) Mountain Time (US & Canada)	13 Bataan Blvd
	Santa Fe, NM 87508
	Theresa.Mendibles@state.nm.us
	IP Address: 75.161.215.226

Record Tracking

Status: Original	Holder: Theresa Mendibles	Location: DocuSign
10/18/2021 5:20:48 PM	Theresa.Mendibles@state.nm.us	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: GSD	Location: DocuSign

Signer Events

Signer Events	Signature	Timestamp
Travis Dutton- Leyda travis.dutton-leyda@state.nm.us IT & Construction Bureau Chief New Mexico General Services, State Purchasing Division Security Level: Email, Account Authentication (None)		Sent: 10/18/2021 5:27:47 PM Viewed: 10/18/2021 5:31:01 PM Signed: 10/18/2021 5:31:36 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign	Signature Adoption: Pre-selected Style Using IP Address: 73.127.219.222	

Theresa Mendibles theresa.mendibles@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None)		Sent: 10/18/2021 5:31:37 PM Viewed: 10/18/2021 5:32:18 PM Signed: 10/18/2021 5:32:27 PM
Electronic Record and Signature Disclosure: Accepted: 6/1/2020 5:55:33 PM ID: a1931c7b-74ec-4e14-aa46-8324a6999adc	Signature Adoption: Pre-selected Style Using IP Address: 75.161.215.226	

Valerie Paulk valerie.paulk@state.nm.us Signed of Behalf of State Purchasing Agent New Mexico General Services Signing Group: 35000 - State Purchasing Agent Security Level: Email, Account Authentication (None)		Sent: 10/18/2021 5:32:28 PM Viewed: 10/18/2021 7:06:57 PM Signed: 10/18/2021 7:07:08 PM
Electronic Record and Signature Disclosure: Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff	Signature Adoption: Pre-selected Style Using IP Address: 97.123.127.51 Signed using mobile	

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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Envelope Sent	Hashed/Encrypted	10/18/2021 5:27:47 PM
Certified Delivered	Security Checked	10/18/2021 7:06:57 PM
Signing Complete	Security Checked	10/18/2021 7:07:08 PM
Completed	Security Checked	10/18/2021 7:07:08 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPInfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPInfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Century Link/Lumen

Procurement Title: NM State Price Agreement #20-361-0021-04390 Expires March 11, 2025

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 Michelle A. Gurule

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:

Michelle A. Gurule Contracts Administrator 12/08/22

Department Rep Printed Name (attesting that all information included)	Title	Date
	Contracts Supervisor	Dec 22, 2022

Purchasing Officer (attesting that all information is reviewed)	Title	Date
	ITT Department Director	Dec 22, 2022

ITT Representative (attesting that all information is reviewed)	Title	Date

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



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3203805

Contractor: Century Link/Lumen

Description: The City ITT Department has engaged Lumen Technologies to provide an upgrade that utilizes a cloud solution with 24/7 monitoring, support, and updates. The current network Firewalls are nearing End of Life and lack the latest enterprise level security controls. Failure of any one network link would allow all current services to continue working without disruption.

Contract Agreement Lease / Rent Amendment

Term Start Date: 01/30/23 Term End Date: 01/30/26

Approved by Council Date: _____

Contract / Lease:

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ 430,884.00

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)

Century Link (DBA Lumen) has drafted this agreement as an amendment to their State Wide Price Agreement with the State of New Mexico to include the City of Santa Fe with agreement #20-361-0021-04390.

3. **Procurement History:** NM State Price Agreement #20-361-0021-04390 Expires March 11, 2025

Dec 22, 2022
Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: Procured via valid SWPA

4. **Funding Source:** ITT ISV **Org / Object:** 6203650-514100

Dec 22, 2022
Budget Officer Approval: _____ Date: _____

Comment & Exceptions: _____

Staff Contact who completed this form: Michelle A. Gurule Phone # 505-955-5533

Email: magurule@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

Marnet Gonzales (Dec 22, 2022 12:23 MST)

ITT Department Director Dec 22, 2022

ITT Representative (attesting that all information is reviewed) Title Date



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/13/2022

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 Marsh USA Inc. CA License #0437153 1301 5th Avenue, Suite 1900 Seattle, WA 98101-2682 Attn: Seattle.certrequest@marsh.com / Fax: 212-948-4326 CN102197661-STND-ALL-22-23 091123	CONTACT NAME: ... PHONE (A/C, No. Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Greenwich Insurance Company</td> <td>22322</td> </tr> <tr> <td>INSURER B : XL Specialty Insurance Co.</td> <td>37885</td> </tr> <tr> <td>INSURER C : Allianz Underwriters Ins Co</td> <td>36420</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Greenwich Insurance Company	22322	INSURER B : XL Specialty Insurance Co.	37885	INSURER C : Allianz Underwriters Ins Co	36420	INSURER D :		INSURER E :		INSURER F :
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INSURER C : Allianz Underwriters Ins Co	36420													
INSURER D :														
INSURER E :														
INSURER F :														

COVERAGES **CERTIFICATE NUMBER:** SEA-003574399-25 **REVISION NUMBER:** 2

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 SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CONTRACTUAL LIABILITY GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER: _____		RGD500033310	09/01/2022	09/01/2023	EACH OCCURRENCE \$ 3,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 3,000,000 GENERAL AGGREGATE \$ 15,000,000 PRODUCTS - COMP/OP AGG \$ 15,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		RAD500033410 Auto Physical Damage - Self Insured	09/01/2022	09/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 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 DED _____ RETENTION \$ _____		U5Z000023220	09/01/2022	09/01/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		RWD500032910 (AOS) RWR500033010 (WI) RWE500033110 (WA) RWE500033210 (OH)	09/01/2022 09/01/2022 09/01/2022 09/01/2022	09/01/2023 09/01/2023 09/01/2023 09/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Technology E&O incl. Cyber/Privacy Liability		U5Z000022330	09/01/2022	09/01/2023	Each Claim/Aggregate \$ 10,000,000 Retention \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Start Date: 09/11/2018
End Date: 09/11/2023

CERTIFICATE HOLDER City of Santa Fe Attn: Larry Worstell 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 of Marsh USA Inc 
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ADDITIONAL REMARKS SCHEDULE

AGENCY Marsh USA Inc.		NAMED INSURED Lumen Technologies, Inc. and all subsidiaries, including but not limited to: Qwest Corporation; Embarq Corporation; Level 3 Communications, LLC and CenturyLink Communications, LLC 100 CenturyLink Dr. Monroe, LA 71203	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance

----- GENERAL LIABILITY -----

Automatic Additional Insured's Primary Coverage
 Additional Insured as respects your interest in the operations of the Named Insured as required by contract or agreement.
 Coverage provided by the above General Liability policy shall be primary and is limited to liability arising out of Named Insured's ownership and/or operations. Any insurance carried by the additional insured shall not be contributory insurance.
 Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation) - any person or organization with whom you have entered into a contract or agreement, or by statute, law or code of ordinance. Separation of Insureds Applies. Insurance covers incidents that occur within 50' of railroad property, any railroad exclusions have been deleted per endorsement CG2417.

----- AUTOMOBILE LIABILITY -----

Any person or organization you are required in a written contract, agreement, statute, law or code of ordinances provided the "bodily injury" or "property damage" occurs subsequent to the executive of the contract, agreement, statute, law or code of ordinances.
 Lessor - Additional Insured and Loss Payee - All Lessors
 Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation) - Any person or organization with whom you have waived prior to the "accident" or the "loss" under a contract with that person or organization, or under statute, law or code of ordinances.

----- WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY AND EXCESS WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY (OH & WA - SELF-INSURED - \$1,000,000 RETENTION) -----

Waiver of Our Right to Recover from others Endorsement - Where required by written agreement signed prior to loss, or required by statute, law or code of ordinances executed prior to loss.

----- EXCESS/UMBRELLA -----

Coverage applies per occurrence. Additional Insured as respects your interest in the operations of the Named Insured as required by contract or agreement. Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation) - Any person or organization with whom you have entered into a contract or agreement, but only to the extent required by such contract or agreement. Separation of Insureds Applies.

----- COMMERCIAL CRIME - FIDELITY BOND -----

Carrier: XL Specialty Insurance Company
 Policy Number: ELU18499022
 Effective Dates: 09/01/2022 - 09/01/2023
 Deductible: \$2,500,000
 Each Occurrence: \$15,000,000

----- U.S. PROPERTY -----

Carrier: Allianz Underwriters Insurance Company
 Policy Number: U5Z000023220
 Effective Dates: 09/01/2022 - 09/01/2023
 Limit: \$25,000,000
 Deductible: \$25,000,000

Property Coverage: "All Risk" of Direct Physical Loss or Damage to All Real and Personal Property, including Boiler & Machinery, Earthquake, Flood and Wind - Replacement Cost Basis, and Business Interruption - Actual Loss Sustained.
 Loss Payee or mortgagee as required by written contract/loan agreement to the the extent of your insurable interest. Waiver of Subrogation - Any person or organization whom you have entered into a contract or agreement, but only to the extent required by such contract or agreement. Other deductibles may apply as per policy terms and conditions.

BUSINESS REGISTRATION

City of Santa Fe

Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-C909
505-955-6551



Business Name: CENTURYLINK COMMUNICATIONS, LLC
DBA: LUMEN TECHNOLOGIES GROUPS & ITS AFFILIATED ENTITIES

Business Location: 2701 SAWMILL RD
SANTA FE , NM 87505

CRS Number: 01-602313-00-7

Owner: CENTURYLINK COMMUNICATIONS, LLC

License Number: 32485

License Type: Business License - Renewable

Issued Date: March 07, 2022

Classification: Business Registration - Standard

Expiration Date: March 07, 2023

Fees Paid: \$35.00

CENTURYLINK COMMUNICATIONS, LLC
400 TIJERAS AVE NW 530
ALBUQUERQUE, NM 87102

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

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

TO BE POSTED IN A CONSPICUOUS PLACE



City of Santa Fe, New Mexico

Memorandum



DATE: January 4, 2023

TO: Mayor Webber and City Council
Finance and Quality of Life Committee

VIA: Emily Oster, Finance Department Director
JoAnn Lovato, Acting Chief Procurement Officer
Kyra Ochoa, Community Health and Safety Department Director KO
Manuel Sanchez, Business Operations Manager MS
KO
MS

FROM: Julie Sanchez, Youth and Family Services Division Director jjs

ITEM AND ISSUE:

Request for Approval of Amendment No. 1 to American Rescue Plan Act (ARPA) Recovery Funds Subrecipient Contract No. 22-0477 in the Total Amount of \$900,000 for Early Childcare Job Development Services with the Santa Fe Community College Early Childhood Education Center of Excellence (SFCC-ECCOE) under the first statutory category; to include a compensation schedule and budget. (Julie Sanchez, Youth and Family Services Division Director, jjsanchez@santafenm.gov; 505-955-6678)

No change to contract total.

BACKGROUND AND SUMMARY:

On October 3, 2022 the City, approved ARPA contract 22-0477 with SFCC-ECCOE for Early Childcare Job Development Services.

Per recommendations from the City of Santa Fe Grants Manager and with approval from SFCC, a request to amend contract 22-0477 was submitted early November to add a budget and compensation schedule as Appendix A.

The Division allocated \$900,000 of its \$5,000,000 in ARPA funds to support increasing the capacity of the early childcare workforce which falls under the first statutory category, to respond to the COVID-10 public health emergency or its negative economic impacts.

The Santa Fe Community College's Early Childcare Center of Excellence is positioned to build and sustain a job development program; the Center has been in existence since 2014, and uses a multi-generation approach to early childhood education and training, by providing affordable and accessible education and professional development opportunities; and has the capacity to work collaboratively in the Santa Fe community to support new workforce development initiatives in early childhood through education and training.

The Santa Fe Community College Early Childhood Pre-Apprenticeship Program (APRENDE) is an opportunity to create an innovative associate-level residency program that builds on the strengths of the workforce as they are working towards certificates and degrees in New Mexico. The professionalization of the early childhood workforce has come slowly as early childhood teachers juggle full time jobs and families while trying to attend school in the evening. For many students, it can take ten years to earn an associate degree. The SFCC ECTAP will bring new teachers to the early childhood profession and honor the work that current teachers are doing by redesigning the early childhood courses to be competency-based through work done in the classroom as apprentices.

In addition, this program will help stabilize the early care and education sector in Santa Fe by creating a workforce pipeline and placing students in teacher assistant and floater positions in Santa Fe area early childhood centers.

- Teachers will work 20-40 hours a week as an apprentice or as a full-time teacher with coursework competencies embedded in the work they do every day with children.
- Coursework will be offered in a hybrid online format with occasional face to face meetings
- Mentor teachers at the site will be trained Early Childhood Mentor Network (ECMN) teachers and will receive a stipend from the mentor network and potential additional compensation and training.
- Sites will pay teachers and apprentices for their work in the classroom and partner with SFCC ECTAP to create teacher schedules to accommodate coursework.
- ECECD Scholarships will support tuition and books for qualified participants.
- 2-year structured cohort program that leads to an accelerated associate degree in early childhood education while students earn certificates along the way.

The program is slated to start Fall 2022 and recruit 20-30, Spanish-speaking and English-speaking teacher apprentice candidates.

PROCUREMENT METHOD:

The procurement method is exempt, as the Santa Fe Community College is a governmental institution, the contract expires June 30, 2026, funding covers costs incurred from March.

CONTRACT NUMBER:

The FY23 Munis contract number is 3203606.

PROJECT LEDGER:

The project ledger number is COM222400A

FUNDING SOURCE:

The funding source is:

Fund Name/Number: Fund 240

Munis Org Name/Number: Human Services/2400122

Munis Object Name/Number: Grants and Services/510400

ACTION REQUESTED:

The Community Health and Safety Department respectfully requests your review and approval of the Recovery Funds Subrecipient Contract with SFCC-ECCOE.

Signature: Manuel Sanchez
Manuel Sanchez (Jan 4, 2023 14:58 MST)

Email: mnsanchez@santafenm.gov

Signature: Kyra Ochoa
Kyra Ochoa (Jan 4, 2023 15:07 MST)

Email: krochoa@santafenm.gov



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: SFCC - Early Childhood Center of Excellence (ECCOE)

Procurement Title: ARPA Funded Early Childcare Job Development Services

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting Community Health & Safety Staff Name Julie Sanchez

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:

<u>Julie Sanchez,</u>	<u>Youth and Family Services</u>	<u>Division Director</u>	<u>12/08/2022</u>
Department Rep Printed Name (attesting that all information included)		Title	Date

<u>JoAnn Lovato</u>		<u>Contracts Supervisor</u>	<u>Jan 9, 2023</u>
Purchasing Officer (attesting that all information is reviewed)		Title	Date

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



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3203606

Contractor: Santa Fe Community College - Early Childcare of Excellence

Description: Amendment #1 - Contract #3203606 between the City of Santa Fe and the Santa Fe Community College - Early Childcare Center Excellence

Contract Agreement Lease / Rent Amendment

Term Start Date: when all has signed Term End Date: 06/30/2026

Approved by Council Date: _____

Contract / Lease: ARPA Recovery Funds Subrecipient Contract

Amendment # 1 to the Original Contract / Lease # Item #22-0477

Increase/(Decrease) Amount \$ 0

Extend Termination Date to: None

Approved by Council Date: _____

Amendment is for: To include a budget as described in Exhibit A

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)

3. Procurement History: Exempt, NMSA 13-1-98, local public body

JoAnn Lovato
JoAnn Lovato (Jan 9, 2023 08:53 MST)

Jan 9, 2023

Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: 13-1-98-A

4. Funding Source: 240/Human Services Fund-ARPA

Org / Object: 2400122.510400

Andy Hopkins
Andy Hopkins (Jan 5, 2023 09:24 MST)

Jan 5, 2023

Budget Officer Approval: _____ Date: _____

Comment & Exceptions: Project Ledger: COM222400A

Staff Contact who completed this form: Melissa Perea Phone # (505) 955-6826

Email: maperea@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

**CITY OF SANTA FE
AMENDMENT No. 1 TO
RECOVERY FUNDS SUBRECIPIENT
CONTRACT BETWEEN CITY OF SANTA FE AND SANTA FE COMMUNITY
COLLEGE EARLY CHILDHOOD CENTER OF EXCELLENCE
FOR EARLY CHILDCARE JOB DEVELOPMENT SERVICES
ITEM# 22-0477**

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE RECOVERY FUNDS SUBRECIPIENT CONTRACT, dated October 3, 2022 (the "Agreement"), between the City of Santa Fe (the "City") and Santa Fe Community College – Early Childhood Center of Excellence. (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 an early childhood apprenticeship service to individuals interested in entering the early childhood field.
- B. Pursuant to Article 7 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, under Compensation Schedule of the Agreement is amended to add the following language, so that Article 3, under Compensation Schedule reads in its entirety as follows:

- A. Compensation Schedule. The City shall pay the Contractor quarterly based upon approved expenditures in that quarter and the deliverables outlined in Exhibit A.

1) Exhibit A shall be outlined as follows:

**RECOVERY FUNDS SUBRECIPIENT
 CONTRACT BETWEEN CITY OF SANTA FE AND SANTA FE COMMUNITY
 COLLEGE EARLY CHILDHOOD CENTER OF EXCELLENCE
 FOR EARLY CHILDCARE JOB DEVELOPMENT SERVICES
 EXHIBIT A: COMPENSATION SCHEDULE**

		TOTAL	Year 1	Year 2	
Salary and Wages	Aprنده Manager (.5 FTE); prorated November-June; 3% COL in year 2	\$70,000	\$25,000	\$41,200	
	Admin Assistant II (.5 FTE); prorated in year 1	\$50,000	\$10,000	\$25,000	
	ECCOE Faculty/Staff Field Support		\$2,500	\$7,500	
	ECCOE Director (.10 FTE) 3% COL in year 2	\$100,000	\$10,000	\$10,300	
	Salary TOTAL		\$47,500	\$84,000	
Benefits	36%	\$17,100	\$30,240		
Salary and Benefits TOTAL		\$64,600	\$114,240		
Travel	In and Out of State; Early Childhood Conferences, mileage to sites, per diem		\$7,000	\$7,000	
Registration	Conferences, Workshops and Webinars for Mentors, Interns, Apprentices and Staff (Ex. NMAEYC, Zero to Three, etc.)		\$2,000	\$8,000	
Materials/Supplies	Classroom and training supplies		\$5,000	\$5,160	
Printing/Publications/Marketing	recruitment marketing, website, social media		\$4,000	\$6,000	
Background Checks	\$44/ person		\$2,000	\$3,000	
Program Evaluation	Sub Contract to UNM Cradle to Career Policy Institute (CCPI) for Program Evaluation		\$20,000	\$20,000	
Spanish Interpretation	Interpretation and translation English/Spanish; \$125/hour		\$4,000	\$6,000	
SFCC Course Development	Development of Early Childhood Spanish General Education (8 classes over two years)		\$6,000	\$14,000	
Training	Staff, Faculty, Mentors and Apprentices: (Ex. Co-teaching, technology, early literacy, coaching, assessment, CPR/First Aid)		\$7,000	\$10,000	
Technology	Swivls, tripods, laptop, microphones for classroom video		\$10,000	\$10,000	
APRENDE Early Childhood Employer Site Support	Est. 20 apprentices and 25 pre-apprentices per term		\$32,000	\$70,000	
Food and Beverage	Food for trainings and workshops		\$2,500	\$3,500	
Mentor Teacher Incentives/Stipends	Evaluation, training, supervision		\$27,000	\$50,000	
Pre-apprentice and Apprentice Incentives/Stipends	Est. 20 apprentices and 20 pre-apprentices per term		\$100,000	\$280,000	
		Total			
TOTAL			\$293,100	\$606,900	\$900,000

2. AGREEMENT IN FULL FORCE.

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

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

as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:
SFCC-ECCOE

ALAN M. WEBBER, MAYOR

Becky Rowley

DR. BECKY ROWLEY, PRESIDENT
SFCC

DATE: _____

DATE: 12/09/2022
CRS# 01-197245-00-9

ATTEST:

Registration #232866

KRISTINE BUSTOS MIHELIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez

[Marcos Martinez \(Dec 8, 2022 11:18 MST\)](#)
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

EMILY OSTER, FINANCE DIRECTOR
2400122.510400 *Att*
Org. Name/Org.#^{AH}

**RECOVERY FUNDS SUBRECIPIENT
CONTRACT BETWEEN CITY OF SANTA FE AND SANTA FE COMMUNITY
COLLEGE EARLY CHILDHOOD CENTER OF EXCELLENCE
FOR EARLY CHILDCARE JOB DEVELOPMENT SERVICES**

THIS AGREEMENT is made and entered into by and between the CITY OF SANTA FE, herein after referred to as the “City”, and SANTA FE COMMUNITY COLLEGE - EARLY CHILDHOOD CENTER OF EXCELLENCE, a local public body, herein after referred to as the “Contractor.”

RECITALS

WHEREAS, the City, as a recipient of a State and Local Fiscal Recovery Funds (SLFRF) award, has substantial discretion to use the award funds in the ways that best suit the needs of the City if such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the recipient that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID–19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; or
4. To make necessary investments in water, sewer, or broadband infrastructure;

WHEREAS, this agreement falls within the first, statutory category;

WHEREAS, recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds, Coronavirus State and Local Fiscal Recovery Funds Compliance and Reporting Guidance are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable;

WHEREAS, the Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate;

WHEREAS, Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient; and

WHEREAS, Santa Fe Community College (SFCC) and the Early Childhood Center of Excellence (ECCOE) understands that this contract represents a subaward of SLFRF funds, agrees to maintain records to satisfy all compliance requirements for use of SLFRF, and agrees to all reporting requirements for expenditures of SLFRF funds.

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. "Subrecipient" means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. 2 C.F.R. § 200.1

D. "You" and "your" refers to Santa Fe Community College – Early Childhood Center of Excellence. "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 work:

- 1) SFCC-ECCOE will recruit, and support individuals interested in early childhood education and track student success through external program evaluation and success metrics aligned to program completion, retention, and effectiveness.
- 2) SFCC-ECCOE will offer/develop coursework in a hybrid format to accommodate work schedules and support demonstration of competency in the field through the apprenticeship model.
- 3) SFCC-ECCOE will support students in applying for ECECD scholarships and additional financial aid available to them in addition to stipends offered through the program.
- 4) SFCC-ECCOE will provide students with resource navigation and support to ensure student success.
- 5) SFCC-ECCOE will work with students and employers to ensure that they are eligible for state certification and credentials that lead to higher wages in the field.

- 6) SFCC-ECCOE will hire a program manager to run the early childhood workforce development initiatives and programs.

B. Performance measures. Recognizing the disproportionate public health and negative economic impacts of the pandemic on many households, communities, and other entities, recipients must report whether certain types of projects are targeted to impacted and disproportionately impacted communities. Recipients will be asked to respond to the following:

- 1) a. What Impacted and/or Disproportionately Impacted population does this project primarily serve? Please select the population primarily served.
- 2) b. If this project primarily serves more than one Impacted and/or Disproportionately Impacted population, please select up to two additional populations served.
- 3) % recruited
- 4) # finishing the program
- 5) % entering the workforce

C. Reporting Requirements. In order to meet the City's reporting obligations to the U.S. Treasury the City will also require the following measures:

1) Obligations and Expenditures: Once a project is entered, the recipient will be able to report on the project's obligations and expenditures. Recipients will be asked to report:

- a. Current period obligation
- b. Cumulative obligation
- c. Current period expenditure
- d. Cumulative expenditure

2) Project Status: Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:

- a. Not Started
- b. Completed less than 50 percent
- c. Completed 50 percent or more
- d. Completed

3. Compensation

Compensation Schedule. The City shall pay the Contractor quarterly based upon approved expenditures in that quarter:

A. Payment. The total compensation under this Agreement shall not exceed nine hundred thousand dollars [\$900,000.00] including New Mexico gross receipts tax. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for

Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

B. Payment shall be made upon Acceptance of each Deliverable and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the City no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

C. Retainage. Not Applicable. The Parties agree there is no retainage.

D. Performance Bond. Not Applicable. The Parties agree there is no Performance Bond.

E. The Contractor may use SLFRF funds to cover eligible costs incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, if the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the subrecipient prior to March 3, 2021 are not eligible, as provided for in Treasury's final rule. Any funds not obligated or expended for eligible uses by the timelines above must be returned to Treasury, including any unobligated or unexpended funds that have been provided to subrecipients and contractors as part of the award closeout process pursuant to 2 C.F.R. 200.344(d).

4. Term

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on date approved by the City and end on June 30, 2026. In no event will the term exceed the duration allowed by statute, NMSA 1978, § 13-1-150.

5. 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.

6. **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.**

7. **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.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **Records and Audit**

During the term of this Agreement and for five 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. Subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.

16. **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.

17. **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.

18. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the City.

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

24 **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.

25. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-2. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

26. **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.

27. **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.

28. **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.

29. **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.

30. **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.

31. **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. 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.

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.

32. **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.

33. **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.

34. **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.

36. **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.

37. **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.

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

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period as the City may determine. 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.

39. **Notification**

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

To the City: Julie Sanchez Youth and Family Services Division Director, PO Box 909, Santa Fe NM 87504, jjisanchez@santafenm.gov

To the Contractor: Catron Allred, SFCC – ECCOE Director, 6401 Richards Avenue, Santa Fe NM 87508, catron.allred@sfcc.edu

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

To the Contractor: Catron Allred, SFCC – ECCOE Director, 6401 Richards Avenue, Santa Fe NM 87508, catron.allred@sfcc.edu

40. Succession

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

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

CITY OF SANTA FE:

CONTRACTOR:
SFCC - ECCOE



ALAN M. WEBBER, MAYOR



DR. BECKY ROWLEY, PRESIDENT
SFCC

DATE: Oct 3, 2022

DATE: August 3, 2022

CRS# 01-197245-00-9

Registration # 232866

ATTEST:



KRISTINE BUSTOS MIHELICIC, CITY CLERK 
GB MTG 09/28/2022

CITY ATTORNEY'S OFFICE:



Marcos Martinez (Aug 2, 2022 11:21 MDT)


SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:



Emily K. Oster (Oct 2, 2022 22:41 MDT)

EMILY OSTER, FINANCE DIRECTOR

2400122.510400 
Org.Name/Org.# AH




City of Santa Fe, New Mexico


Memorandum



DATE: August 10, 2022

TO: Mayor Webber and City Council
Finance and Quality of Life Committee

VIA: Alexis Lotero, Acting Finance Department Director
Fran Dunaway, Chief Procurement Officer
Kyra Ochoa, Community Health and Safety Department Director 

FROM: Julie Sanchez, Youth and Family Services Division Director 

ITEM AND ISSUE:

Request for Approval of an American Rescue Plan Act (ARPA) Recovery Funds Subrecipient Contract in the Total Amount of \$900,000 for Early Childcare Job Development Services with the Santa Fe Community College Early Childhood Education Center of Excellence (SFCC-ECCOE) under the first statutory category; to respond to the COVID-10 public health emergency or its negative economic impacts (Julie Sanchez, Youth and Family Services Division Director, jjsanchez@santafenm.gov; 505-955-6678)

BACKGROUND AND SUMMARY:

The City, as a recipient of a State and Local Fiscal Recovery Funds (SLFRF) award, the Youth and Family Services Division has been allocated \$5,000,000 of the total award to impact areas of homelessness, violence intervention, early childcare job development, and support to nonprofits impacted by the pandemic. The City, as a recipient has substantial discretion to use the award funds in the ways that best suit the needs of the City if such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the recipient that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID-19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; or
4. To make necessary investments in water, sewer, or broadband infrastructure;

The Division is allocating \$900,000 of its \$5,000,000 to support increasing the capacity of the early childcare workforce which falls under the first statutory category, to respond to the COVID-10 public health emergency or its negative economic impacts.

The Santa Fe Community College’s Early Childcare Center of Excellence is positioned to build and sustain a job development program; the Center has been in existence since 2014, and uses a multi-generation approach to early childhood education and training, by providing affordable and accessible education and professional development opportunities; and has the capacity to work collaboratively in the Santa Fe community to support new workforce development initiatives in early childhood through education and training.

The Santa Fe Community College Early Childhood Pre-Apprenticeship Program (APRENDE) is an opportunity to create an innovative associate-level residency program that builds on the strengths of the workforce as they are working towards certificates and degrees in New Mexico. The professionalization of

the early childhood workforce has come slowly as early childhood teachers juggle full time jobs and families while trying to attend school in the evening. For many students, it can take ten years to earn an associate degree. The SFCC ECTAP will bring new teachers to the early childhood profession and honor the work that current teachers are doing by redesigning the early childhood courses to be competency-based through work done in the classroom as apprentices.

In addition, this program will help stabilize the early care and education sector in Santa Fe by creating a workforce pipeline and placing students in teacher assistant and floater positions in Santa Fe area early childhood centers.

- Teachers will work 20-40 hours a week as an apprentice or as a full-time teacher with coursework competencies embedded in the work they do every day with children.
- Coursework will be offered in a hybrid online format with occasional face to face meetings
- Mentor teachers at the site will be trained Early Childhood Mentor Network (ECMN) teachers and will receive a stipend from the mentor network and potential additional compensation and training.
- Sites will pay teachers and apprentices for their work in the classroom and partner with SFCC ECTAP to create teacher schedules to accommodate coursework.
- ECECD Scholarships will support tuition and books for qualified participants.
- 2-year structured cohort program that leads to an accelerated associate degree in early childhood education while students earn certificates along the way.

The program is slated to start Fall 2022 and recruit 20-30, Spanish-speaking and English-speaking teacher apprentice candidates.

PROCUREMENT METHOD:

The procurement method is exempt, as the Santa Fe Community College is a governmental institution, the contract expires June 30, 2026, funding covers costs incurred from March.

CONTRACT NUMBER:

The FY23 Munis contract number is 3203606.

PROJECT LEDGER:

The project ledger number is COM222400A

FUNDING SOURCE:

The funding source is:

Fund Name/Number: Fund 240

Munis Org Name/Number: Human Services/2400122

Munis Object Name/Number: Grants and Services/510400

ACTION REQUESTED:

The Community Health and Safety Department respectfully requests your review and approval of the Recovery Funds Subrecipient Contract with SFCC-ECCOE.

City of Santa Fe, New Mexico

memo

Date: June 6, 2022

To: Fran Dunaway, Chief Procurement Officer

From: Kyra Ochoa, Community Health and Safety Department Director 
Kyra Ochoa (Jun 6, 2022 13:37 MDT)

Julie Sanchez, Youth and Family Services Division Director 

Subject: Exemption Determination Request, NMSA 13-1-98, local public body

Youth and Family Services Division respectfully request exempt determination to be approved by the City's Chief Procurement Officer (CPO), Fran Dunaway, for the following scope of work (SOW) for a professional services agreement (PSA) with the Santa Fe Community College (SFCC):

Using allocated ARPA funds to build and implement a project which will subsidize students who attend SFCC to obtain their credentials in early childcare to provide much needed childcare services in the City of Santa Fe. The approach is to build the pipeline of providers; as students obtain their credentials, they will also be doing a practicum to provide childcare and fill vacancies, both supporting teachers and keeping up the staff to child ratios. The proposal includes opportunities for both job training and paid flexible internships.

City of Santa Fe follows the New Mexico State Procurement Code (NMPC) & City of Santa Fe Procurement Manual (COSPM).

NMPC, NMSA, 1978 13-1-98 & COSPM, Item VI. Exemptions from the Procurement Code.

NMSA 1978, 13-1-98 A. "Procurement of items of tangible personal property or services by a state agency or a local public body (City of SF -municipality) from a state agency, a local public body (SFCC-educational institutions, school districts or local school boards/13-1-67 definition; local public body)

Amount: \$900,000.00

Term: Fiscal Year 23-26

Approved Exemption


Fran Dunaway (Jun 8, 2022 12:38 MDT)

Fran Dunaway, Chief Procurement Officer 



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3203606

Contractor: Santa Fe Community College - Early Childcare Center of Excellence

Description: ARPA Recovery Funds Subrecipient Contract for Early Childcare Job Development - funds may cover incurred costs from March 3, 2021 per federal guidelines.

Contract Agreement Lease / Rent Amendment

Term Start Date: 07/01/2020 Term End Date: 06/30/2026

Approved by Council Date: _____

Contract / Lease: ARPA Recovery Funds Subrecipient 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)

3. **Procurement History: Exempt, NMSA 13-1-98, local public body**

Andy Hopkins Sep 2, 2022
Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: 13-1-98-A

4. **Funding Source: 240/Human Services Fund - ARPA**

Org / Object: 2400122.510400

Andy Hopkins Sep 2, 2022
Budget Officer Approval: _____ Date: _____

Comment & Exceptions: Project Ledger: COM222400A

Staff Contact who completed this form: Julie Sanchez Phone # 505-955-6678

Email: jjsanchez@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: SFCC - Early Childhood Center of Excellence (ECCOE)

Procurement Title: ARPA Funded Early Childcare Job Development Services

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting Comm. Health and Safety Staff Name Julie Sanchez

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 type="checkbox"/> | <input checked="" type="checkbox"/> | Sole Source Request and Determination Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contractors Exempt Letter |
| <input checked="" type="checkbox"/> | <input 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: |

Julie Sanchez, Youth and Family Services Division Director 8/10/2022

Department Rep Printed Name (attesting that all information included)	Title	Date
	Contracts Supervisor	Sep 2, 2022

Purchasing Officer (attesting that all information is reviewed)	Title	Date
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Include all other substantive documents and records of communication that pertain to the procurement and contract.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/3/2022

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 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).

Table with 2 columns: PRODUCER (Poms & Associates Insurance Brokers) and CONTACT INFORMATION (Risk Services, phone, fax, email, address). Includes a table for INSURER(S) AFFORDING COVERAGE with NAIC #.

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.

Main table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liab, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
See attached New Mexico Tort Claims Act Section 41-4-19: Maximum Liability Summary. General Liability Retention=\$750K. Coverage as respects to Federal Grant for Early Childhood Development.

CERTIFICATE HOLDER CANCELLATION

Table with 2 columns: CERTIFICATE HOLDER (City of Santa Fe) and 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)

AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page _____ of _____

AGENCY Poms & Associates Insurance Brokers		NAMED INSURED New Mexico Public Schools Insurance Authority	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: _____ FORM TITLE: : Notes

Summary of New Mexico Tort Claims Act Section 41-4-19:
Maximum Liability Governmental entities and agencies, including public schools, public charter schools and community colleges and universities are granted immunity from liability.
Commercial General Liability Products and Completed Operations Professional Liability Contractual Liability
Imposed by New Mexico Tort Claims Act [NMSA 1975 §41-4-1 through 41-4-29]
\$400,000 Bodily Injury Per Person
\$200,000 Property Damage Per Property Address
\$300,000 Medical
\$750,000 Per Occurrence
\$1,050,000 Combined Limit/Maximum Liability



City of Santa Fe

Treasury Department

200 Lincoln Ave.

Santa Fe, New Mexico 87504-0909

505-955-6551

BUSINE

Business Name: SANTA FE COMMUNITY COLLEGE
DBA: SANTA FE COMMUNITY
COLLEGE

Business Location: 6401 RICHARDS AVE
SANTA FE, NM 87508

CRS Number: 01197245009

Owner: SANTA FE COMMUNITY COLLEGE

License Number: 232866

License Type: Business Licen

Issued Date: May 23, 2022

Classification: Out of Jurisdict

Expiration Date: May 23, 2023

Fees Paid: \$10.00

SANTA FE COMMUNITY COLLEGE
6401 RICHARDS AVE
SANTA FE, NM 87508

THIS IS NOT A CONSTRUCTION PE
APPROPRIATE PERMITS MUST BE
OF SANTA FE BUILDING PERMIT C
COMMENCEMENT OF ANY CONS
INSTALLATION OF ANY EXTERIOR

THIS REGISTRATION/LICENSE IS N
OTHER BUSINESSES OR PREMISES

TO BE POSTED IN A CONSPICUOUS PLACE



City of Santa Fe, New Mexico

Memorandum



DATE: January 3, 2023

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

VIA: Regina Wheeler, Public Works Director *Regina Wheeler*
Regina Wheeler (Jan 6, 2023 11:36 MST)

Sam Burnett, Facilities Division Director *J Samuel Burnett*
J Samuel Burnett (Jan 5, 2023 17:38 MST)

FROM: Caryn Grosse, PMP, Facilities Project Administrator Sr. *cg*

REQUESTED ACTION:

Request approval of Agreement to Terminate Power Purchase Agreements Between City of Santa Fe and Dissigno Holdings, LLC; Caryn Grosse, clgrosse@santafenm.gov, 505-955-5938

- 1) Request for approval of a Budget Adjustment Resolution (BAR) in the amount of \$51,221 from Wastewater Operations Administration for repairs to Compost Array to Solar Projects CIP
- 2) Request for approval of a Budget Adjustment Resolution (BAR) in the amount of \$51,221 from Civic Convention Center Operations for repairs to Convention Center Array to Solar Projects CIP

BACKGROUND AND SUMMARY:

In 2011, the City of Santa Fe and MLH Cripple Creek Solar, LLC, signed Power Purchase Agreements (PPA) for solar arrays located at the Convention Center and the Compost Facility. In 2016, those agreements were amended to transfer system ownership from MLH Cripple Creek Solar, LLC, to Dissigno Holdings, LLC.

An evaluation of these, and PPA agreements with other system owners, in November 2021 indicated that these two systems have not been maintained and had fallen below 50 percent of the anticipated energy production specified in the agreements. The City of Santa Fe sent a letter in January 2022 to Dissigno Holdings requesting that Dissigno meet the maintenance obligations specified in the agreements. Dissigno indicated that it was unable to perform its obligations and offered to donate the systems to the City “as is.”

When restored to full function, each of these systems is anticipated to generate nearly 154,000 kWh/year, with an estimated value of nearly \$22,700/year for the production and an additional \$12,300/year in renewable energy certificates (RECs). The PNM REC agreements for both arrays are transferrable to the City within 30 days of the change in ownership. The combined value of the anticipated production and RECs is \$34,986 per array per year, totaling \$69,971 annual benefit for both. The arrays will have approximately 13 years of warranted production after repairs.

Proposals were obtained for the repairs to both systems. Repairs are estimated to cost \$47,290 per array, for a total of \$94,580, excluding NMGRT. Budget Amendment Resolutions (BARs) from both the Convention Center and Wastewater Treatment Plant enterprise funds to cover the cost of repairs are included in this packet.

PROCUREMENT METHOD:

No procurement on termination.

Repairs will be procured using NM State Price Agreement #20-00000-21-00029 Photovoltaic (Solar Electric) Systems.

FUNDING SOURCES:

BAR 1 to transfer \$51,221 from:

Munis Org Name/Number: Wastewater Operations-Admin/5000361

BAR 2 to transfer \$51,221 from:

Munis Org Name/Number: Civic Convention Center Operations /5206600

To:

Project Ledger ID: SOLAR REP

Munis Org Name/Number: Solar Projects CIP/3159980

Munis Object Name/Number: WIP Construction (Replace Inverter)/572970

PROJECT SCHEDULE:

Once the Agreement to Terminate is completed and the assignment or conveyance has been made to the City, repairs can be made to the system. It is anticipated that the lead-time for the inverters and other materials will be approximately 10 weeks based on current information.

CONTRACT NUMBER:

The Munis contract number is 3201933.

ATTACHMENTS:

Agreement to Terminate and Exhibits

Production Spreadsheet

Proposal for Repairs

BARs for Repairs

SPA 20-00000-21-00029 Photovoltaic (Solar Electric) Systems

Summary of Contracts

Agreement to Terminate the Power Purchase Agreement Between the City of Santa Fe and Dissigno Holdings, LLC

This Termination Agreement, effective as of the date of the final signature (the "**Termination Agreement**"), between City of Santa Fe, a New Mexico a home-rule municipality, having its principal place of business at 200 Lincoln Avenue, Santa Fe, New Mexico 87501 ("**the City**"), and Dissigno Holdings, LLC, a California limited liability company, having its principal place of business at 366 Eldridge Ave, Mill Valley, California 94941 ("**the System Owner**," and together with the City, the "**Parties**," and each, a "**Party**").

WHEREAS, the Parties have entered into a *Purchase Power Agreement by and Between the City of Santa Fe and MLH Cripple Creek LLC*, No. 11-1171, dated as of December 16, 2011, as amended by *Amendment No. 1 to the Purchase Power Agreement*, No. 12-0571 dated June 11, 2012, and *the Second Amendment to and Consent to Assignment of Purchase Power Agreement By and Between MLH Cripple Creek Solar, LLC*, No. 16-0702 dated July 22, 2016, attached hereto as Exhibit A;

WHEREAS, the Parties have entered into a *Purchase Power Agreement by and Between the City of Santa Fe and MLH Cripple Creek LLC*, No. 11-1170, dated as of December 16, 2011, as amended by *Amendment No. 1 to the Purchase Power Agreement*, No. 13-0118, dated March 1, 2013, and *the Second Amendment to and Consent to Assignment of Purchase Power Agreement By and Between MLH Cripple Creek Solar, LLC*, No. 16-0701 dated August 15, 2016, attached hereto as Exhibit B, (collectively the "Purchase Power Agreements");

WHEREAS, the Parties and the Public Service Company of New Mexico ("PNM") have also entered into the following agreements: *Public Service Company of New Mexico Agreement No. 1035338, Standard Large Solar Renewable Energy Certificate Purchase Agreement for Third party Owner Participation in PNM's Solar REC Incentive Program*, and *Public Service Company of New Mexico Agreement No. 1033683, Standard Large Solar Renewable Energy Certificate Purchase Agreement for Third party Owner Participation in PNM's Solar REC Incentive Program* (the "REC Agreements"), attached hereto as Exhibit C;

WHEREAS, the Parties agree that the System Owner can no longer perform its obligations under the Purchase Power Agreements in their current form;

WHEREAS, the Parties hereto desire to terminate the Purchase Power Agreement and the Parties desire that Dissigno's rights under the REC Agreements be assigned to the City on the terms and subject to the conditions set forth herein; and

WHEREAS, pursuant to Section 20.8, *Amendments and Modifications*, of the Purchase Power Agreements, the Parties may modify or terminate the Agreement by a writing signed by an authorized Representative each Party.

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Termination Agreement have the respective meanings assigned to them in the Purchase Power Agreement.

2. Termination of the Agreement. Subject to the terms and conditions of this Termination Agreement, the Purchase Power Agreements are hereby terminated as of the date on which the System Owner transfers and assigns to the City all of its right, title, and interest in: 1) the System, as defined by the Purchase Power Agreements, and 2) any Environmental Credits identified by the REC Agreements (the "**Termination Date**"). From and after the Termination Date, the Agreement will be of no further force or effect, and the rights and obligations of each of the Parties thereunder shall terminate.

3. Certain Rights and Obligations.

As material consideration for the covenants, agreements, and undertakings of the Parties under this Termination Agreement:

(a) Within 30 days following the effective date of this agreement, the System Owner shall assign or convey to the City, in a form acceptable to the City, all of System Owner's right, title, and interest in the "System".

(b) Within 30 days following the effective date of this agreement, the System Owner shall assign or convey to the City, in a form acceptable to the City all of the System Owner's right, title and interest in the REC Agreements to the City. The System owner agrees to fully cooperate and to timely complete any and all documentation reasonably required by any mandatory or voluntary program governing the existence or trade of Environmental Credits, including documentation required to verify the Environmental Credits, including Renewable Energy Credits.

4. Mutual Release.

(a) In consideration of the covenants, agreements, and undertakings of the Parties under this Termination Agreement, each Party, on behalf of itself and its respective present and former parents, subsidiaries, Affiliates, officers, directors, shareholders, members, successors, and assigns (collectively, "**Releasors**") hereby releases, waives, and forever discharges the other Party and its respective present and former, direct and indirect, parents, subsidiaries, Affiliates, employees, officers, directors, shareholders, members, agents, Representatives, permitted successors, and permitted assigns (collectively, "**Releasees**") of and from any and all actions, causes of action, suits, losses, liabilities, rights, debts, dues, sums of money, accounts, reckonings, obligations, costs, expenses, liens, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, admiralty, or equity (collectively, "**Claims**"), which any of such Releasors ever had, now have, or hereafter can, shall, or may have against any of such Releasees for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of time through the date of this Termination Agreement arising out of or

relating to the Agreement, except for any Claims relating to rights and obligations preserved by, created by, or otherwise arising out of this Termination Agreement (including any surviving indemnification obligations under the Agreement).

(b) Each Party, on behalf of itself and each of its respective Releasors, understands that it may later discover Claims or facts that may be different than, or in addition to, those that it or any other Releasor now knows or believes to exist regarding the subject matter of the release contained in this Section 4, and which, if known at the time of signing this Termination Agreement, may have materially affected this Termination Agreement and such Party's decision to enter into it and grant the release contained in this Section 4. Nevertheless, the Releasors intend to fully, finally and forever settle and release all Claims that now exist, may exist or previously existed, as set forth in the release contained in this Section 4, whether known or unknown, foreseen or unforeseen, or suspected or unsuspected, and the release given herein is and will remain in effect as a complete release, notwithstanding the discovery or existence of such additional or different facts. The Releasors hereby waive any right or Claim that might arise as a result of such different or additional Claims or facts.

5. Representations and Warranties. Each Party hereby represents and warrants to the other Party that:

(a) It has the full right, power, and authority to enter into this Termination Agreement and to perform its obligations hereunder.

(b) The execution of this Termination Agreement by the individual whose signature is set forth at the end of this Termination Agreement on behalf of such Party, and the delivery of this Termination Agreement by such Party, have been duly authorized by all necessary action on the part of such Party.

(c) This Termination Agreement has been executed and delivered by such Party and (assuming due authorization, execution, and delivery by the other Party hereto) constitutes the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

(d) It (i) knows of no Claims against the other Party relating to or arising out of the Agreement that are not covered by the release contained in Section 4 and (ii) has neither assigned nor transferred any of the Claims released herein to any Person and no Person has subrogated to or has any interest or rights in any Claims.

(e) EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS TERMINATION AGREEMENT, (A) NEITHER PARTY HERETO NOR ANY PERSON ON SUCH PARTY'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) EACH PARTY HERETO ACKNOWLEDGES THAT, IN ENTERING INTO THIS TERMINATION AGREEMENT, IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THE OTHER PARTY, OR

ANY OTHER PERSON ON SUCH OTHER PARTY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 5.

6. Indemnification.

(a) the System Owner (as "**Indemnifying Party**") shall defend, indemnify and hold harmless the City, and its officers, directors, employees, agents Affiliates, permitted successors and permitted assigns (collectively, "**Indemnified Party**"), against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and costs of enforcing any right to indemnification under this Termination Agreement, and the cost of pursuing any insurance providers, awarded against an Indemnified Party (collectively, "**Losses**"), arising out or resulting from any claim of a third party or Party alleging: (i) material breach by Indemnifying Party or its Personnel of any representation, warranty, covenant, or other obligations set forth in this Termination Agreement; or (ii) negligence or more culpable act or omission of an Indemnifying Party or its Personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Termination Agreement.

(b) Notwithstanding anything to the contrary in this Termination Agreement, the Indemnifying Party is not obligated to indemnify, defend or hold harmless the System Owner and the other Indemnified Parties against any Losses arising out of or resulting from an Indemnified Party's: (i) willful, reckless or negligent acts or omissions; or (ii) bad faith failure to materially comply with any of its obligations set forth in this Termination Agreement.

(c) An Indemnified Party seeking indemnification under this Section 6 shall give the Indemnifying Party: (i) prompt Notice (as defined below) of the relevant claim; provided, however, that failure to provide such notice shall not relieve the Indemnifying Party from its liability or obligation hereunder except to the extent of any material prejudice directly resulting from such failure; and (ii) reasonable cooperation, at the Indemnifying Party's expense, in the defense of such claim. The Indemnifying Party shall have the right to control the defense and settlement of any such claim; provided, however, that the Indemnifying Party shall not, without the prior written approval of the Indemnified Party, settle or dispose of any claims in a manner that affects the Indemnified Party's rights or interests. The Indemnified Party shall have the right to participate in the defense at its own expense.

(d) THIS SECTION 6 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF EACH INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY OF EACH INDEMNIFIED PARTY FOR ANY DAMAGES COVERED BY THIS SECTION 6.

7. Publicity and Announcements. Neither Party shall (orally or in writing) issue any press release or make any other public statement, or otherwise communicate with the media, concerning the existence of this Termination Agreement or the subject matter hereof, without the prior written approval of the other Party (which shall not be unreasonably

withheld or delayed), except to the extent that such Party is required to make any public disclosure, including seeking approval from the Governing Body to terminate the Purchase Power Agreement or filing with respect to the subject matter of this Termination Agreement (i) by applicable Law or (ii) pursuant to any rules or regulations of any securities exchange of which the securities of such party are listed or traded.

8. Miscellaneous.

(a) All notices, requests, consents, claims, demands, waivers, summons, and other legal process, and other similar types of communications hereunder (each, a "**Notice**") must be in writing and addressed to the relevant Party at the address set forth on the first page of this Termination Agreement (or to such other address that may be designated by the receiving Party from time to time in accordance with this Section 8(a)). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). A Notice is effective only (i) upon receipt by the receiving Party and (ii) if the Party giving the Notice has complied with the requirements of this Section 8(a).

(b) This Agreement and all related documents, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of New Mexico, United States of America. Service of process, summons, notice, or other document by certified mail in accordance with Section 8(a) will be effective service of process for any suit, action or other proceeding brought in any such court.

(c) This Termination Agreement and each of the terms and provisions hereof may only be amended, modified, waived, or supplemented by an agreement in writing signed by each Party.

(d) Neither Party may assign, transfer, or delegate any or all of its rights or obligations under this Termination Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, that either Party may assign this Termination Agreement to an Affiliate, a successor-in-interest by consolidation, merger, or operation of law, or to a purchaser of all or substantially all of the Party's assets. No assignment will relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing will be null and void. This Termination Agreement will inure to the benefit of and be binding upon each of the Parties and each of their respective permitted successors and permitted assigns.

(e) The Parties drafted this Termination Agreement without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(f) If any term or provision of this Termination Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability

shall not affect any other term or provision of this Termination Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(g) Each Party acknowledges and agrees that (i) a breach or threatened breach by such party of any of its obligations under this Termination Agreement would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (ii) in the event of a breach or a threatened breach by such Party of any such obligations, the other Party will, in addition to any and all other rights and remedies that may be available to such party at law, in equity or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each Party agrees that it shall not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 8(g).

(h) This Termination Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(i) Except as expressly set forth in the second sentence of this Section 8(i), this Termination Agreement benefits solely the Parties hereto and their respective permitted successors and permitted assigns, and nothing in this Termination Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Termination Agreement. The Parties hereby designate all Releasers and Indemnified Parties as third-party beneficiaries of Section 4 and Section 6, respectively, having the right to enforce such Sections.

(j) This Termination Agreement may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Termination Agreement as of the date first written above.

CITY OF SANTA FE

By _____

Name: Alan Webber

Title: Mayor

Attest:

Kristine Bustos Mihelcic, City Clerk

City Attorney's Office:

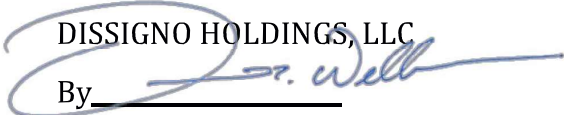
Marcos Martinez
Marcos Martinez (Dec 9, 2022 16:27 MST)

Senior Assistant City Attorney

Approved for Finances:

Emily Oster, Finance Director

DISSIGNO HOLDINGS, LLC

By 

Name: David Williams

Title: Managing Director

ITEM # 11-1171

POWER PURCHASE AGREEMENT

By and between

MLH CRIPPLE CREEK SOLAR, LLC

and

The CITY OF SANTA FE

(Convention Center)

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- Exhibit A System Description
- Exhibit B Monthly Project System Production Estimates and Cost Estimates
- Exhibit C Sample Invoice
- Exhibit D Early Buyout Option

POWER PURCHASE AGREEMENT (CONVENTION CENTER)

This Power Purchase Agreement (Convention Center) (this "Agreement") is made and entered into as of this 30th day of November, 2011 (the "Effective Date"), by and between MLH Cripple Creek Solar, LLC its principal office at 4 Embarcadero Center, Suite 3670, San Francisco, California 94111, ("System Owner") and the City of Santa Fe with its principal office at 200 Lincoln Ave Santa Fe, NM 87504, ("Host Customer"); System Owner and Host Customer shall be referred to herein as a "Party" and collectively, as the "Parties".

RECITALS

WHEREAS, the Host Customer desires to receive Electricity from the System;

WHEREAS, the Host Customer owns the Premises and Site upon which the System will be located;

WHEREAS, the System Owner, at the Host Customer's request, intends to design, install, own or lease, operate, and maintain the System for the production of Electricity on the Host Customer's Site;

WHEREAS, the System Owner desires to sell and the Host Customer desires to purchase all of the Electricity generated by the System;

WHEREAS, pursuant to this Agreement, System Owner and Host Customer agree that any Tax Credits associated with the development and operation of the solar photovoltaic system, including the installation, ownership, maintenance and operation of the System and the sale of Electricity from the System to the Host Customer shall inure to the benefit of the System Owner during the Term of this Agreement;

WHEREAS, pursuant to this Agreement, the System Owner and Host Customer agree that, absent an Event of Default by Host Customer, the Host Customer shall own all Environmental Credits, including renewable energy credits, and net metering benefits from the Output of the System during the Term of this Agreement.

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and intending to be legally bound hereby, the Parties hereby covenant and agree as follows:

ARTICLE I DEFINITIONS; RULES OF INTERPRETATION

Section 1.1 Definitions.

The following terms shall have the following meanings:

“Agreement” means this Solar Energy Agreement, as the same may be modified or amended from time to time in accordance with the provisions hereof.

“Bankruptcy” means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency, or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case or proceedings shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain un-dismissed for sixty (60) days.

“Business Day” means any day other than Saturday, Sunday, or a legal holiday in the State of New Mexico.

“City of Santa Fe” means the city of Santa Fe, New Mexico.

“Commencement Date” has the meaning established in Section 5.1.

“Construction Period” has the meaning established in Section 2.2.

“Default” means any event or circumstance which, with notice or lapse of time or both, would constitute an Event of Default under Article XIII.

“Delivery Point” means the physical location, as set forth on Exhibit A (System Description), attached hereto, where the System connects to the Premises at the load side lugs of the Delivery Point Circuit Breaker.

“Delivery Point Circuit Breaker” means that circuit breaker located in the “Medium Voltage Switchgear” that is owned by the Host Customer and designed and furnished for interconnection of the System with the Premises and the Host Utility.

“Due Date” has the meaning established in Section 6.3.

“Effective Date” has the meaning provided in the introductory paragraph.

“Electricity” means electrical energy generated and delivered to the Delivery Point from the operation of the System.

“Environmental Credits” mean any and all renewable energy certificates or emissions credits, rebates or any other green tag, renewable energy, emissions reduction credits, emission allowances, attributes, offsets or other environmental benefit, or other tradable renewable energy credits, whether related to any renewable portfolio standard or other renewable energy purchase requirement or otherwise, arising from the production of Output and whether existing as of the Commencement Date or enacted thereafter by the State of New Mexico, pursuant to the Renewable Energy Act, Sections 62-16-1 et seq. NMSA 1978 and Title 17.9.572 NMAC, as amended, provided, however, that “Environmental Credits” shall not include Tax Credits.

“Event of Default” has the meaning provided in Article XIII.

“Fair Market Value” has the meaning provided in Section 15.2.4.

“Force Majeure Event” means, when used in connection with the performance of a Party’s obligations under this Agreement, any act, event, or condition (to the extent not caused by such Party or its agents or employees) which is unforeseeable, or being foreseeable, could not have been avoided by the exercise of reasonable diligence and care and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Agreement, including: (i) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any governmental authority, riot, acts of terrorism, acts of a public enemy or other civil disturbance; (ii) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, fires, excess winds, and objects striking the earth from space (such as meteorites);(iii) sabotage or destruction by a third party (other than any, agent, employees or contractors retained by or on behalf of the Party and acting in the performance of its duties) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement; (iv) regional or national strikes, walkouts, lockouts, or similar industrial or labor actions or disputes other than those directed at the Party seeking to claim a Force Majeure Event hereunder; (v) acts of any governmental authority, excluding however acts of Host Customer that occur as the result of any act, action, rule, regulation, or order of the City of Santa Fe, that materially restrict or limit System Owner’s access to the Site or its activities at the Site or Host Customer’s usage of the Output, and (vi) any act, action, rule, regulation, order, or power failure caused by the Host Utility.

“Good Utility Industry Practices” means the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the System, Good Utility Industry Practices include, but are not limited to, taking reasonable steps to ensure that:

1. equipment, materials, resources, and supplies are available to meet the System’s needs;
2. sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to operate the System property and efficiently, and are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the site of the System;
3. preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable trained and experienced personnel utilizing proper equipment and tools;
4. appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

5. equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or contrary to environmental laws or regulations or without regard to defined limitations such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits; and
6. the System will function properly under both normal and reasonable expected emergency conditions at the Premises.

“Host Customer” has the meaning provided in the introductory paragraph.

“Host Utility” means Public Service Company of New Mexico or PNM.

“Interconnection” means that the System has met all of the Host Utility requirements to begin normal operations of the System, which has then initially produced useable Electricity.

“Interconnection Agreement” means the agreement between the Host Customer and Host Utility authorizing interconnected System operations.

“Interconnection Notice” has the meaning provided in Section 5.1.

“Late Fee” has the meaning provided in Section 6.4.

“Meter” means the standard instrument(s) and equipment owned and installed at the Site by Host Utility, which the Host Utility uses to measure and record the Output delivered to the Host Customer at the Delivery Point, which term does not include meters installed by the Host Customer or System Owner.

“Meter Reading Dispute Resolution Process” means the procedures established by rule or regulation of the Host Utility pertaining to its meter readings or billing error and in effect at the time either the Host Customer or the System Owner initiates this process.

“Mountain Prevailing Time” or “MPT” means Mountain Standard Time or Mountain Daylight Time, as in effect from time to time.

“Net Metering Agreement” means the agreement between the Host Customer and the Host Utility pursuant to 17.9.570 of the NMAC.

“Notice-to-Proceed” is a separate notice or instruction authorizing the System Owner to proceed with the work or a part thereof.

“Output” means the Electricity produced by the System and delivered at the Delivery Point.

“Party” or “Parties” has the meaning established in the introductory paragraph.

“Person” means any natural person, partnership, trust, estate, association, corporation, limited liability company, governmental authority or agency, or any other individual or entity.

“Potential Output” means solar electric energy that cannot be generated or delivered by the System because of an act or omission of the Host Customer.

“Premises” means property under the control of the City of Santa Fe and the Host Customer, including the improvements thereon, as described in Exhibit “A”.

“Projected Output” means the anticipated level of System Output as provided in Exhibit “B” for a stated period of time.

“Prudent Industry Practice” means the practices, methods, and acts engaged in or approved by a significant portion of the solar energy industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expedition.

“Quarterly Date” means the first Business Day of each of January, April, July, and October.

“Renewable Energy Credits” means a certificate in accordance with 17.9.572.13.C NMAC, Renewable Portfolio Standard, representing the renewable energy benefits of the output of 1 MWh of solar electricity.

“Service Term” means the 20-year period from the Commencement Date.

“Site” means the area of the Premises on which the System Owner will install, operate, and maintain the System, as described in the Site Plan in Exhibit A.

“Solar Electricity Price” has the meaning provided in Section 6.1.

“System” means all equipment and materials, including photovoltaic arrays, DC/AC inverters, wiring, transformers, switches, instruments and meters, medium voltage equipment and circuits, and other appurtenant facilities installed as part of the System now or hereafter owned by System Owner for the purpose of providing Output to the Host Customer at the Delivery Point, and as such equipment and materials may be modified during the Term. The System excludes any part of the equipment owned and under the control of the Host Utility or Host Customer.

“System Owner” has the meaning provided in the introductory paragraph.

“Tax Credits” mean all state, local and or federal production tax credit, tax deduction and/or investment tax credit and/or other financial assistance (including any grants) specific to or arising from the production of Output by the System and/or investment in the System.

“Term” has the meaning established in Section 2.1.

“Utility Rate” means the applicable all-inclusive electric service rate per kilo-Watt-hour (kWh) charged to Host Customer by the Host Utility (including a municipal or cooperative utility, as applicable) serving Host Customer in the service territory in which Premises are located. The Utility Rate shall include all electric charges, transmission, distribution or other delivery charges, ancillary service charges, demand charges, transition or competitive service charges, taxes, and other fees and charges in effect.

Section 1.2 Interpretation.

In this Agreement, unless the context requires otherwise, the singular includes the plural and the plural the singular, words importing any gender include the other gender; references to statutes, sections, or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section, or regulation referred to; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation” or “but not limited to” or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, annexes, or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits and appendices attached thereto and all subsequent amendments and other modifications to such instruments, and references to Persons include their respective successors and permitted assigns.

Section 1.3 Service Agreement.

The Parties intend that this Agreement be treated as a “service contract” within the meaning of Section 7701(e) of the Internal Revenue Code.

ARTICLE II
TERM

Section 2.1 Service Term.

The term of this Agreement (the “Term”) shall commence on the Effective Date and shall terminate on the 15th anniversary of the Commencement Date, unless terminated earlier, or extended pursuant to the option, in accordance with the terms and conditions in this Agreement. ^{11/30/11 till 2026}

Section 2.2 Construction Period.

The period commencing on the Effective Date and continuing to the Commencement Date shall be the “Construction Period”.

ARTICLE III
CONSTRUCTION AND INSTALLATION OF SYSTEM

Section 3.1 Construction of System.

During the Construction Period:

Section 3.1.1 System Owner shall install, construct, service, and test the System consistent with the specifications set forth in Exhibit A, all in a good and workmanlike manner and in accordance with all applicable laws and regulations.

Section 3.1.2 System Owner may hire independent contractors to design, build, install, construct, service, and test the System (each, a "Contractor"). Such Contractors may use subcontractors (who for purposes of this Agreement shall be deemed Contractors) for any part or all of the services contracted by System Owner. System Owner shall require any Contractors and each of their respective subcontractors to have all licenses, and registrations reasonably necessary or customary to perform the services to be performed by such Contractor or subcontractor.

Section 3.1.3 Host Customer shall provide System Owner, its employees, Contractors, invitees, agents, and assigns access to the Site, and as may be necessary, upon reasonable advance notice, to the Premises, in order to construct and test the System.

Section 3.1.4 System Owner shall procure or shall ensure that the Contractors have procured and shall maintain insurance in respect of the design, construction, and installation of the System in accordance with requirements of this Section 3.1.4 and at minimum amounts set forth in Section 18.

The insurance shall: (i) be maintained with insurers with a Best's rating of at least "A", Financial Class Size VIII, (ii) be in the name of such Contractor, (iii) include Host Customer and its officials, officers, employees, agents, volunteers, and representatives as additional insureds under the commercial general liability policy, and (iv) be primary, without right of contribution, to any insurance maintained by Host Customer. System Owner shall ensure that each Contractor shall furnish to Host Customer upon the issuance of notice of commencement of construction pursuant to Section 3.1. a certificate of insurance for such coverage stating the name of the insurance company and policy number, the policy period, the named insured and address, a description of coverage, policy limits, a description of location of covered operations, the name and address of the certificate holder, a notice of cancellation provision, and an authorized signature and date. Such certificate shall further indicate that the insurance will not be cancelled unless thirty (30) days' (ten (10) days if cancellation is due to nonpayment of premium) prior written notice has been given to the Host Customer. In the event the Contractors' insurance carriers do not agree to this notice requirement, the System Owner will provide written notice to the Host Customer, within five (5) Business Days', of System Owner's receipt of any such notice from an insurance carrier(s) of cancellation or non-renewal of the required insurance. For the avoidance of doubt, the failure of any Contractor to provide such certificate shall not be deemed to be a waiver by Host Customer of any of Contractor's or System Owner's obligations hereunder.

Section 3.2 Location of System.

The System shall be situated on the Site as set forth and in accordance with Exhibit A.

Section 3.3 Schedule.

System Owner will give the Host Customer at least five (5) Business Days' written notice prior to the commencement of construction, together with a proposed construction schedule and an estimated Commencement Date. System Owner will notify Host Customer of any material changes to the proposed schedule and the estimated Commencement Date during the Construction Period. The System Owner (or its Contractor) will endeavor to coordinate construction activities with the Host Customer so as to ensure that there will be no interference with normal operations at the Premises.

System Owner will work diligently toward completion of construction and Interconnection by September 30, 2012.

Section 3.4 Construction Period Electricity.

The System Owner or its Contractors may test the System during the Construction Period. Any energy generated and delivered to the Delivery Point incidental to testing during the Construction Period or before the Commencement Date shall not be considered to be Output for the purposes of accounting or payments.

Section 3.5 Construction Related Energy Supply and Water Supply.

The System Owner shall self-supply or purchase from another source all energy and water the System Owner needs to construct the System.

ARTICLE IV
CONNECTION AND DELIVERY POINT

Section 4.1 Delivery.

Title to, risk of loss, and custody and control of, the Output shall pass from System Owner to Host Customer at the Delivery Point.

Section 4.2 Connection.

System Owner, on behalf of Host Customer, is responsible for arranging for Interconnection of the System to the Host Utility and is solely responsible for all equipment, maintenance, and repairs associated with such Interconnection equipment in accordance with the terms and conditions of this Agreement and the Interconnection Agreement.

Section 4.3 System Operation and Status of Delivery Point Circuit Breaker Prior to Interconnection

The Host Customer will lock open its Delivery Point Circuit Breaker until Host Utility authorization for testing and demonstration of proper operation of the System is obtained by the

System Owner and provided to the Host Customer. The Host Customer will then close the Delivery Point Circuit Breaker for the duration of testing as directed by the System Owner and authorized by the Host Utility. The System Owner will accommodate, as part of this testing, the Host Customer's testing, verification, and calibration as necessary of the Delivery Point Circuit Breaker over current and reverse current trip functions, other trip functions, and integral and transmitted power and power quality readings and settings.

ARTICLE V

PURCHASE AND SALE OF OUTPUT

Section 5.1 Commencement Date.

System Owner will give Host Customer not less than five (5) Business Days' prior written notice (the "Interconnection Notice") that the System has completed testing and that the System has satisfied the requirements of the Host Utility for Interconnection. The date of interconnection shall be the Commencement Date.

Section 5.2 Sale and Delivery of Output.

Beginning on the Commencement Date or To Be Determined, whichever is later, System Owner will deliver and sell all of the Output at the Delivery Point, and Host Customer shall purchase all of the Output at the Delivery Point, and continuing until the end of the Term.

Section 5.3 System to Reduce Other Electric Purchases.

The Parties acknowledge that the System is not expected to meet the entirety of Host Customer's demand for Electricity. To the extent that at any time the Output is insufficient to meet all of Host Customer's Electricity demand, Host Customer shall be responsible for purchasing and paying for Electricity from other sources.

Section 5.4 Sale of Potential Output; Sale Only to Host Customer

If generation and delivery of Output is foregone or reduced due to an act or omission of the Host Customer and such foregone Output is not due to (i) a Force Majeure Event (ii) an act or omission of System Owner, or (iii) a System failure, Host Customer shall purchase all of the Potential Output. Notwithstanding the preceding sentence, Host Customer shall also purchase and pay for any Potential Output on those occasions where the Host Utility is able to receive such Output from the System and apply net metering program credit to Host Customer's account. Host Customer shall pay System Owner an amount equal to the applicable Solar Electricity Price as expressed in Section 6.1 of this Agreement multiplied by the calculated Potential Output that would have been paid during the period of the temporary shutdown, curtailment, or foregone Output (Potential Output shall be calculated based on the Projected Output expressed in Exhibit B as adjusted by the actual historical production of electricity by the System). The average hourly production shall be reduced at a rate of 0.5% per year following the first year of the agreement.

In no event shall System Owner sell, or be deemed to have sold, Output to any Person other than Host Customer.

Section 5.5 Taxes.

System Owner is responsible for payment of local, state, and federal income taxes attributable to System Owner for income received under this Agreement and for any personal property taxes, license taxes, or privilege taxes attributable to ownership or usage of the System. System Owner agrees to bear and pay when due any sales or gross receipts tax, to the extent applicable, imposed upon System Owner a seller of Electricity, to the extent of and in the same amount as any similar sales, use, excise or gross receipts that is included in the Utility Rate. If such a sales, use, excise or gross receipts tax is attributable to the sale of Output from System Owner to Host Customer, but not otherwise included or includable in the Solar Electricity Price, then Host Customer agrees to bear the costs of such sales or gross receipts taxes and shall either pay such taxes or reimburse System Owner if paid by System Owner. System Owner shall not be obligated for any taxes payable by or assessed against Host Customer.

ARTICLE VI
PURCHASE PRICE, INVOICING AND PAYMENT

Section 6.1 Solar Electricity Price.

The price for Output shall be at a fixed price of \$0.1475 per kilowatt-hour for years one (1) through fifteen (15) (the "Solar Electricity Price").

Section 6.2 Invoices.

Host Customer and System Owner shall make arrangements directly with the Host Utility to obtain the Meter data that will be the basis of each System Owner Invoice for Output. Not later than five (5) business days following its receipt of such Meter data, System Owner shall prepare and provide the Host Customer an invoice for the Output delivered to the Host Customer in the prior month (or partial month) commencing with the month in which the Commencement Date occurs and continuing thereafter until the last full month in the Service Term. The amount due for the Output delivered or Potential Output for such month shall be determined by multiplying the Solar Electricity Price by the Output or Potential Output for such month, and each invoice shall set forth in reasonable detail the calculation of all amounts owed, including any amounts owed pursuant to Section 5.4 and Section 6.1 of this Agreement. A sample invoice calculation is shown on Exhibit C. Delays in the issuance of any such invoice shall not constitute any waiver of Host Customer's obligation to pay, or System Owner's right to collect, any payment due System Owner under any such invoice.

Section 6.3 Payments.

Host Customer shall pay the undisputed amount of each invoice on or before the thirtieth (30th) calendar day following receipt thereof ("Due Date"). All payments made by Host Customer under this Agreement shall be made in the form of a check payable to MLH CRIPPLE CREEK

SOLAR, LLC at the address for notices set forth in Section 20.4, as such address may be modified by System Owner by notice to Host Customer in writing.

Section 6.4 Late Fees.

To the extent permitted by New Mexico law, if any undisputed part of a monthly payment is not made by the Host Customer or the System Owner within thirty (30) calendar days following the Due Date, the Host Customer or the System Owner agrees to pay a late fee that shall accrue on the basis of twelve percent (12%) per annum (or such lower percentage as and if required by applicable law) on the amount of such late payment from the Due Date until the date of payment ("Late Fee"). The calculation of Late Fees shall not constitute any waiver of the Party's obligation to pay such amounts when due or a Party's right to collect such amounts or to exercise any other right or remedies it may have for failure to pay such amounts when due under this Agreement or now or hereafter existing at law or in equity or otherwise.

ARTICLE VII
METERING

Section 7.1 Installation of Meter.

The System Owner shall provide as part of the System the metering infrastructure hardware required by the Host Utility's standards for installation of the Meter. When the infrastructure is ready as demonstrated by the System Owner to the Host Customer, the System Owner and the Host Customer shall request that the Host Utility furnish and set the Meter and commence testing of the System for interconnected operations.

Section 7.2 Meter Testing and Calibration.

The Host Utility provides renewable energy generation data on its monthly invoices. If there is a discrepancy between the System Owner's Meter and the amount reported by the Host Utility by greater than one half of one percent, then either the Host Customer or System Owner may request accuracy testing and calibration of the Meter by the Host Utility. The cost, if any, of such testing shall be borne by the requesting Party.

Section 7.3 Meter Reading Dispute Resolution

Either the System Owner or the Host Customer may invoke the Host Utility's current Meter Reading Dispute Resolution Process at any time and shall pay the Host Utility's charges.

Section 7.4 Alternative Measures in Event of Meter Non-Operability.

In the event the Meter is out of service or the Parties agree to jointly dispute the accuracy of a monthly measurement of Output by the Meter, the Output shall be determined by the following alternatives, and in the following order: (a) the best of any alternative or back-up meter that System Owner or the Host Customer may have installed as demonstrated by mathematical analysis of historical simultaneous readings of the Meter and the alternative or back up meter; or

(b) calculating the Output in an agreed manner for such period of Meter inoperability using the System Projected Output tables in Exhibit B as a basis for such calculation.

Section 7.5 Retroactive Adjustment of Historical Invoice for Meter Error

Any disputed reading of the Meter may be the basis of either Party invoking the Meter Reading Dispute Resolution Process. In that event, the Host Customer shall pay to the System Owner the amount calculated in accordance with Section 7.4. The System Owner shall submit a corrected invoice to the Host Customer for each billing period invoice questioned. The corrected invoice shall reflect the finding of the Host Utility. The parties shall use their best efforts to fully resolve any and all disputed monthly invoices prior to the due date for the final invoice of Host Customer's fiscal year.

ARTICLE VIII
SITE USE AND ACCESS

Section 8.1 Notice-to-Proceed

System Owner shall not commence construction activities on the Site until the City of Santa Fe has issued the Notice-to-Proceed.

ARTICLE IX
ENVIRONMENTAL CREDITS

Section 9.1 Environmental Credits.

All Environmental Certificates (Renewable Energy Credits), whether available directly or indirectly, shall be the property of the Host Customer for the Term of this agreement.

Section 9.2 Environmental Credits Documentation.

System Owner, at no additional cost to the Host Customer, agrees to fully cooperate and to timely complete any and all documentation reasonably required by any mandatory or voluntary program governing the existence or trade of Environmental Credits, including documentation required to verify the Environmental Credits, including Renewable Energy Credits.

ARTICLE X
CONDITIONS PRECEDENT TO THE PARTIES' OBLIGATIONS

Section 10.1 Conditions Precedent to the System Owner's Obligations

Subject to the terms and conditions of this Agreement, and unless waived by System Owner, System Owner's obligations to initiate construction of the System on the Site under this Agreement are conditioned upon the occurrence of the following:

Section 10.1.1 Necessary Governmental Approvals. System Owner shall have filed all applicable applications and certifications and shall have obtained all approvals, permits, licenses and authorizations necessary for the construction and installation of the System.

Section 10.2 Conditions Precedent to the Host Customer's Obligations.

Subject to the terms and conditions of this Agreement, and unless waived by Host Customer, Host Customer's obligations under this Agreement are conditioned upon the occurrence of the following:

Section 10.2.1 The System Owner shall have applied for on behalf of the Host Customer and received from the Host Utility an Interconnection Agreement, Renewable Energy Credit Agreement, and Net Metering Agreement with respect to the Output of the System.

Section 10.2.3 The System Owner shall have applied for and received all necessary permits, licenses, approvals and authorization for construction of the PV System. Notwithstanding the foregoing, this Section 10.2.3 shall be deemed waived and satisfied upon the Commencement Date.

Section 10.3 Reasonable Efforts.

System Owner and Host Customer each agrees to use reasonable efforts to satisfy the applicable conditions precedent set forth above as promptly as practicable after the Effective Date.

Section 10.4 Ownership of Approvals.

All permits and approvals obtained pursuant to Section 10.1 shall be owned and controlled by System Owner. To the extent that any such permits or approvals must be obtained and/or owned by Host Customer, then Host Customer agrees that it will reasonably cooperate with the gaining of all such permits and approval to the extent necessary.

ARTICLE XI
REPRESENTATIONS

Section 11.1 Host Customer Representations.

Host Customer makes the following representations and warranties to System Owner as of the Effective Date:

Section 11.1.1 Due Authorization. Host Customer has the power and authority to enter into this Agreement and perform its obligations hereunder and has taken all necessary action to authorize the execution, delivery and performance of this Agreement. Host Customer has duly executed and delivered this Agreement and this Agreement constitutes the valid and legally binding obligations of Host Customer, enforceable in accordance with its terms.

Section 11.1.2 No Consent Required. Host Customer has all the rights required to enter into this Agreement and perform its obligations hereunder without the consent, approval, permit or authorization of any third party, and without notice to any third party, other than these notices that have been given.

Section 11.1.3 No Conflict. This Agreement is enforceable against Host Customer in accordance with its terms and does not conflict with or violate the terms of its organizational documents, or any laws, rules, regulations, or agreements to which the Host Customer is a party.

Section 11.1.4 Ability to Perform. Host Customer has no knowledge of any facts or circumstances that, but for the passage of time, could materially adversely affect its ability to perform its obligations hereunder.

Section 11.1.5 Absence of Litigation. There is no litigation pending or, to the knowledge of Host Customer threatened against Host Customer which could have a material adverse effect on its business, operations, financial condition, or its existing electricity load profile or its ability to perform its obligations under this Agreement.

Section 11.1.6 All the necessary permits, licenses, approvals and authorization for construction of the PV System upon the Premises are in full force and effect, and no default by Host Customer has occurred under such permits that has not been cured and Host Customer has not received any notice, claim or other form of communication that it is in default under the same.

Section 11.2 System Owner Representations.

System Owner makes the following representations and warranties to Host Customer as of the Effective Date:

Section 11.2.1. Due Authorization. System Owner is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware and has full power to engage in the business it presently conducts and is in good standing under the laws of the State of New Mexico. System Owner has the power and authority to enter into this Agreement and perform its obligations hereunder and has taken all corporate or other action to authorize the execution, delivery and performance of this Agreement and no other action on the part of System Owner or on the part of its equity owners is necessary. System Owner has duly executed and delivered this Agreement and this Agreement constitutes the valid and legally binding obligations of System Owner, enforceable in accordance with its terms.

Section 11.2.2 No Conflict. This Agreement is enforceable against System Owner in accordance with its terms and does not conflict with or violate the terms of its organizational documents, any other agreement to which System Owner is a party, or applicable law.

Section 11.2.3 Ability to Perform. System Owner has no knowledge of any facts or circumstances that, but for the passage of time, would materially adversely affect System Owner's ability to perform its obligations hereunder.

Section 11.2.4 No Consent Required. System Owner has all the rights required to enter into this Agreement and perform its obligations hereunder without the consent, approval, permit or authorization of any third party.

Section 11.2.5 Absence of Litigation. There is no litigation pending or, to the knowledge of System Owner, threatened against System Owner which could have a material adverse effect on its business, operations, financial condition or prospects or its ability to perform its obligations under this Agreement.

Section 11.2.6 No Material Changes. Since the date of its formation, System Owner has not experienced any material changes to, its creditworthiness or the results of its business or financial condition, profile that could have a material adverse effect on the Host Customer or the System.

Section 11.2.7 Projected Output. The System Owner has calculated the Projected Output set forth in Exhibit B in accordance with its normal professional practices and expects the System Output will meet or exceed the Projected Output.

Section 11.2.8 Ability to Complete Construction and Interconnection. The System Owner has the capacity to complete Interconnection by September 30, 2012 and will meet the deadline unless due to actions or omissions of the Host Customer the Host Utility, or government authorities or the occurrence of a Force Majeure event which prevents such timely completion.

ARTICLE XII COVENANTS OF THE PARTIES

For the Term of the Agreement, the Parties hereby covenant as follows:

Section 12.1 Additional Consent and Approvals.

The Parties shall work together cooperatively to assist one another in procuring and maintaining all necessary easements, rights of way, leases, licenses, consents and approvals, including the completion of the Interconnection Agreement, Net Metering Agreement, and Renewable Energy Credit Agreement between the Host Customer and the Host Utility and other rights the Parties deem necessary or desirable for the construction and installation of the System, the production and delivery of Output to the Delivery Point, and the operation and maintenance of the System under this Agreement, provided however that the cost for the same shall be attributed to the Party responsible for obtaining such consent or approvals. System Owner and Host Customer shall each provide one another with a copy of all such permits, licenses, leases, consents and approvals, including copies of those approvals, permits, and related documents. Any easements, leases, licenses or any other agreement that will burden the Site must be pre-approved in writing by Host Customer, which approval shall not be unreasonably withheld.

Section 12.2 Repair and Maintenance of the System

Section 12.2.1 System Owner shall use commercially reasonable efforts to maintain the System in good working order, and shall operate the System in accordance with manufacturer's

specifications, Host Utility requirements, applicable laws, regulations and ordinances. System Owner shall promptly repair any damage to or failure of the System.

Section 12.2.2 Host Customer shall be responsible for maintaining and fulfilling all its respective (i) obligations to the interconnected Host Utility and any other electric service provider, including with respect to the Interconnection Agreement, Net Metering Arrangement, and Renewable Energy Credit agreement, and (ii) requirements imposed by the Host Utility and/or other electric service provider and any federal, state or local government agencies with respect to such services.

Section 12.2.3 System Owner, on behalf of the Host Customer, shall be responsible for maintaining and fulfilling all its respective obligations to the Host Customer and Host Utility, including implementing operations and maintenance in accordance with the Interconnection Agreement and all requirements imposed by the Host Utility and any federal, state or local government agencies with respect to such services for the generation and sale of the Output to the Host Customer.

Section 12.3 Contractors.

System Owner may engage Contractors to operate and maintain the System. Such Contractors may use subcontractors for any part or all of the services contracted by System Owner. System Owner shall require any such Contractors and subcontractors to have all licenses, registrations and insurance coverage as required by this Agreement for such service providers and shall provide copies of same to Host Customer upon request. System Owner shall ensure that such Contractors and subcontractors comply fully with the terms of this Agreement. Host Customer agrees to provide System Owner, its employees, Contractors, invitees, and assigns access to the Site during the Term of this Agreement.

Section 12.4 Ownership of System by System Owner.

Host Customer and System Owner agree that the System is and shall at all times be the personal property of System Owner severable from the Site and the Premises and shall not become or constitute a fixture. If any person attempts to claim ownership of or other rights to System by asserting any claim against or through Host Customer and such claim is not attributable to any act or omission of System Owner, its agents, contractors, or employees, Host Customer agrees to take necessary action to protect System Owner's title to the System. Host Customer will at all times keep the System free from any legal process and any lien not attributable to any act or omission of System Owner, and will give System Owner immediate notice if any legal process or lien is asserted or made against the System or against Host Customer where the System may be subject to any lien, attachment or seizure by any Person. The Host Customer shall not take any position on any tax return or on any other filings indicating that it is the owner of the System.

Section 12.5 Interconnection; Compliance.

Section 12.5.1 During the Construction Period, System Owner will obtain all permits, approvals, and other authorizations that may be required by any governmental agency or authority or by the interconnected Host Utility in connection with the Interconnection of the System to the Host Customer at the Delivery Point. System Owner will use commercially reasonable efforts to assist Host Customer by providing technical information for the completion of the Interconnection Agreement.

Section 12.5.2 System Owner and Host Customer will comply with such permits, approvals, and authorizations described in Section 12.5.1 above in effect at all times during Service Term, and at all times during the Service Term shall comply with such other authorizations and applicable requirements of the Host Utility necessary for the flow of Electricity from the System to the Host Utility's system.

Section 12.5.3 The Host Customer will execute the Interconnection Agreement within two business days of receipt of the Interconnection Agreement from the Host Utility, provided that it is materially identical in form to that form provided one month previously to the Host Customer by the System Owner and it is materially identical to the Host Utility's current standard form. Otherwise, the System Owner will grant to the Host Customer up to ten (10) business days for legal and management review by the Host Customer.

Section 12.5.4 The System Owner shall comply with all applicable requirements of the Host Utility regarding the quality of Electricity produced by the System with regard to power factor and electrical noise, spikes, harmonic content, phase imbalance, sine wave distortion and all other applicable measures of the quality of the Electricity.

Section 12.5.5 The Host Customer, following the execution of the initial Interconnection Agreement pursuant to Section 12.5.3, shall not amend or modify such agreement, without the prior written consent of the System Owner, which consent shall not be unreasonably withheld.

Section 12.6 Notice of Malfunction; Non-Interference.

Section 12.6.1 Each Party shall notify the other immediately upon actual knowledge of (a) any material malfunction of or damage to the System, (b) to the Meter, or (c) any other matters that could reasonably be expected to adversely affect the System, the Site, or the Premises.

Section 12.6.2 Host Customer may not adjust, modify, maintain, alter, or interfere with service from the System, except as authorized in writing by System Owner or in the event of an emergency where there is an imminent threat to life or property; provided that Host Customer shall give System Owner (or its contractor) immediate notice in such event. The Host Customer's operation and maintenance of the Medium Voltage Switchgear are exempt from the requirements of this paragraph.

Section 12.7 Financing Incentives; Financing.

Host Customer agrees to take all action reasonably requested by System Owner in order for System Owner to obtain all rebates or subsidies that would be applicable under this

Agreement, in connection with the installation and operation of the System by any state, local or federal government, utility or other source, but at no cost to Host Customer.

Section 12.8 Status of Premises and Site.

In the event that any or all of the Site is or becomes subject during the term of this Agreement to a lease, security interest, lien or mortgage, City of Santa Fe shall use reasonable efforts to have such holder of any such security interest, lien or mortgage enter into a recognition agreement with System Owner reasonably acceptable to System Owner acknowledging and recognizing System Owner's rights under this Agreement and acknowledging that the System is the personal property of System Owner severable from the Site and not a fixture.

ARTICLE XIII
DEFAULT

The occurrence of any of the following events shall be an "Event of Default" under this Agreement.

Section 13.1 Host Customer's Failure to Pay.

Host Customer's failure to make timely payments when due under Sections 6.3 of this Agreement.

Section 13.2 Material Misrepresentation as of Effective Date.

If any of the representations and warranties made by a Party hereunder shall have been inaccurate in any material respect (or if a representation or warranty is qualified by materiality, such representation or warranty is inaccurate in any respect) as of the Effective Date, and such inaccuracy or the effect thereof, to the extent it can be cured, is not cured within 30 days from the earlier of (a) notice from the non-breaching Party and (b) the discovery or determination by the breaching Party of the misrepresentation; provided that if the breaching Party commences an action to cure such inaccurate representation within such thirty (30) days, and thereafter proceeds with all due diligence to cure such failure the cure period shall extend for an additional sixty (60) days.

Section 13.3 Bankruptcy.

If any Party becomes the subject of a winding-up or liquidation order or petition (whether compulsory or voluntary), or insolvent, or the subject of an administration order, or (ii) entering into any composition or arrangement with creditors or (iii) having a receiver appointed over the whole or any portion of its assets.

Section 13.4 Failure to Meet Provisions of this Agreement.

A failure by any Party to perform fully any provision of this Agreement other than as explicitly set forth in this Article XIII and either (a) such failure continues for a period of thirty

(30) days after written notice of such nonperformance or (b) the nonperforming Party commences an action to cure such failure to perform within such thirty (30) days, and thereafter proceeds with all due diligence to cure such failure, and such failure is still not cured within sixty (60) days after the expiration of the initial thirty (30) day period.

ARTICLE XIV FORCE MAJEURE

Section 14.1 Force Majeure.

Section 14.1.1 Neither System Owner nor Host Customer shall be considered to be in default in the performance of its obligations under this Agreement or liable for any delay or failure to comply with this Agreement to the extent that performance of any of its obligations hereunder is prevented or delayed by a Force Majeure Event.

Section 14.1.2 If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party affected by a Force Majeure Event shall use commercially reasonable efforts to remove or repair the cause of the Force Majeure Event and shall resume performance of its obligations as soon as reasonably practicable, and shall notify the other party in writing of the cessation or termination of the Force Majeure Event.

Section 14.2 Termination

Section 14.2.1 Any Party shall be entitled to terminate this Agreement upon thirty (30) days prior written notice to the other Party if any Force Majeure Event has been in existence for a period of one hundred fifty (150) consecutive days or longer, unless such Force Majeure Event ceases prior to the expiration of such thirty (30) day period. In the event of a termination of this Agreement pursuant to this Section 14.2.1, System Owner shall retain title to the System and shall remove it from the premises. Host Customer shall allow System Owner, its employees, agents, assigns Contractors and invitees reasonable access to the Site to remove the System from the Site within ninety (90) days after such termination.

ARTICLE XV TERMINATION AND PARTIES' RIGHTS

Section 15.1 Termination for Default.

Section 15.1.1 Upon the occurrence and during the continuation of any Event of Default hereunder, the non-defaulting Party shall have the option but not the obligation to terminate this Agreement, by providing written notice of termination to the defaulting Party.

Section 15.1.2 If such termination occurs as a result of Host Customer's default System Owner shall retain title to the System and shall remove it from the premises. Host Customer shall allow System Owner, its employees, agents, assigns, Contractors and invitees reasonable access to the Site to remove the System from the Site within ninety (90) days after such termination, and shall make or have made promptly any repairs to the Site to the extent necessary to repair any adverse impact such removal causes to the Site; provided, that Host Customer shall be responsible for the reasonable costs associated with any such repairs.

Section 15.1.3 If such termination occurs as a result of the System Owner's default, then System Owner shall retain title to the System and shall remove it from the premises. Host Customer shall allow System Owner, its employees, agents, assigns, Contractors and invitees reasonable access to the Site to remove the System from the Site within ninety (90) days after such termination, and System Owner shall make or have made promptly any repairs to the Site to the extent necessary to repair any adverse impact such removal causes to the Site.

Section 15.1.4 Termination pursuant to this Section 15.1 shall not eliminate the non-defaulting Party's right to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise, except to the extent limited by this Agreement.

Section 15.2 Substitute Solar Energy Agreement.

Notwithstanding any other provision of this Agreement to the contrary, in the event that Host Customer terminates this Agreement because it will no longer occupy the Site or the Premises, Host Customer shall use commercially reasonable efforts to facilitate discussions between System Owner and a successor occupant of the Site and Premises regarding the sale of Output to such new occupant if there is a successor occupant.

Section 15.4 Option to Purchase.

Host Customer shall have the option on the sixth anniversary of the Commencement Date and again at each subsequent anniversary of the Commencement Date, exercisable by written notice thereof from Host Customer to System Owner not later than 60 days following the relevant anniversary date, to purchase the System from System Owner at a price equal to the Fair Market Value at the time such option is exercised. Host Customer acknowledges that System Owner makes no representation or promise as to the Fair Market Value at any future time. This Agreement shall terminate upon Host Customer's purchase of the System pursuant to the exercise of the purchase option set forth in this Section 15.4 without any further payment; provided, however, that the foregoing shall not relieve any party of any obligation or liability that had accrued hereunder prior to termination. Upon Host Customer's payment for the System, System Owner shall furnish the System, including all components thereof and operation manuals, in the condition at the time of determination of the Fair Market Value, subject to normal wear and tear free and clear of all liens other than any liens attributable to the actions of Host Customer

"Fair Market Value" of the System is the price that would be established in an arm's-length transaction between an informed and willing buyer and an informed and willing seller for the equipment that comprises the System as installed on the Premises. The parties shall first

attempt to reach mutual agreement on the Fair Market Value. If after thirty (30) days Host Customer and System Owner cannot agree to the Fair Market Value, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from System Owner to Host Customer at Host Customer's sole expense.

Section 15.5 Option to Purchase at End of Term.

Section 15.5.1 Provided that Host Customer has fulfilled all obligations to System Owner under this Agreement, at the expiration of the Service Term, Host Customer shall have the option to purchase the System by notifying System Owner in writing at least one hundred eighty (180) days prior to the end of the applicable term that Host Customer intends to exercise its option under this Section 15.5.

Section 15.5.2 If Host Customer exercises its option under this Section 15.5, Host Customer shall pay System Owner an amount equal to the Fair Market Value of the System as agreed upon by the Parties.

Section 15.5.3 Upon Host Customer's payment for the System, System Owner shall furnish the System, including all components thereof and operation manuals, in the condition at the time of determination of the Fair Market Value, subject to normal wear and tear free and clear of all liens.

Section 15.5.4 If Host Customer chooses to exercise its purchase option pursuant to this Section 15.5, System Owner shall replace the System inverter(s), unless the System inverter(s) have been replaced subsequent to the tenth (10th) anniversary of the Commencement Date.

Section 15.5.5 Upon transfer of ownership of the System to Host Customer, System Owner shall have no further obligation with respect to the performance, installation, or operation of any part or component of the System.

Section 15.6 Option to Renew Agreement.

Provided Host Customer has fulfilled all material obligations to System Owner under this Agreement and is not in default of this Agreement, at the expiration of the Service Term, Host Customer shall have the option to renew this Agreement for one (1) five (5) year period upon the same terms and conditions except for the Solar Electricity Price which shall be mutually agreed upon by Host Customer and System Owner at the expiration of the Service Term. In the event Host Customer elects to renew this Agreement pursuant to this Section 15.6, Host Customer shall provide System Owner written notice of its election to renew upon at least ninety (90) days prior to the expiration of the Service Term.

Section 15.7 Host Customer Declines Option to Renew Agreement.

Provided that Host Customer has fulfilled all material obligations to System Owner under this Agreement and is not in default of this Agreement, and in the event Host Customer fails to renew this Agreement at the expiration of the Service Term as provided for in Section 15.6, System Owner shall remove the System and restore the Site to its original condition within 120 days after the expiration of the Service Term.

ARTICLE XVI
LIABILITY; INDEMNIFICATION

Section 16.1 Indemnity.

To the extent permitted by New Mexico law and to the extent covered by the insurance required under this Agreement, each Party shall indemnify, defend and hold harmless the other party, and all of their respective present or future elected officials, officers, directors, shareholders, employees, agents, volunteers and representatives from and against any and all losses, damages, liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses (including, but not limited to, reasonable costs of defense, settlement, and reasonable attorney's fees), which may be asserted against any or all of them by any person or governmental agency, or which any or all of them may hereafter suffer, incur, be responsible for or pay out, including damages in connection with bodily injuries (including, but not limited to, present and future death, sickness, disease and emotional or mental distress) to any person (including the indemnified Party's employees), damage (including, but not limited to, loss of use) to any property (public or private), or any violation or alleged violation of any laws, to the extent caused or arising out of a party's (a) negligent acts or omissions or (b) breach of its obligations, covenants or warranties hereunder. For purposes of interpretation of this Section 16.1 the term "party", when referring to the Host Customer, shall include the respective elected officials, officers, employees, agents, volunteers and representatives of the City of Santa Fe.

Section 16.2 Consequential Damages and Limitation of Liability.

Except to the extent specifically provided elsewhere in this Agreement, neither Party will be liable to the other for special, indirect or consequential damages arising out of the performance or non-performance of this Agreement, whether caused by negligence, tort, strict liability, breach of contract, or breach of warranty, including damages in the nature of loss profits or revenues, loss of use of facilities, or equipment or inability to perform contracts with third parties (other than for any damages incurred under such contracts), other than for damages resulting from the claims of parties not a party to this Agreement.

Section 16.3 Liability and Responsibility.

Host Customer. Subject to the New Mexico Tort Claims Act and other applicable law, Host Customer agrees to pay System Owner for the costs and expenses relating to any repairs to, direct or indirect harm to, or loss of the System, to the extent resulting from the action or inaction

of Host Customer or any of its contractors, agents, tenants, employees, partners, owners, subsidiaries, or affiliates. If such harm to or loss of the System results in the Site or the System becoming unusable in whole or in part by the casualty, and such casualty event causes a material reduction in the Output of the System or diminishes the ability of the System Operator to operate the System, and, if such damage shall be so extensive that System Owner, in its sole but reasonable judgement, determines not to rebuild, then System Owner shall have the right to cancel this Agreement by notice to Host Customer within one hundred eighty (180) days after the date of such damage.

System Owner. System Owner agrees to pay Host Customer for the costs and expenses relating to any repairs to, direct or indirect harm to, or loss of Host Customer's personal property or fixtures on the Premises, to the extent resulting from the action or inaction of System Owner or any of its contractors, agents, employees, partners, owners, subsidiaries or affiliates. If such harm to or loss to all or a portion of the Premises other than the Site shall be so damaged that in the sole but reasonable opinion of Host Customer the Premises should be restored in such a way as to alter the Site materially, Host Customer may cancel this Agreement by notice to System Owner given at any time within one hundred eighty (180) days after the date of such damage.

ARTICLE XVII INTERRUPTION OF SERVICE

Section 17.1 Interruptions Are Expected.

The Parties acknowledge and understand that the System consists of intermittent generation facilities. This Agreement provides no warranty or guaranty to Host Customer with respect to the supply of Electricity. System Owner shall not be liable for any damages caused by or resulting from any interruption in Electricity during the Term, other than if caused by System Owner or its agents, contractors or subcontractors, nor shall System Owner be responsible for the cost of alternative supplies of Electricity during any such interruption. If the capability of the System to produce and deliver Electricity is interrupted, other than as a result of the acts or omissions of Host Customer or as otherwise provided herein, System Owner will make commercially reasonable efforts to restore Output in a timely manner.

Section 17.2 Obstructions.

Section 17.2.1 Host Customer shall not install or permit to be installed on the Premises (or any other property owned or controlled by City of Santa Fe) any physical obstruction to the operation of the System that would reduce or block sunlight or otherwise interfere with the System or reduce Output.

Section 17.2.2 In the event that any obstruction that could reasonably be expected to reduce the Output is proposed to be erected or installed on property other than the Premises, Host Customer and System Owner mutually agree to cooperate with one another in opposing the erection of such obstruction.

Section 17.3 System Owner's Interruption of Output.

Notwithstanding anything to the contrary herein, System Owner shall have the reasonable right to interrupt, reduce or discontinue the delivery of Output for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of Output, or at the direction of authorized governmental authorities or electric utilities. Other than in the event of unexpected interruptions or in the event of an emergency, System Owner shall give Host Customer written notice at least five (5) Business Days prior to an interruption of Output deliveries and an estimate of the expected duration of the interruption. To the extent practical, all maintenance and repairs to the system will be performed during off peak hours, and in a manner that would not require a complete interruption in Output of the overall System. In no case shall any System Owner's interruption of Output or failure of the System be construed by the System Owner as Potential Output.

Section 17.4 Host Customer's Interruption of Output.

Notwithstanding anything to the contrary herein, Host Customer shall have the right for reasonable periods of time, which such periods shall be mutually agreed upon between Host Customer and System Owner, to interrupt the delivery of Output for purposes of inspection, maintenance, Host Utility feeder and buss tie-breaker interlocked circuit breaker switching operations, or replacement of the Medium Voltage Switchgear or any part thereof or at the direction of authorized governmental authorities or electric utilities. Host Customer shall give System Owner email or telephonic notice at least five (5) Business Days prior to a planned interruption of Output deliveries and an estimate of the expected duration of the interruption. To the extent practical, all maintenance and repairs to the System will be performed when there is no solar Output and in a manner that will minimize the duration of any complete interruption in Output of the overall System. Potential Output is created by any Host Customer discretionary interruption of Output at the Delivery Point. Host Customer agrees to pay all costs and expenses incurred to de-install and re-install the System, if required by Host Customer, during any delivery interruption, temporary shutdown or curtailment period. System Owner will be compensated for any Potential Output as discussed in Section 5.4 of this Agreement.

Section 17.5 Cost to Restore Service Following Interruption.

System Owner shall bear all costs associated with restoring service following any interruption in the capability of the System to produce and deliver Electricity from Solar irradiance resulting from (i) a failure of any component of the System, (ii) System Owner's operation of the System, or (iii) any failure of the System to automatically resume normal production of Electricity following any interruption of Host Utility power at the Delivery Point. Host Customer shall bear the costs associated with the restoration of the delivery of Output if an interruption of such supply of Electricity is the result of damage to the System or Meter caused by actions or inactions of Host Customer.

Section 17.6 Output Guaranty

After year six (6) of the term of the Agreement, if the System fails to generate at least 50% of Projected Output adjusted annually based on a -0.5% system degradation rate in each 12-month calendar period, and provided, however, that such reduced Output is not caused by a Force Majeure Event or act of Host Customer, the System Owner shall allow the Host Customer after written notification to remove the said system. The Host Customer shall provide a written notice to the System Owner outlining their intent to remove the system at 30 days prior to any action.

ARTICLE XVIII
INSURANCE

Section 18.1 Insurance Requirements.

18.1.1 Host Customer shall maintain without interruption from the Commencement Date until the expiration of the Term, with a company or companies rated A or above by A.M. Best, commercial general liability insurance in an amount not less than one million (\$1,000,000) dollars per occurrence. Such insurance shall name System Owner and its equity owners and any parties providing financing to System Owner for the System as additional insured. Host Customer shall furnish to System Owner within five (5) business days of issuance of notice of commencement of construction pursuant to Section 3.3 by System Owner and annually thereafter, a certificate of insurance for such coverage stating the name of the insurance company and policy number, the policy period, the named insured and address, a description of coverage, policy limits, a description of location of covered operations, the name and address of the certificate holder, a notice of cancellation provision, and an authorized signature and date. Such certificate shall further indicate that the insurance will not be cancelled unless thirty (30) days' prior written notice (10 days if cancellation is due to nonpayment of premium) has been given to System Owner and that System Owner is named as an additional insured under the commercial general liability policy. In the event the Host Customer's insurance carriers will not agree to this notice requirement, the Host Customer will provide written notice to the System Owner, the required notices within four working days of Host Customers receipt of notice from its insurance carrier(s) of cancellation or non-renewal of the required insurance. For the avoidance of doubt, the failure of Host Customer to provide such certificate shall not be deemed to be a waiver by System Owner of any of Host Customer's obligations hereunder.

18.1.2 At all times while this Agreement is in force, System Owner shall at its own expense maintain insurance in at least the amounts specified below. For the avoidance of doubt, such amounts are the minimum required and shall not be construed as a limitation on System Owner's liability or indemnification obligations hereunder:

(a) Commercial general liability (including products liability, completed operations and contractual liability coverage) at \$3,000,000 per occurrence combined single limit and \$5,000,000 in the aggregate.

(b) Commercial automobile liability insurance at \$3,000,000 combined single limit.

(c) Workers' compensation insurance as required by Applicable Law.

(d) Employer's liability insurance with the following limits:

Bodily Injury by Accident	\$500,000	Each Accident
Bodily Injury by Disease	\$500,000	Each Employee
Bodily Injury by Disease	\$500,000	Policy Limit

Without limiting the foregoing System Owner, at its sole cost and expense, shall keep in force at all times while this Agreement is in force an insurance policy which will provide All Risk Property insurance, including coverage for Earthquake, Machinery & Equipment coverage, on a Replacement Cost basis. Such policy shall include Business Interruption and, during any period of construction or reconstruction, Builders Risk coverage.

The insurance shall: (i) be maintained with insurers with a Best's rating of at least "A", Financial Class Size VIII, (ii) be in the name of System Owner, (iii) include Host Customer and its officials, officers, employees, agents, volunteers and representatives as additional insureds under the commercial general liability policy, and (iv) all policies shall be primary, without right of contribution, to any insurance maintained by Host Customer and its officials, officers, employees, agents, volunteers and representatives. System Owner shall furnish to Host Customer upon the issuance of notice of commencement of construction pursuant to Section 3.3 and annually thereafter a certificate of insurance for such coverage stating the name of the insurance company and policy number, the policy period, the named insured and address, a description of coverage, policy limits, a description of location of covered operations, the name and address of the certificate holder, a notice of cancellation provision, and an authorized signature and date. Such certificate shall further indicate that the insurance will not be cancelled unless thirty (30) days' (10 days if cancellation is due to nonpayment of premium) prior written notice has been given to Host Customer and that Host Customer and its officials, officers, employees, agents, volunteers and representatives are named as an additional insureds under the commercial general liability policy. In the event the System Owner's insurance carriers will not agree to this notice requirement, the System Owner will provide written notice to the Host Customer within four working days of System Owner's receipt of notice from its insurance carrier(s) of cancellation or non-renewal of the required insurance. For the avoidance of doubt, the failure of System Owner to provide such certificate shall not be deemed to be a waiver by Host Customer of any of System Owner's obligations hereunder.

ARTICLE XIX ASSIGNMENT

Section 19.1 Assignment.

Neither party may assign this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed; provided, however, that no such consent

shall be required if Host Customer assigns this Agreement to an affiliated entity or System Owner collaterally assigns its rights and obligations under this Agreement in connection with a financing of the System.

ARTICLE XX MISCELLANEOUS

Section 20.1 Independent Contractors.

Nothing in this Agreement, and no action taken by the parties under this Agreement, shall constitute a partnership, association, joint venture or other co-operative entity between the parties or make one party the agent or legal representative of the other. Neither party is herein granted, nor shall it hold itself out as having, any right or authority to assume or create any obligation, express or implied, on behalf of or in the name of the other. In fulfilling its obligations hereunder, each party is acting as an independent contractor.

Section 20.2 Disputes.

Any dispute, controversy or claim (each, a "Dispute") arising out of or relating to this Agreement or any breach or alleged breach hereof, either Party may request that the Dispute first be submitted to mediation for resolution. Prior to mediation (if requested by a Party) or the filing of a lawsuit, the parties, through a manager with authority to resolve the Dispute, shall meet and use their best efforts to resolve the Dispute. Mediation shall commence no later than thirty (30) days after submission of the Dispute and shall be conducted at the locality where the Premises is situated and in accordance with the then prevailing rules of the Construction Industry Mediation Rules of the American Arbitration Association. In the event that the Dispute is not resolved pursuant to mediation, each Party may pursue any rights and remedies as each may have, whether hereunder or in law or at equity. Except to the extent that this Agreement expressly permits a party to suspend performance pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement; provided, in no event shall System Owner be obligated to deliver Electricity to Host Customer in the event that Host Customer is in Default of its payment obligations to System Owner hereunder.

Section 20.3 No Third Party Beneficiaries.

No person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in their own right to enforce any provisions of this Agreement; except that any person who is expressly entitled to indemnification as provided in Article XVI hereof shall be entitled to enforce such rights as and to the extent provided therein.

Section 20.4 Notices.

Any written notice, direction, instruction, request or other communication required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt or refusal, and shall be delivered (a) personally to the Party to whom notice is to be given, (b) by facsimile (provided that the original of such facsimile is sent to the other Party by a recognized

overnight delivery service with positive tracking of items on the same day as the day on which the facsimile transmission is received by such other Party) to the Party to whom notice is to be given, (c) by a recognized overnight delivery service with positive tracking of items, to the Party to whom notice is to be given, or (d) to the Party to whom notice is to be given, by first class registered or certified mail, return receipt requested, postage prepaid, and addressed to the addressee at the address stated opposite its name below, or at the most recent address specified by written notice given to the other party in the manner provided in this Section 20.4:

If to Host Customer:

City of Santa Fe
200 Lincoln Ave
Santa Fe, New Mexico 87504
Attn.: Energy Specialist
naschiavo@santafenm.gov

If to System Owner:

MLH Cripple Creek Solar, LLC
Four Embarcadero CTE STE 3670
San Francisco, CA 94111
Attn. Brad Bauer
brad@mp2capital.com

Section 20.5 Applicable Law and Jurisdiction; Waiver.

This Agreement is made and shall be interpreted and enforced in accordance with the laws of the State of New Mexico.

Section 20.6 Complete Agreement.

This Agreement and any documents expressly incorporated herein or therein by reference shall constitute the entire Agreement between both Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, representations, and statements, including any marketing materials and sales presentations (including related any energy audit) whether oral or written. There are no agreements, understandings, or covenants between the parties of any kind, expressed or implied, or otherwise, pertaining to the rights and obligations set forth herein that have not been set forth in this Agreement.

Section 20.7 Right to Set-Off.

Neither Host Customer nor System Owner shall have any right to set-off any payment obligation under this Agreement against any obligations due to System Owner or Host Customer, as applicable, under any provision of this Agreement.

Section 20.8 Amendments and Modifications.

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both Parties.

Section 20.9 Further Assurances.

Each Party shall use its reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assignments, consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Agreement or to arrange financing for the System.

Section 20.10 Invalidity.

The invalidity or unenforceability, in whole or in part, of any portion or provision of this Agreement will not affect the validity and enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. Notwithstanding the provisions of the preceding sentence, should any term or provision of this Agreement be found invalid or unenforceable, the Parties shall immediately renegotiate in good faith such term or provision of this Agreement to effectuate the same intent and to eliminate such invalidity or unenforceability.

Section 20.11 Counterpart Execution.

This Agreement may be executed and delivered by the Parties in any number of counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 20.12 Neutral Interpretation.

The Parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party. Any headings or captions contained in this Agreement are for reference purposes only and are in no way to be construed to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

Section 20.13 No Waiver.

No waiver of any of the terms and conditions of this Agreement shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

Section 20.14 Survival.

Any provisions necessary to give effect to the intent of the Parties hereunder after the termination of this Agreement shall survive the termination of this Agreement, including, without limitation, the indemnification provisions set forth in Article XVI hereof.

Section 20.15 Obligations.

The Host Customer and the System Owner agree to satisfy their payment obligations in accordance with the terms of this Agreement.

Section 20.16 Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations to and authorization being made for the Host Customer for the performance of this Agreement. Host Customer shall make reasonable efforts to secure continuing appropriations and authorization to continue payments under this Agreement. In the event appropriations and authorization are not made, written notice shall be given by Host Customer to System Owner that payments under this Agreement may no longer be made; provided, that the Host Customer shall allow System Owner to continue to occupy the Site, to operate the System, and shall transfer environmental credits referred to in Article IX of this Agreement to System Owner.

Section 20.17 Improvement Loan

(a) Host Customer shall advance to System Owner a portion of the funds required to construct, assemble and install the System on the Premises (the "Improvement Loan") in an amount equal to Three Hundred Fifteen Thousand Three Hundred Dollars (\$315,300). Interest shall accrue at an annual interest rate of two percent (2.0%). System Owner shall pay quarterly installments of principal and interest within thirty (30) days of the first Quarterly Date following the Commencement Date. Thereafter, System Owner shall pay equal quarterly installments of principal and interest within thirty (30) days of each Quarterly Date thereafter sufficient to amortize the Improvement Loan over a twenty (20) year term.

(b) The proceeds of the Improvement Loan may be used only to pay a portion of the costs of constructing, assembling and installing the System, including without limitation, engineering, permitting and related costs. The amount by which the total cost of constructing, assembling and installing the System and otherwise improving the Premises exceeds the Improvement Loan shall be paid by System Owner. Host Customer shall disburse a portion of the Improvement Loan from time to time, within thirty (30) days after receipt of a complete Application for Payment pursuant to Section 20.17 (c) below. Disbursements shall be paid to System Owner, where the disbursement is a reimbursement of costs actually paid by System Owner. Disbursements of the Improvement Loan shall be made monthly and shall be subject to an annual interest rate of two and one-half percent (2.5%) based on the average balance of outstanding loan for the preceding month. The first quarterly installment payment shall include

the interest accrued pursuant to the preceding sentence and thereafter the Improvement Loan shall be repaid as provided in Section 20.17 (a) above.

(c) To request a disbursement of the Improvement Loan, System Owner shall submit a written application for payment, which shall include all of the following (collectively, the "Application for Payment"):

(i) a completed AIA form G702 (1992 Edition), Application and Certification for Payment, or other comparable form reasonably approved by Host Customer;

(ii) a certification from System Owner stating that the materials or work for which payment is being requested have been supplied and installed to the Premises (in the case of materials) or performed (in the case of work);


(iii) representation by System Owner that no default exists; and

(iv) Such other commercially reasonable documentation as Host Customer may require.

[SIGNATURE PAGE FOLLOWS]

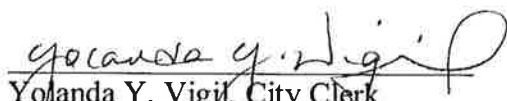
IN WITNESS WHEREOF, the duly authorized representatives of the Parties have each executed this Solar Energy Agreement, as of the Effective Date.

CITY OF SANTA FE


David Coss, Mayor
City of Santa Fe

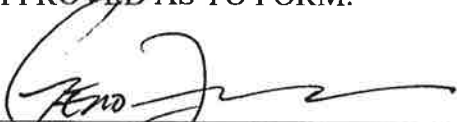
12/5/11
Date

ATTEST:

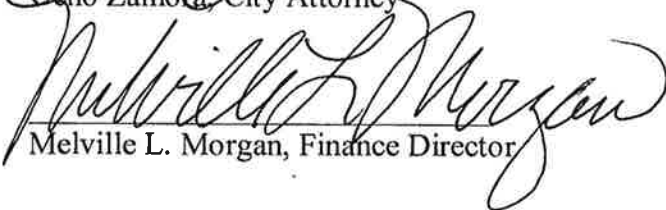

Yolanda Y. Vigil, City Clerk
contg 11/30/11

12-27-11
Date

APPROVED AS TO FORM:


Geno Zamora, City Attorney

11/8/11
Date


Melville L. Morgan, Finance Director

12/9/11
Date

Business Unit/Line Item
52102/514050

MLH Cripple Creek Solar, LLC


Brad Bauer, President

12/16/11
Date

NM Taxation & Revenue
CRS # 03-202206-00-9

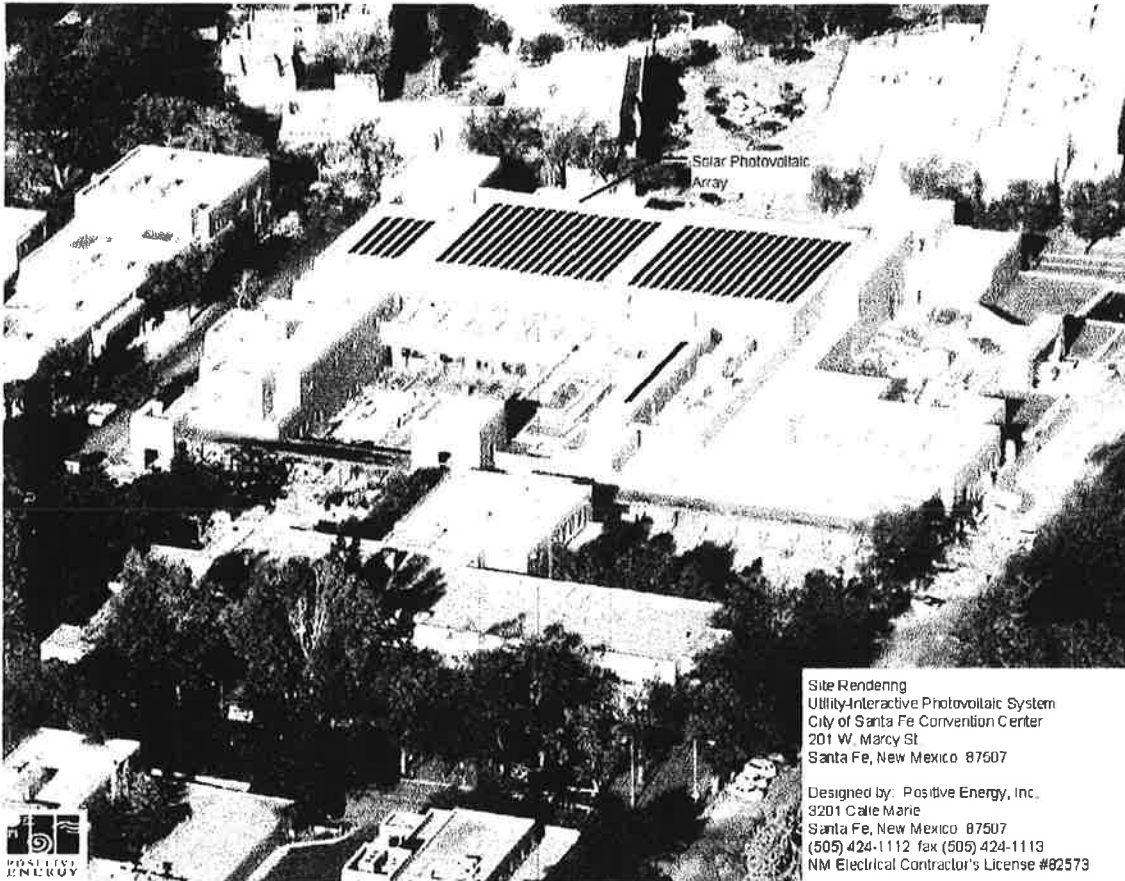
City of Santa Fe Business
Registration # 11-00109639

EXHIBIT A

System Description

100 kW DC photovoltaic system located at 201 West Marcy Street Santa Fe, New Mexico

A-1 Drawing of Premises and Site



Site Rendering
Utility-Interactive Photovoltaic System
City of Santa Fe Convention Center
201 W. Marcy St
Santa Fe, New Mexico 87507

Designed by: Positive Energy, Inc.
3201 Calle Marie
Santa Fe, New Mexico 87507
(505) 424-1112 fax (505) 424-1113
NM Electrical Contractor's License #82573

EXHIBIT B

Monthly Project System Production Estimates and Cost Estimates

B-1 Year 1: Quarterly Projected Output

QTR	Cost/kWh	kWh Generated Quarterly	Payments
1	\$0.1475	40,625	\$5,992
2	\$0.1475	40,625	\$5,992
3	\$0.1475	40,625	\$5,992
4	\$0.1475	40,625	\$5,992

B-2 20 Year Annual Projected Output

Year	Cost/kWh	kWh Generated Annually	Payments
1	\$0.1475	162,500	\$ 23,969
2	\$0.1475	161,688	\$ 23,849
3	\$0.1475	160,879	\$ 23,730
4	\$0.1475	160,075	\$ 23,611
5	\$0.1475	159,274	\$ 23,493
6	\$0.1475	158,478	\$ 23,375
7	\$0.1475	157,686	\$ 23,259
8	\$0.1475	156,897	\$ 23,142
9	\$0.1475	156,113	\$ 23,027
10	\$0.1475	155,332	\$ 22,911
11	\$0.1475	154,555	\$ 22,797
12	\$0.1475	153,783	\$ 22,683
13	\$0.1475	153,014	\$ 22,570
14	\$0.1475	152,249	\$ 22,457
15	\$0.1475	151,487	\$ 22,344
16	\$0.1475	150,730	\$ 22,233
17	\$0.1475	149,976	\$ 22,122
18	\$0.1475	149,226	\$ 22,011
19	\$0.1475	148,480	\$ 21,901
20	\$0.1475	147,738	\$ 21,791

EXHIBIT C

Sample Invoice

MLH Cripple Creek Solar, LLC
Four Embarcadero Center Suite 3670
San Francisco, CA 94111

Solar Energy Agreement Monthly Invoice

From:
MLH Cripple Creek Solar, LLC
Four Embarcadero Center Suite 3670
San Francisco, CA 94111

To:
City of Santa Fe
Attn: Santa Fe Convention Center
200 LINCOLN AVE
SANTA FE, NM 87504

Invoice #: XXXXXX Invoice Date: x/xx/20xx

This Invoice is for the power generated by the system at City of Santa Fe Community Convention Center located at 201 West Marcy Street in Santa Fe, New Mexico between the dates of xx/xx/20xx and xx/xx/20xx. Please make checks payable to "MP2 CAPITAL, LLC."

Item	Description	Unit Cost	Total Cost
1	Output: xxx,xxx kWh	\$0.1475	\$xxxxx
2	Potential Output: xxx,xxx kWh	\$0.1475	\$xxxxx
	Total Due Net 30		\$xxxxx

Submitted by:

, Controller

EXHIBIT D

Early Buyout Option/Termination Fee

Year*	Buyout Price
1	\$ 433,500
2	\$ 407,998
3	\$ 382,638
4	\$ 357,420
5	\$ 332,344
6	\$ 247,850
7	\$ 233,533
8	\$ 218,928
9	\$ 204,029
10	\$ 188,829
11	\$ 173,324
12	\$ 157,506
13	\$ 141,369
14	\$ 124,907
15	\$ 108,113
16	\$ 90,981

* Each Year shall be a calendar year. The first Year shall begin on the January 1st following the Full Commercial Operation Date.



City Of Santa Fe
PO BOX 909
Santa Fe NM, 87504

City of Santa Fe, New Mexico

BUSINESS LICENSE

Official Document
Please Post

Business Name: **MLH CRIPPLE CREEK SOLAR LLC**

Location: **LINCOLN AVE**

Class: **BUSINESS REGISTRATION-STANDARD PSA W/CTY**

Comment:

Control Number: 0060647

License Number: 11-00109639

Issue Date November 22, 2011

Expiration Date December 31, 2011

**MLH CRIPPLE CREEK SOLAR LLC
FOUR EMBARCADERO CENTER #3670**

SAN FRANCISCO CA 94111

CITY OF SANTA FE

**AMENDMENT No. 1 TO
POWER PURCHASE AGREEMENT**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE POWER PURCHASE AGREEMENT, dated November 30, 2011 (the "Agreement"), between the City of Santa Fe (the "City") and MLH Cripple Creek Solar, LLC (the "Contractor").

The date of this Amendment shall be the date when it is executed by the City.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to construct, own, operate and maintain a utility interconnected photovoltaic system at the City's Community Convention Center. The Contractor has further agreed to sell to the City 100 percent of the energy generated at that facility at a fixed price.

B. Pursuant to Article 20.8 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. SOLAR ELECTRICITY PRICE.

Article 6.1 of the Agreement is amended as follows:

The price for Output shall be a fixed price of \$0.145 per kilowatt hour for years (1) one through fifteen (15) (the "Solar Electricity Price").

Article 6.2 of the Agreement is amended by deleting the third sentence of such section in its entirety and, in lieu thereof, inserting the following text:

"The amount due for the Output delivered or Potential Output for such month shall be determined by multiplying the Solar Electricity Price by the Output or Potential Output for such month. Such amount owed by Host Customer shall then be reduced by the amount of payment

received by System Owner for such month pursuant to that certain Standard Large Solar Renewable Energy Certificate Purchase Agreement among System Owner, Host Customer, and Public Service Company of New Mexico. Each invoice shall set forth in reasonable detail the calculation of all amounts owed, including any amounts owed pursuant to Section 5.4 and Section 6.1 of this Agreement”

2. ENVIRONMENTAL CREDITS

Article 9.1 of the Agreement is amended by deleting such section in its entirety and, in lieu thereof, inserting the following text:

“All Environmental Certificates (Renewable Energy Credits), whether available directly or indirectly, shall be the property of the System Owner for the Term of this Agreement.”

Article 9.2 of the Agreement is amended by deleting such section in its entirety and, in lieu thereof, inserting the following text:

“Host Customer, at no additional cost to the System Owner, agrees to fully cooperate and to timely complete any and all documentation reasonably required by any mandatory or voluntary program governing the existence or trade of Environmental Credits, including documentation required to verify the Environmental Credits, including Renewable Energy Credits.”

3. EXHIBIT A: SYSTEM DESCRIPTION

Exhibit A of the Agreement is amended to reflect the revised system size as follows:

A 90.7 KW DC photovoltaic system located at 201 West Marcy Street Santa Fe, New Mexico.

4. EXHIBIT C: SAMPLE INVOICE


Exhibit C shall be amended to reflect the correct unit cost price of \$0.145/kWh.

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 Power Purchase Agreement as of the date set forth below.

CITY OF SANTA FE:


ROBERT ROMERO, CITY MANAGER
Date: 6/11/12

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK 

CONTRACTOR:

By: 
(Name & Title)
JEFFREY GLAVAN
SECRETARY

APPROVED AS TO FORM:

 ^{FOR}
GENO I. ZAMORA, CITY ATTORNEY

APPROVED:


MELVILLE L. MORGAN,
FINANCE DEPARTMENT DIRECTOR 6/16/12

**SECOND AMENDMENT TO AND CONSENT TO ASSIGNMENT OF
POWER PURCHASE AGREEMENT BY AND BETWEEN MLH CRIPPLE
CREEK SOLAR, LLC AND THE CITY OF SANTA FE (CONVENTION
CENTER)**

THIS SECOND AMENDMENT TO AND CONSENT TO ASSIGNMENT OF THE POWER PURCHASE AGREEMENT BY AND BETWEEN MLH CRIPPLE CREEK SOLAR, LLC AND THE CITY OF SANTA FE (CONVENTION CENTER) (“Amendment and Consent to Assignment”) is made and entered into as of July 27, 2016 (the “Effective Date”) by and between the CITY OF SANTA FE, New Mexico (“City of Santa Fe”) and MLH CRIPPLE CREEK SOLAR, LLC. The City of Santa Fe and MLH CRIPPLE CREEK SOLAR, LLC, are referred to individually herein as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, the City of Santa Fe and MLH CRIPPLE CREEK SOLAR, LLC entered into that certain “Power Purchase Agreement By and Between MLH CRIPPLE CREEK SOLAR, LLC and The CITY OF SANTA FE (Convention Center)” dated November 30, 2011 and as amended by the parties pursuant to “AMENDMENT No. 1 TO POWER PURCHASE AGREEMENT” dated June 11, 2012 (collectively the “Convention Center PPA”);

WHEREAS, MLH CRIPPLE CREEK SOLAR, LLC desires to assign the Convention Center PPA to DISSIGNO HOLDINGS, LLC and the City of Santa Fe consents to such assignment;

WHEREAS, the City of Santa Fe and MLH CRIPPLE CREEK SOLAR, LLC desire to amend the Convention Center PPA as set forth below to effectuate the assignment of the Convention Center PPA to DISSIGNO HOLDINGS, LLC;

NOW THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration (the receipt and adequacy whereof is hereby acknowledged) the Parties agree as follows:

**ARTICLE I
INTERPRETATION**

- 1.1 Defined Terms.** Unless otherwise defined in this Amendment and Consent to Assignment, capitalized terms used and not otherwise defined herein shall have the meanings specified in the Convention Center PPA.

**ARTICLE 2
CONSENT TO ASSIGNMENT**

- 2.1 **Consent to Assignment.** Pursuant to Section 19.1 of the Convention Center PPA, the City of Santa Fe hereby provides written consent for MLH CRIPPLE CREEK SOLAR, LLC to assign its rights and responsibilities under the Convention Center PPA to DISSIGNO HOLDINGS, LLC, an Oregon limited liability company with an address of 19547 Blue Lake Loop, Bend, OR, 97702.

**ARTICLE 3
AMENDMENTS**

- 3.1 **Amendments to the Convention Center PPA.** Subject to the conditions precedent set forth in Section 4.1 hereof, the Parties agree to amend the Convention Center PPA as follows:

3.1.1 *Introductory Paragraph.* The following sentence shall be added at the end of the introductory paragraph: “Effective May___, 2016, System Owner shall be Dissigno Holdings, LLC.”

3.1.2 *Section 1.1.* Section 1.1 shall be amended by revising the definition of “Service Term” by striking reference to “20-year period” and replacing it with “15-year period”.

3.1.3 *Section 6.3.* Section 6.3 shall be amended by striking reference to “MLH CRIPPLE CREEK SOLAR, LLC” and replacing it with “DISSIGNO HOLDINGS, LLC”.

3.1.4 *Section 20.4.* Section 20.4 shall be amended by striking the name and address for System Owner and replacing it with:

Tara Doyle
Dissigno Holdings, LLC
19547 Blue Lake Loop
Bend, OR 97702
(510) 684-5546
tara@dissigno.com

3.1.5 *Exhibit C.* Exhibit C shall be amended by striking references to:

MLH Cripple Creek Solar, LLC
Four Embarcadero Center, Suite 3670
San Francisco, CA 94111

And replacing such references with:

Tara Doyle
Dissigno Holdings, LLC
19547 Blue Lake Loop
Bend, OR 97702

- 3.1.6 *Exhibit C*. Exhibit C shall be further amended by striking reference to “MP2 CAPITAL, LLC” and replacing it with “DISSIGNO HOLDINGS, LLC”.

ARTICLE 4 CONDITIONS PRECEDENT, EFFECT ON THE CONVENTION CENTER PPA

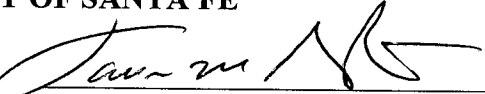
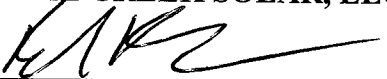
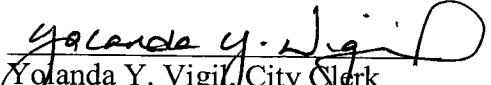
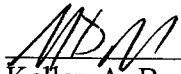

- 4.1 **Conditions Precedent to Amendment.** The amendments set forth in Article 3 shall have no force and effect unless and until MLH CRIPPLE CREEK SOLAR, LLC assigns its rights under the Convention Center PPA to DISSIGNO HOLDINGS, LLC and notice of such assignment having been completed is provided to the City of Santa Fe.
- 4.2 **Convention Center PPA to Remain in Full Effect.** Except as specifically amended in this Amendment and Consent to Assignment, the Convention Center PPA shall continue in full force and effect and is hereby in all respects ratified and confirmed. The Convention Center PPA shall henceforth be read and construed in conjunction with this Amendment and Consent to Assignment.

ARTICLE 5 REPRESENTATIONS

- 5.1 **Mutual Representations.** Each Party hereby represents and warrants to the other Party that:
- 5.1.1 it has the full power and authority to execute and deliver this Amendment and Consent to Assignment and to perform all of its obligations hereunder.
- 5.1.2 its obligations under the Amendment and Consent to Assignment constitute its legal, valid and binding obligations, enforceable in accordance with its respective terms.
- 5.1.3 all representations contained in this Amendment and Consent to Assignment are true and accurate as of the Effective Date.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the undersigned, which hereby declare under penalty of perjury to be the authorized representatives of the Parties named hereto, have executed this Amendment and Consent to Assignment on the dates specified below to be effective as of the Effective Date.

CITY OF SANTA FE By: <u></u> Name: Javier M. Gonzales, Title: Mayor Date: <u>8/2/16</u>	MLH CRIPPLE CREEK SOLAR, LLC By: <u></u> Name: <u>Paul Bunn</u> Title: <u>Authorized Representative</u> Date: <u>8/15/16</u>
Attest: <u></u> Yolanda Y. Vigil, City Clerk cc mtg. 7/27/16 Approved as to form: <u></u> 6/13/16 Kelley A. Brennan, City Attorney Approved: <u></u> 7-29-2016 Oscar Rodriguez, Finance Director	

ITEM # 11-1170

POWER PURCHASE AGREEMENT

By and between

MLH CRIPPLE CREEK SOLAR, LLC

and

The CITY OF SANTA FE

(Compost Facility)

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- Exhibit A System Description
- Exhibit B Monthly Project System Production Estimates and Cost Estimates
- Exhibit C Sample Invoice
- Exhibit D Early Buyout/Termination Schedule

POWER PURCHASE AGREEMENT (COMPOST FACILITY)

This Power Purchase Agreement (Compost Facility) (this "Agreement") is made and entered into as of this 30th day of November, 2011 (the "Effective Date"), by and between MLH Cripple Creek Solar, LLC its principal office at 4 Embarcadero Center, Suite 3670, San Francisco, California 94111, ("System Owner") and the City of Santa Fe with its principal office at 200 Lincoln Ave Santa Fe, NM 87504, ("Host Customer"); System Owner and Host Customer shall be referred to herein as a "Party" and collectively, as the "Parties".

RECITALS

WHEREAS, the Host Customer desires to receive Electricity from the System;

WHEREAS, the Host Customer owns the Premises and Site upon which the System will be located;

WHEREAS, the System Owner, at the Host Customer's request, intends to design, install, own or lease, operate, and maintain the System for the production of Electricity on the Host Customer's Site;

WHEREAS, the System Owner desires to sell and the Host Customer desires to purchase all of the Electricity generated by the System;

WHEREAS, pursuant to this Agreement, System Owner and Host Customer agree that any Tax Credits associated with the development and operation of the solar photovoltaic system, including the installation, ownership, maintenance and operation of the System and the sale of Electricity from the System to the Host Customer shall inure to the benefit of the System Owner during the Term of this Agreement;

WHEREAS, pursuant to this Agreement, the System Owner and Host Customer agree that, absent an Event of Default by Host Customer, the Host Customer shall own all Environmental Credits, including renewable energy credits, and net metering benefits from the Output of the System during the Term of this Agreement.

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and intending to be legally bound hereby, the Parties hereby covenant and agree as follows:

ARTICLE I DEFINITIONS; RULES OF INTERPRETATION

Section 1.1 Definitions.

The following terms shall have the following meanings:

“Agreement” means this Solar Energy Agreement, as the same may be modified or amended from time to time in accordance with the provisions hereof.

“Bankruptcy” means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency, or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case or proceedings shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain un-dismissed for sixty (60) days.

“Business Day” means any day other than Saturday, Sunday, or a legal holiday in the State of New Mexico.

“City of Santa Fe” means the city of Santa Fe, New Mexico.

“Commencement Date” has the meaning established in Section 5.1.

“Construction Period” has the meaning established in Section 2.2.

“Default” means any event or circumstance which, with notice or lapse of time or both, would constitute an Event of Default under Article XIII.

“Delivery Point” means the physical location, as set forth on Exhibit A (System Description), attached hereto, where the System connects to the Premises at the load side lugs of the Delivery Point Circuit Breaker.

“Delivery Point Circuit Breaker” means that circuit breaker located in the “Medium Voltage Switchgear” that is owned by the Host Customer and designed and furnished for interconnection of the System with the Premises and the Host Utility.

“Due Date” has the meaning established in Section 6.3.

“Effective Date” has the meaning provided in the introductory paragraph.

“Electricity” means electrical energy generated and delivered to the Delivery Point from the operation of the System.

“Environmental Credits” mean any and all renewable energy certificates or emissions credits, rebates or any other green tag, renewable energy, emissions reduction credits, emission allowances, attributes, offsets or other environmental benefit, or other tradable renewable energy credits, whether related to any renewable portfolio standard or other renewable energy purchase requirement or otherwise, arising from the production of Output and whether existing as of the Commencement Date or enacted thereafter by the State of New Mexico, pursuant to the Renewable Energy Act, Sections 62-16-1 et seq. NMSA 1978 and Title 17.9.572 NMAC, as amended, provided, however, that “Environmental Credits” shall not include Tax Credits.

“Event of Default” has the meaning provided in Article XIII.

“Fair Market Value” has the meaning provided in Section 15.2.4.

“Force Majeure Event” means, when used in connection with the performance of a Party’s obligations under this Agreement, any act, event, or condition (to the extent not caused by such Party or its agents or employees) which is unforeseeable, or being foreseeable, could not have been avoided by the exercise of reasonable diligence and care and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Agreement, including: (i) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any governmental authority, riot, acts of terrorism, acts of a public enemy or other civil disturbance; (ii) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, fires, excess winds, and objects striking the earth from space (such as meteorites);(iii) sabotage or destruction by a third party (other than any, agent, employees or contractors retained by or on behalf of the Party and acting in the performance of its duties) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement; (iv) regional or national strikes, walkouts, lockouts, or similar industrial or labor actions or disputes other than those directed at the Party seeking to claim a Force Majeure Event hereunder; (v) acts of any governmental authority, excluding however acts of Host Customer that occur as the result of any act, action, rule, regulation, or order of the City of Santa Fe, that materially restrict or limit System Owner’s access to the Site or its activities at the Site or Host Customer’s usage of the Output, and (vi) any act, action, rule, regulation, order, or power failure caused by the Host Utility.

“Good Utility Industry Practices” means the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the System, Good Utility Industry Practices include, but are not limited to, taking reasonable steps to ensure that:

1. equipment, materials, resources, and supplies are available to meet the System’s needs;
2. sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to operate the System property and efficiently, and are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the site of the System;
3. preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable trained and experienced personnel utilizing proper equipment and tools;
4. appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

5. equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or contrary to environmental laws or regulations or without regard to defined limitations such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits; and
6. the System will function properly under both normal and reasonable expected emergency conditions at the Premises.

“Host Customer” has the meaning provided in the introductory paragraph.

“Host Utility” means Public Service Company of New Mexico or PNM.

“Interconnection” means that the System has met all of the Host Utility requirements to begin normal operations of the System, which has then initially produced useable Electricity.

“Interconnection Agreement” means the agreement between the Host Customer and Host Utility authorizing interconnected System operations.

“Interconnection Notice” has the meaning provided in Section 5.1.

“Late Fee” has the meaning provided in Section 6.4.

“Meter” means the standard instrument(s) and equipment owned and installed at the Site by Host Utility, which the Host Utility uses to measure and record the Output delivered to the Host Customer at the Delivery Point, which term does not include meters installed by the Host Customer or System Owner.

“Meter Reading Dispute Resolution Process” means the procedures established by rule or regulation of the Host Utility pertaining to its meter readings or billing error and in effect at the time either the Host Customer or the System Owner initiates this process.

“Mountain Prevailing Time” or “MPT” means Mountain Standard Time or Mountain Daylight Time, as in effect from time to time.

“Net Metering Agreement” means the agreement between the Host Customer and the Host Utility pursuant to 17.9.570 of the NMAC.

“Notice-to-Proceed” is a separate notice or instruction authorizing the System Owner to proceed with the work or a part thereof.

“Output” means the Electricity produced by the System and delivered at the Delivery Point.

“Party” or “Parties” has the meaning established in the introductory paragraph.

“Person” means any natural person, partnership, trust, estate, association, corporation, limited liability company, governmental authority or agency, or any other individual or entity.

“Potential Output” means solar electric energy that cannot be generated or delivered by the System because of an act or omission of the Host Customer.

“Premises” means property under the control of the City of Santa Fe and the Host Customer, including the improvements thereon, as described in Exhibit “A”.

“Projected Output” means the anticipated level of System Output as provided in Exhibit “B” for a stated period of time.

“Prudent Industry Practice” means the practices, methods, and acts engaged in or approved by a significant portion of the solar energy industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expedition.

“Quarterly Date” means the first Business Day of each of January, April, July, and October.

“Renewable Energy Credits” means a certificate in accordance with 17.9.572.13.C NMAC, Renewable Portfolio Standard, representing the renewable energy benefits of the output of 1 MWh of solar electricity.

“Service Term” means the 20-year period from the Commencement Date.

“Site” means the area of the Premises on which the System Owner will install, operate, and maintain the System, as described in the Site Plan in Exhibit A.

“Solar Electricity Price” has the meaning provided in Section 6.1.

“System” means all equipment and materials, including photovoltaic arrays, DC/AC inverters, wiring, transformers, switches, instruments and meters, medium voltage equipment and circuits, and other appurtenant facilities installed as part of the System now or hereafter owned by System Owner for the purpose of providing Output to the Host Customer at the Delivery Point, and as such equipment and materials may be modified during the Term. The System excludes any part of the equipment owned and under the control of the Host Utility or Host Customer.

“System Owner” has the meaning provided in the introductory paragraph.

“Tax Credits” mean all state, local and or federal production tax credit, tax deduction and/or investment tax credit and/or other financial assistance (including any grants) specific to or arising from the production of Output by the System and/or investment in the System.

“Term” has the meaning established in Section 2.1.

“Utility Rate” means the applicable all-inclusive electric service rate per kilo-Watt-hour (kWh) charged to Host Customer by the Host Utility (including a municipal or cooperative utility, as applicable) serving Host Customer in the service territory in which Premises are located. The Utility Rate shall include all electric charges, transmission, distribution or other delivery charges, ancillary service charges, demand charges, transition or competitive service charges, taxes, and other fees and charges in effect.

Section 1.2 Interpretation.

In this Agreement, unless the context requires otherwise, the singular includes the plural and the plural the singular, words importing any gender include the other gender; references to statutes, sections, or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section, or regulation referred to; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation” or “but not limited to” or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, annexes, or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits and appendices attached thereto and all subsequent amendments and other modifications to such instruments, and references to Persons include their respective successors and permitted assigns.

Section 1.3 Service Agreement.

The Parties intend that this Agreement be treated as a “service contract” within the meaning of Section 7701(e) of the Internal Revenue Code.

ARTICLE II
TERM

Section 2.1 Service Term.

The term of this Agreement (the “Term”) shall commence on the Effective Date and shall terminate on the 20th anniversary of the Commencement Date, unless terminated earlier, or extended pursuant to the option, in accordance with the terms and conditions in this Agreement.

Section 2.2 Construction Period.

The period commencing on the Effective Date and continuing to the Commencement Date shall be the “Construction Period”.

ARTICLE III
CONSTRUCTION AND INSTALLATION OF SYSTEM

Section 3.1 Construction of System.

During the Construction Period:

Section 3.1.1 System Owner shall install, construct, service, and test the System consistent with the specifications set forth in Exhibit A, all in a good and workmanlike manner and in accordance with all applicable laws and regulations.

Section 3.1.2 System Owner may hire independent contractors to design, build, install, construct, service, and test the System (each, a "Contractor"). Such Contractors may use subcontractors (who for purposes of this Agreement shall be deemed Contractors) for any part or all of the services contracted by System Owner. System Owner shall require any Contractors and each of their respective subcontractors to have all licenses, and registrations reasonably necessary or customary to perform the services to be performed by such Contractor or subcontractor.

Section 3.1.3 Host Customer shall provide System Owner, its employees, Contractors, invitees, agents, and assigns access to the Site, and as may be necessary, upon reasonable advance notice, to the Premises, in order to construct and test the System.

Section 3.1.4 System Owner shall procure or shall ensure that the Contractors have procured and shall maintain insurance in respect of the design, construction, and installation of the System in accordance with requirements of this Section 3.1.4 and at minimum amounts set forth in Section 18.

The insurance shall: (i) be maintained with insurers with a Best's rating of at least "A", Financial Class Size VIII, (ii) be in the name of such Contractor, (iii) include Host Customer and its officials, officers, employees, agents, volunteers, and representatives as additional insureds under the commercial general liability policy, and (iv) be primary, without right of contribution, to any insurance maintained by Host Customer. System Owner shall ensure that each Contractor shall furnish to Host Customer upon the issuance of notice of commencement of construction pursuant to Section 3.1. a certificate of insurance for such coverage stating the name of the insurance company and policy number, the policy period, the named insured and address, a description of coverage, policy limits, a description of location of covered operations, the name and address of the certificate holder, a notice of cancellation provision, and an authorized signature and date. Such certificate shall further indicate that the insurance will not be cancelled unless thirty (30) days' (ten (10) days if cancellation is due to nonpayment of premium) prior written notice has been given to the Host Customer. In the event the Contractors' insurance carriers do not agree to this notice requirement, the System Owner will provide written notice to the Host Customer, within five (5) Business Days', of System Owner's receipt of any such notice from an insurance carrier(s) of cancellation or non-renewal of the required insurance. For the avoidance of doubt, the failure of any Contractor to provide such certificate shall not be deemed to be a waiver by Host Customer of any of Contractor's or System Owner's obligations hereunder.

Section 3.2 Location of System.

The System shall be situated on the Site as set forth and in accordance with Exhibit A.

Section 3.3 Schedule.

System Owner will give the Host Customer at least five (5) Business Days' written notice prior to the commencement of construction, together with a proposed construction schedule and an estimated Commencement Date. System Owner will notify Host Customer of any material changes to the proposed schedule and the estimated Commencement Date during the Construction Period. The System Owner (or its Contractor) will endeavor to coordinate construction activities with the Host Customer so as to ensure that there will be no interference with normal operations at the Premises.

System Owner will work diligently toward completion of construction and Interconnection by September 30, 2012.

Section 3.4 Construction Period Electricity.

The System Owner or its Contractors may test the System during the Construction Period. Any energy generated and delivered to the Delivery Point incidental to testing during the Construction Period or before the Commencement Date shall not be considered to be Output for the purposes of accounting or payments.

Section 3.5 Construction Related Energy Supply and Water Supply.

The System Owner shall self-supply or purchase from another source all energy and water the System Owner needs to construct the System.

ARTICLE IV
CONNECTION AND DELIVERY POINT

Section 4.1 Delivery.

Title to, risk of loss, and custody and control of, the Output shall pass from System Owner to Host Customer at the Delivery Point.

Section 4.2 Connection.

System Owner, on behalf of Host Customer, is responsible for arranging for Interconnection of the System to the Host Utility and is solely responsible for all equipment, maintenance, and repairs associated with such Interconnection equipment in accordance with the terms and conditions of this Agreement and the Interconnection Agreement.

Section 4.3 System Operation and Status of Delivery Point Circuit Breaker Prior to Interconnection

The Host Customer will lock open its Delivery Point Circuit Breaker until Host Utility authorization for testing and demonstration of proper operation of the System is obtained by the System Owner and provided to the Host Customer. The Host Customer will then close the Delivery Point Circuit Breaker for the duration of testing as directed by the System Owner and

authorized by the Host Utility. The System Owner will accommodate, as part of this testing, the Host Customer's testing, verification, and calibration as necessary of the Delivery Point Circuit Breaker over current and reverse current trip functions, other trip functions, and integral and transmitted power and power quality readings and settings.

ARTICLE V

PURCHASE AND SALE OF OUTPUT

Section 5.1 Commencement Date.

System Owner will give Host Customer not less than five (5) Business Days' prior written notice (the "Interconnection Notice") that the System has completed testing and that the System has satisfied the requirements of the Host Utility for Interconnection. The date of interconnection shall be the Commencement Date.

Section 5.2 Sale and Delivery of Output.

Beginning on the Commencement Date or To Be Determined, whichever is later, System Owner will deliver and sell all of the Output at the Delivery Point, and Host Customer shall purchase all of the Output at the Delivery Point, and continuing until the end of the Term.

Section 5.3 System to Reduce Other Electric Purchases.

The Parties acknowledge that the System is not expected to meet the entirety of Host Customer's demand for Electricity. To the extent that at any time the Output is insufficient to meet all of Host Customer's Electricity demand, Host Customer shall be responsible for purchasing and paying for Electricity from other sources.

Section 5.4 Sale of Potential Output; Sale Only to Host Customer.

If generation and delivery of Output is foregone or reduced due to an act or omission of the Host Customer and such foregone Output is not due to (i) a Force Majeure Event (ii) an act or omission of System Owner, or (iii) a System failure, Host Customer shall purchase all of the Potential Output. Notwithstanding the preceding sentence, Host Customer shall also purchase and pay for any Potential Output on those occasions where the Host Utility is able to receive such Output from the System and apply net metering program credit to Host Customer's account. Host Customer shall pay System Owner an amount equal to the applicable Solar Electricity Price as expressed in Section 6.1 of this Agreement multiplied by the calculated Potential Output that would have been paid during the period of the temporary shutdown, curtailment, or foregone Output (Potential Output shall be calculated based on the Projected Output expressed in Exhibit B as adjusted by the actual historical production of electricity by the System). The average hourly production shall be reduced at a rate of 0.5% per year following the first year of the agreement.

In no event shall System Owner sell, or be deemed to have sold, Output to any Person other than Host Customer.

Section 5.5 Taxes.

System Owner is responsible for payment of local, state, and federal income taxes attributable to System Owner for income received under this Agreement and for any personal property taxes, license taxes, or privilege taxes attributable to ownership or usage of the System. System Owner agrees to bear and pay when due any sales or gross receipts tax, to the extent applicable, imposed upon System Owner a seller of Electricity, to the extent of and in the same amount as any similar sales, use, excise or gross receipts that is included in the Utility Rate. If such a sales, use, excise or gross receipts tax is attributable to the sale of Output from System Owner to Host Customer, but not otherwise included or includable in the Solar Electricity Price, then Host Customer agrees to bear the costs of such sales or gross receipts taxes and shall either pay such taxes or reimburse System Owner if paid by System Owner. System Owner shall not be obligated for any taxes payable by or assessed against Host Customer.

ARTICLE VI
PURCHASE PRICE, INVOICING AND PAYMENT

Section 6.1 Solar Electricity Price.

The price for Output shall be at a fixed price of \$0.1475 per kilowatt-hour for years one (1) through twenty (20) (the “Solar Electricity Price”).

Section 6.2 Invoices.

Host Customer and System Owner shall make arrangements directly with the Host Utility to obtain the Meter data that will be the basis of each System Owner Invoice for Output. Not later than five (5) business days following its receipt of such Meter data, System Owner shall prepare and provide the Host Customer an invoice for the Output delivered to the Host Customer in the prior month (or partial month) commencing with the month in which the Commencement Date occurs and continuing thereafter until the last full month in the Service Term. The amount due for the Output delivered or Potential Output for such month shall be determined by multiplying the Solar Electricity Price by the Output or Potential Output for such month, and each invoice shall set forth in reasonable detail the calculation of all amounts owed, including any amounts owed pursuant to Section 5.4 and Section 6.1 of this Agreement. A sample invoice calculation is shown on Exhibit C. Delays in the issuance of any such invoice shall not constitute any waiver of Host Customer’s obligation to pay, or System Owner’s right to collect, any payment due System Owner under any such invoice.

Section 6.3 Payments.

Host Customer shall pay the undisputed amount of each invoice on or before the thirtieth (30th) calendar day following receipt thereof (“Due Date”). All payments made by Host Customer under this Agreement shall be made in the form of a check payable to MLH Cripple Creek Solar, LLC at the address for notices set forth in Section 20.4, as such address may be modified by System Owner by notice to Host Customer in writing.

Section 6.4 Late Fees.

To the extent permitted by New Mexico law, if any undisputed part of a monthly payment is not made by the Host Customer or the System Owner within thirty (30) calendar days following the Due Date, the Host Customer or the System Owner agrees to pay a late fee that shall accrue on the basis of twelve percent (12%) per annum (or such lower percentage as and if required by applicable law) on the amount of such late payment from the Due Date until the date of payment (“Late Fee”). The calculation of Late Fees shall not constitute any waiver of the Party’s obligation to pay such amounts when due or a Party’s right to collect such amounts or to exercise any other right or remedies it may have for failure to pay such amounts when due under this Agreement or now or hereafter existing at law or in equity or otherwise.

ARTICLE VII
METERING

Section 7.1 Installation of Meter.

The System Owner shall provide as part of the System the metering infrastructure hardware required by the Host Utility’s standards for installation of the Meter. When the infrastructure is ready as demonstrated by the System Owner to the Host Customer, the System Owner and the Host Customer shall request that the Host Utility furnish and set the Meter and commence testing of the System for interconnected operations.

Section 7.2 Meter Testing and Calibration.

The Host Utility provides renewable energy generation data on its monthly invoices. If there is a discrepancy between the System Owner’s Meter and the amount reported by the Host Utility by greater than one half of one percent, then either the Host Customer or System Owner may request accuracy testing and calibration of the Meter by the Host Utility. The cost, if any, of such testing shall be borne by the requesting Party.

Section 7.3 Meter Reading Dispute Resolution

Either the System Owner or the Host Customer may invoke the Host Utility’s current Meter Reading Dispute Resolution Process at any time and shall pay the Host Utility’s charges.

Section 7.4 Alternative Measures in Event of Meter Non-Operability.

In the event the Meter is out of service or the Parties agree to jointly dispute the accuracy of a monthly measurement of Output by the Meter, the Output shall be determined by the following alternatives, and in the following order: (a) the best of any alternative or back-up meter that System Owner or the Host Customer may have installed as demonstrated by mathematical analysis of historical simultaneous readings of the Meter and the alternative or back up meter; or (b) calculating the Output in an agreed manner for such period of Meter inoperability using the System Projected Output tables in Exhibit B as a basis for such calculation.

Section 7.5 Retroactive Adjustment of Historical Invoice for Meter Error

Any disputed reading of the Meter may be the basis of either Party invoking the Meter Reading Dispute Resolution Process. In that event, the Host Customer shall pay to the System Owner the amount calculated in accordance with Section 7.4. The System Owner shall submit a corrected invoice to the Host Customer for each billing period invoice questioned. The corrected invoice shall reflect the finding of the Host Utility. The parties shall use their best efforts to fully resolve any and all disputed monthly invoices prior to the due date for the final invoice of Host Customer's fiscal year.

ARTICLE VIII
SITE USE AND ACCESS

Section 8.1 Notice-to-Proceed

System Owner shall not commence construction activities on the Site until the City of Santa Fe has issued the Notice-to-Proceed.

ARTICLE IX
ENVIRONMENTAL CREDITS

Section 9.1 Environmental Credits.

All Environmental Certificates (Renewable Energy Credits), whether available directly or indirectly, shall be the property of the Host Customer for the Term of this agreement.

Section 9.2 Environmental Credits Documentation.

System Owner, at no additional cost to the Host Customer, agrees to fully cooperate and to timely complete any and all documentation reasonably required by any mandatory or voluntary program governing the existence or trade of Environmental Credits, including documentation required to verify the Environmental Credits, including Renewable Energy Credits.

ARTICLE X
CONDITIONS PRECEDENT TO THE PARTIES' OBLIGATIONS

Section 10.1 Conditions Precedent to the System Owner's Obligations

Subject to the terms and conditions of this Agreement, and unless waived by System Owner, System Owner's obligations to initiate construction of the System on the Site under this Agreement are conditioned upon the occurrence of the following:

Section 10.1.1 Necessary Governmental Approvals. System Owner shall have filed all applicable applications and certifications and shall have obtained all approvals, permits, licenses and authorizations necessary for the construction and installation of the System.

Section 10.2 Conditions Precedent to the Host Customer's Obligations.

Subject to the terms and conditions of this Agreement, and unless waived by Host Customer, Host Customer's obligations under this Agreement are conditioned upon the occurrence of the following:

Section 10.2.1 The System Owner shall have applied for on behalf of the Host Customer and received from the Host Utility an Interconnection Agreement, Renewable Energy Credit Agreement, and Net Metering Agreement with respect to the Output of the System.

Section 10.2.3 The System Owner shall have applied for and received all necessary permits, licenses, approvals and authorization for construction of the PV System. Notwithstanding the foregoing, this Section 10.2.3 shall be deemed waived and satisfied upon the Commencement Date.

Section 10.3 Reasonable Efforts.

System Owner and Host Customer each agrees to use reasonable efforts to satisfy the applicable conditions precedent set forth above as promptly as practicable after the Effective Date.

Section 10.4 Ownership of Approvals.

All permits and approvals obtained pursuant to Section 10.1 shall be owned and controlled by System Owner. To the extent that any such permits or approvals must be obtained and/or owned by Host Customer, then Host Customer agrees that it will reasonably cooperate with the gaining of all such permits and approval to the extent necessary.

*ARTICLE XI
REPRESENTATIONS*

Section 11.1 Host Customer Representations.

Host Customer makes the following representations and warranties to System Owner as of the Effective Date:

Section 11.1.1 Due Authorization. Host Customer has the power and authority to enter into this Agreement and perform its obligations hereunder and has taken all necessary action to authorize the execution, delivery and performance of this Agreement. Host Customer has duly executed and delivered this Agreement and this Agreement constitutes the valid and legally binding obligations of Host Customer, enforceable in accordance with its terms.

Section 11.1.2 No Consent Required. Host Customer has all the rights required to enter into this Agreement and perform its obligations hereunder without the consent, approval, permit or authorization of any third party, and without notice to any third party, other than these notices that have been given.

Section 11.1.3 No Conflict. This Agreement is enforceable against Host Customer in accordance with its terms and does not conflict with or violate the terms of its organizational documents, or any laws, rules, regulations, or agreements to which the Host Customer is a party.

Section 11.1.4 Ability to Perform. Host Customer has no knowledge of any facts or circumstances that, but for the passage of time, could materially adversely affect its ability to perform its obligations hereunder.

Section 11.1.5 Absence of Litigation. There is no litigation pending or, to the knowledge of Host Customer threatened against Host Customer which could have a material adverse effect on its business, operations, financial condition, or its existing electricity load profile or its ability to perform its obligations under this Agreement.

Section 11.1.6 All the necessary permits, licenses, approvals and authorization for construction of the PV System upon the Premises are in full force and effect, and no default by Host Customer has occurred under such permits that has not been cured and Host Customer has not received any notice, claim or other form of communication that it is in default under the same.

Section 11.2 System Owner Representations.

System Owner makes the following representations and warranties to Host Customer as of the Effective Date:

Section 11.2.1 Due Authorization. System Owner is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of California and has full power to engage in the business it presently conducts and is in good standing under the laws of the State of New Mexico. System Owner has the power and authority to enter into this Agreement and perform its obligations hereunder and has taken all corporate or other action to authorize the execution, delivery and performance of this Agreement and no other action on the part of System Owner or on the part of its equity owners is necessary. System Owner has duly executed and delivered this Agreement and this Agreement constitutes the valid and legally binding obligations of System Owner, enforceable in accordance with its terms.

Section 11.2.2 No Conflict. This Agreement is enforceable against System Owner in accordance with its terms and does not conflict with or violate the terms of its organizational documents, any other agreement to which System Owner is a party, or applicable law.

Section 11.2.3 Ability to Perform. System Owner has no knowledge of any facts or circumstances that, but for the passage of time, would materially adversely affect System Owner's ability to perform its obligations hereunder.

Section 11.2.4 No Consent Required. System Owner has all the rights required to enter into this Agreement and perform its obligations hereunder without the consent, approval, permit or authorization of any third party.

Section 11.2.5 Absence of Litigation. There is no litigation pending or, to the knowledge of System Owner, threatened against System Owner which could have a material adverse effect on its business, operations, financial condition or prospects or its ability to perform its obligations under this Agreement.

Section 11.2.6 No Material Changes. Since the date of its formation, System Owner has not experienced any material changes to, its creditworthiness or the results of its business or financial condition, profile that could have a material adverse effect on the Host Customer or the System.

Section 11.2.7 Projected Output. The System Owner has calculated the Projected Output set forth in Exhibit B in accordance with its normal professional practices and expects the System Output will meet or exceed the Projected Output.

Section 11.2.8 Ability to Complete Construction and Interconnection. The System Owner has the capacity to complete Interconnection by September 30, 2012 and will meet the deadline unless due to actions or omissions of the Host Customer the Host Utility, or government authorities or the occurrence of a Force Majeure event which prevents such timely completion.

*ARTICLE XII
COVENANTS OF THE PARTIES*

For the Term of the Agreement, the Parties hereby covenant as follows:

Section 12.1 Additional Consent and Approvals.

The Parties shall work together cooperatively to assist one another in procuring and maintaining all necessary easements, rights of way, leases, licenses, consents and approvals, including the completion of the Interconnection Agreement, Net Metering Agreement, and Renewable Energy Credit Agreement between the Host Customer and the Host Utility and other rights the Parties deem necessary or desirable for the construction and installation of the System, the production and delivery of Output to the Delivery Point, and the operation and maintenance of the System under this Agreement, provided however that the cost for the same shall be attributed to the Party responsible for obtaining such consent or approvals. System Owner and Host Customer shall each provide one another with a copy of all such permits, licenses, leases, consents and approvals, including copies of those approvals, permits, and related documents. Any easements, leases, licenses or any other agreement that will burden the Site must be pre-approved in writing by Host Customer, which approval shall not be unreasonably withheld.

Section 12.2 Repair and Maintenance of the System

Section 12.2.1 System Owner shall use commercially reasonable efforts to maintain the System in good working order, and shall operate the System in accordance with manufacturer's

specifications, Host Utility requirements, applicable laws, regulations and ordinances. System Owner shall promptly repair any damage to or failure of the System.

Section 12.2.2 Host Customer shall be responsible for maintaining and fulfilling all its respective (i) obligations to the interconnected Host Utility and any other electric service provider, including with respect to the Interconnection Agreement, Net Metering Arrangement, and Renewable Energy Credit agreement, and (ii) requirements imposed by the Host Utility and/or other electric service provider and any federal, state or local government agencies with respect to such services.

Section 12.2.3 System Owner, on behalf of the Host Customer, shall be responsible for maintaining and fulfilling all its respective obligations to the Host Customer and Host Utility, including implementing operations and maintenance in accordance with the Interconnection Agreement and all requirements imposed by the Host Utility and any federal, state or local government agencies with respect to such services for the generation and sale of the Output to the Host Customer.

Section 12.3 Contractors.

System Owner may engage Contractors to operate and maintain the System. Such Contractors may use subcontractors for any part or all of the services contracted by System Owner. System Owner shall require any such Contractors and subcontractors to have all licenses, registrations and insurance coverage as required by this Agreement for such service providers and shall provide copies of same to Host Customer upon request. System Owner shall ensure that such Contractors and subcontractors comply fully with the terms of this Agreement. Host Customer agrees to provide System Owner, its employees, Contractors, invitees, and assigns access to the Site during the Term of this Agreement.

Section 12.4 Ownership of System by System Owner.

Host Customer and System Owner agree that the System is and shall at all times be the personal property of System Owner severable from the Site and the Premises and shall not become or constitute a fixture. If any person attempts to claim ownership of or other rights to System by asserting any claim against or through Host Customer and such claim is not attributable to any act or omission of System Owner, its agents, contractors, or employees, Host Customer agrees to take necessary action to protect System Owner's title to the System. Host Customer will at all times keep the System free from any legal process and any lien not attributable to any act or omission of System Owner, and will give System Owner immediate notice if any legal process or lien is asserted or made against the System or against Host Customer where the System may be subject to any lien, attachment or seizure by any Person. The Host Customer shall not take any position on any tax return or on any other filings indicating that it is the owner of the System.

Section 12.5 Interconnection; Compliance.

Section 12.5.1 During the Construction Period, System Owner will obtain all permits, approvals, and other authorizations that may be required by any governmental agency or authority or by the interconnected Host Utility in connection with the Interconnection of the System to the Host Customer at the Delivery Point. System Owner will use commercially reasonable efforts to assist Host Customer by providing technical information for the completion of the Interconnection Agreement.

Section 12.5.2 System Owner and Host Customer will comply with such permits, approvals, and authorizations described in Section 12.5.1 above in effect at all times during Service Term, and at all times during the Service Term shall comply with such other authorizations and applicable requirements of the Host Utility necessary for the flow of Electricity from the System to the Host Utility's system.

Section 12.5.3 The Host Customer will execute the Interconnection Agreement within two business days of receipt of the Interconnection Agreement from the Host Utility, provided that it is materially identical in form to that form provided one month previously to the Host Customer by the System Owner and it is materially identical to the Host Utility's current standard form. Otherwise, the System Owner will grant to the Host Customer up to ten (10) business days for legal and management review by the Host Customer.

Section 12.5.4 The System Owner shall comply with all applicable requirements of the Host Utility regarding the quality of Electricity produced by the System with regard to power factor and electrical noise, spikes, harmonic content, phase imbalance, sine wave distortion and all other applicable measures of the quality of the Electricity.

Section 12.5.5 The Host Customer, following the execution of the initial Interconnection Agreement pursuant to Section 12.5.3, shall not amend or modify such agreement, without the prior written consent of the System Owner, which consent shall not be unreasonably withheld.

Section 12.6 Notice of Malfunction; Non-Interference.

Section 12.6.1 Each Party shall notify the other immediately upon actual knowledge of (a) any material malfunction of or damage to the System, (b) to the Meter, or (c) any other matters that could reasonably be expected to adversely affect the System, the Site, or the Premises.

Section 12.6.2 Host Customer may not adjust, modify, maintain, alter, or interfere with service from the System, except as authorized in writing by System Owner or in the event of an emergency where there is an imminent threat to life or property; provided that Host Customer shall give System Owner (or its contractor) immediate notice in such event. The Host Customer's operation and maintenance of the Medium Voltage Switchgear are exempt from the requirements of this paragraph.

Section 12.7 Financing Incentives; Financing.

Host Customer agrees to take all action reasonably requested by System Owner in order for System Owner to obtain all rebates or subsidies that would be applicable under this Agreement, in connection with the installation and operation of the System by any state, local or federal government, utility or other source, but at no cost to Host Customer.

Section 12.8 Status of Premises and Site.

In the event that any or all of the Site is or becomes subject during the term of this Agreement to a lease, security interest, lien or mortgage, City of Santa Fe shall use reasonable efforts to have such holder of any such security interest, lien or mortgage enter into a recognition agreement with System Owner reasonably acceptable to System Owner acknowledging and recognizing System Owner's rights under this Agreement and acknowledging that the System is the personal property of System Owner severable from the Site and not a fixture.

*ARTICLE XIII
DEFAULT*

The occurrence of any of the following events shall be an "Event of Default" under this Agreement.

Section 13.1 Host Customer's Failure to Pay.

Host Customer's failure to make timely payments when due under Sections 6.3 of this Agreement.

Section 13.2 Material Misrepresentation as of Effective Date.

If any of the representations and warranties made by a Party hereunder shall have been inaccurate in any material respect (or if a representation or warranty is qualified by materiality, such representation or warranty is inaccurate in any respect) as of the Effective Date, and such inaccuracy or the effect thereof, to the extent it can be cured, is not cured within 30 days from the earlier of (a) notice from the non-breaching Party and (b) the discovery or determination by the breaching Party of the misrepresentation; provided that if the breaching Party commences an action to cure such inaccurate representation within such thirty (30) days, and thereafter proceeds with all due diligence to cure such failure the cure period shall extend for an additional sixty (60) days.

Section 13.3 Bankruptcy.

If any Party becomes the subject of a winding-up or liquidation order or petition (whether compulsory or voluntary), or insolvent, or the subject of an administration order, or (ii) entering into any composition or arrangement with creditors or (iii) having a receiver appointed over the whole or any portion of its assets.

Section 13.4 Failure to Meet Provisions of this Agreement.

A failure by any Party to perform fully any provision of this Agreement other than as explicitly set forth in this Article XIII and either (a) such failure continues for a period of thirty (30) days after written notice of such nonperformance or (b) the nonperforming Party commences an action to cure such failure to perform within such thirty (30) days, and thereafter proceeds with all due diligence to cure such failure, and such failure is still not cured within sixty (60) days after the expiration of the initial thirty (30) day period.

*ARTICLE XIV
FORCE MAJEURE*

Section 14.1 Force Majeure.

Section 14.1.1 Neither System Owner nor Host Customer shall be considered to be in default in the performance of its obligations under this Agreement or liable for any delay or failure to comply with this Agreement to the extent that performance of any of its obligations hereunder is prevented or delayed by a Force Majeure Event.

Section 14.1.2 If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party affected by a Force Majeure Event shall use commercially reasonable efforts to remove or repair the cause of the Force Majeure Event and shall resume performance of its obligations as soon as reasonably practicable, and shall notify the other party in writing of the cessation or termination of the Force Majeure Event.

Section 14.2 Termination

Section 14.2.1 Any Party shall be entitled to terminate this Agreement upon thirty (30) days prior written notice to the other Party if any Force Majeure Event has been in existence for a period of one hundred fifty (150) consecutive days or longer, unless such Force Majeure Event ceases prior to the expiration of such thirty (30) day period. In the event of a termination of this Agreement pursuant to this Section 14.2.1, System Owner shall retain title to the System and shall remove it from the premises. Host Customer shall allow System Owner, its employees, agents, assigns Contractors and invitees reasonable access to the Site to remove the System from the Site within ninety (90) days after such termination.

*ARTICLE XV
TERMINATION AND PARTIES' RIGHTS*

Section 15.1 Termination for Default.

Section 15.1.1 Upon the occurrence and during the continuation of any Event of Default hereunder, the non-defaulting Party shall have the option but not the obligation to terminate this Agreement, by providing written notice of termination to the defaulting Party.

Section 15.1.2 If such termination occurs as a result of Host Customer's default System Owner shall retain title to the System and shall remove it from the premises. Host Customer shall allow System Owner, its employees, agents, assigns, Contractors and invitees reasonable access to the Site to remove the System from the Site within ninety (90) days after such termination, and shall make or have made promptly any repairs to the Site to the extent necessary to repair any adverse impact such removal causes to the Site; provided, that Host Customer shall be responsible for the reasonable costs associated with any such repairs.

Section 15.1.3 If such termination occurs as a result of the System Owner's default, then System Owner shall retain title to the System and shall remove it from the premises. Host Customer shall allow System Owner, its employees, agents, assigns, Contractors and invitees reasonable access to the Site to remove the System from the Site within ninety (90) days after such termination, and System Owner shall make or have made promptly any repairs to the Site to the extent necessary to repair any adverse impact such removal causes to the Site.

Section 15.1.4 Termination pursuant to this Section 15.1 shall not eliminate the non-defaulting Party's right to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise, except to the extent limited by this Agreement.

Section 15.2 Substitute Solar Energy Agreement.

Notwithstanding any other provision of this Agreement to the contrary, in the event that Host Customer terminates this Agreement because it will no longer occupy the Site or the Premises, Host Customer shall use commercially reasonable efforts to facilitate discussions between System Owner and a successor occupant of the Site and Premises regarding the sale of Output to such new occupant if there is a successor occupant.

Section 15.4 Option to Purchase.

Host Customer shall have the option on the sixth anniversary of the Commencement Date and again at each subsequent anniversary of the Commencement Date, exercisable by written notice thereof from Host Customer to System Owner not later than 60 days following the relevant anniversary date, to purchase the System from System Owner at a price equal to the Fair Market Value at the time such option is exercised. Host Customer acknowledges that System Owner makes no representation or promise as to the Fair Market Value at any future time. This Agreement shall terminate upon Host Customer's purchase of the System pursuant to the exercise of the purchase option set forth in this Section 15.4 without any further payment; provided, however, that the foregoing shall not relieve any party of any obligation or liability that had accrued hereunder prior to termination. Upon Host Customer's payment for the System, System Owner shall furnish the System, including all components thereof and operation manuals, in the condition at the time of determination of the Fair Market Value, subject to normal wear and tear free and clear of all liens other than any liens attributable to the actions of Host Customer

“Fair Market Value” of the System is the price that would be established in an arm's-length transaction between an informed and willing buyer and an informed and willing seller for the equipment that comprises the System as installed on the Premises. The parties shall first attempt to reach mutual agreement on the Fair Market Value. If after thirty (30) days Host Customer and System Owner can not agree to the Fair Market Value, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from System Owner to Host Customer at Host Customer's sole expense.

Section 15.5 Option to Purchase at End of Term.

Section 15.5.1 Provided that Host Customer has fulfilled all obligations to System Owner under this Agreement, at the expiration of the Service Term, Host Customer shall have the option to purchase the System by notifying System Owner in writing at least one hundred eighty (180) days prior to the end of the applicable term that Host Customer intends to exercise its option under this Section 15.5.

Section 15.5.2 If Host Customer exercises its option under this Section 15.5, Host Customer shall pay System Owner an amount equal to the Fair Market Value of the System as agreed upon by the Parties.

Section 15.5.3 Upon Host Customer's payment for the System, System Owner shall furnish the System, including all components thereof and operation manuals, in the condition at the time of determination of the Fair Market Value, subject to normal wear and tear free and clear of all liens.

Section 15.5.5 Upon transfer of ownership of the System to Host Customer, System Owner shall have no further obligation with respect to the performance, installation, or operation of any part or component of the System.

Section 15.6 Option to Renew Agreement.

Provided Host Customer has fulfilled all material obligations to System Owner under this Agreement and is not in default of this Agreement, at the expiration of the Service Term, Host Customer shall have the option to renew this Agreement for one (1) five (5) year period upon the same terms and conditions except for the Solar Electricity Price which shall be mutually agreed upon by Host Customer and System Owner at the expiration of the Service Term. In the event Host Customer elects to renew this Agreement pursuant to this Section 15.6, Host Customer shall provide System Owner written notice of its election to renew upon at least ninety (90) days prior to the expiration of the Service Term.

Section 15.7 Host Customer Declines Option to Renew Agreement.

Provided that Host Customer has fulfilled all material obligations to System Owner under this Agreement and is not in default of this Agreement, and in the event Host Customer fails to renew this Agreement at the expiration of the Service Term as provided for in Section 15.6, System Owner shall remove the System and restore the Site to its original condition within 120 days after the expiration of the Service Term.

ARTICLE XVI
LIABILITY; INDEMNIFICATION

Section 16.1 Indemnity.

To the extent permitted by New Mexico law and to the extent covered by the insurance required under this Agreement, each Party shall indemnify, defend and hold harmless the other party, and all of their respective present or future elected officials, officers, directors, shareholders, employees, agents, volunteers and representatives from and against any and all losses, damages, liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses (including, but not limited to, reasonable costs of defense, settlement, and reasonable attorney's fees), which may be asserted against any or all of them by any person or governmental agency, or which any or all of them may hereafter suffer, incur, be responsible for or pay out, including damages in connection with bodily injuries (including, but not limited to, present and future death, sickness, disease and emotional or mental distress) to any person (including the indemnified Party's employees), damage (including, but not limited to, loss of use) to any property (public or private), or any violation or alleged violation of any laws, to the extent caused or arising out of a party's (a) negligent acts or omissions or (b) breach of its obligations, covenants or warranties hereunder. For purposes of interpretation of this Section 16.1 the term "party", when referring to the Host Customer, shall include the respective elected officials, officers, employees, agents, volunteers and representatives of the City of Santa Fe.

Section 16.2 Consequential Damages and Limitation of Liability.

Except to the extent specifically provided elsewhere in this Agreement, neither Party will be liable to the other for special, indirect or consequential damages arising out of the performance or non-performance of this Agreement, whether caused by negligence, tort, strict liability, breach of contract, or breach of warranty, including damages in the nature of loss profits or revenues, loss of use of facilities, or equipment or inability to perform contracts with third parties (other than for any damages incurred under such contracts), other than for damages resulting from the claims of parties not a party to this Agreement.

Section 16.3 Liability and Responsibility.

Host Customer. Subject to the New Mexico Tort Claims Act and other applicable law, Host Customer agrees to pay System Owner for the costs and expenses relating to any repairs to, direct or indirect harm to, or loss of the System, to the extent resulting from the action or inaction of Host Customer or any of its contractors, agents, tenants, employees, partners, owners, subsidiaries, or affiliates. If such harm to or loss of the System results in the Site or the System

becoming unusable in whole or in part by the casualty, and such casualty event causes a material reduction in the Output of the System or diminishes the ability of the System Operator to operate the System, and, if such damage shall be so extensive that System Owner, in its sole but reasonable judgement, determines not to rebuild, then System Owner shall have the right to cancel this Agreement by notice to Host Customer within one hundred eighty (180) days after the date of such damage.

System Owner. System Owner agrees to pay Host Customer for the costs and expenses relating to any repairs to, direct or indirect harm to, or loss of Host Customer's personal property or fixtures on the Premises, to the extent resulting from the action or inaction of System Owner or any of its contractors, agents, employees, partners, owners, subsidiaries or affiliates. If such harm to or loss to all or a portion of the Premises other than the Site shall be so damaged that in the sole but reasonable opinion of Host Customer the Premises should be restored in such a way as to alter the Site materially, Host Customer may cancel this Agreement by notice to System Owner given at any time within one hundred eighty (180) days after the date of such damage.

ARTICLE XVII
INTERRUPTION OF SERVICE

Section 17.1 Interruptions Are Expected.

The Parties acknowledge and understand that the System consists of intermittent generation facilities. This Agreement provides no warranty or guaranty to Host Customer with respect to the supply of Electricity. System Owner shall not be liable for any damages caused by or resulting from any interruption in Electricity during the Term, other than if caused by System Owner or its agents, contractors or subcontractors, nor shall System Owner be responsible for the cost of alternative supplies of Electricity during any such interruption. If the capabilities of the System to produce and deliver Electricity from solar irradiance of Electricity from the System is interrupted, other than as a result of the acts or omissions of Host Customer or as otherwise provided herein, System Owner will make commercially reasonable efforts to restore Output in a timely manner.

Section 17.2 Obstructions.

Section 17.2.1 Host Customer shall not install or permit to be installed on the Premises (or any other property owned or controlled by City of Santa Fe) any physical obstruction to the operation of the System that would reduce or block sunlight or otherwise interfere with the System or reduce Output.

Section 17.2.2 In the event that any obstruction that could reasonably be expected to reduce the Output is proposed to be erected or installed on property other than the Premises, Host Customer and System Owner mutually agree to cooperate with one another in opposing the erection of such obstruction.

Section 17.3 System Owner's Interruption of Output.

Notwithstanding anything to the contrary herein, System Owner shall have the reasonable right to interrupt, reduce or discontinue the delivery of Output for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of Output, or at the direction of authorized governmental authorities or electric utilities. Other than in the event of unexpected interruptions or in the event of an emergency, System Owner shall give Host Customer written notice at least five (5) Business Days prior to an interruption of Output deliveries and an estimate of the expected duration of the interruption. To the extent practical, all maintenance and repairs to the system will be performed during off peak hours, and in a manner that would not require a complete interruption in Output of the overall System. In no case shall any System Owner's interruption of Output or failure of the System be construed by the System Owner as Potential Output.

Section 17.4 Host Customer's Interruption of Output.

Notwithstanding anything to the contrary herein, Host Customer shall have the right for reasonable periods of time, which such periods shall be mutually agreed upon between Host Customer and System Owner, to interrupt the delivery of Output for purposes of inspection, maintenance, Host Utility feeder and buss tie-breaker interlocked circuit breaker switching operations, or replacement of the Medium Voltage Switchgear or any part thereof or at the direction of authorized governmental authorities or electric utilities. Host Customer shall give System Owner email or telephonic notice at least five (5) Business Days prior to a planned interruption of Output deliveries and an estimate of the expected duration of the interruption. To the extent practical, all maintenance and repairs to the System will be performed when there is no solar Output and in a manner that will minimize the duration of any complete interruption in Output of the overall System. Potential Output is created by any Host Customer discretionary interruption of Output at the Delivery Point. Host Customer agrees to pay all costs and expenses incurred to de-install and re-install the System, if required by Host Customer, during any delivery interruption, temporary shutdown or curtailment period. System Owner will be compensated for any Potential Output as discussed in Section 5.4 of this Agreement.

Section 17.5 Cost to Restore Service Following Interruption.

System Owner shall bear all costs associated with restoring service following any interruption in the capability of the System to produce and deliver Electricity from Solar irradiance resulting from (i) a failure of any component of the System, (ii) System Owner's operation of the System, or (iii) any failure of the System to automatically resume normal production of Electricity following any interruption of Host Utility power at the Delivery Point. Host Customer shall bear the costs associated with the restoration of the delivery of Output if an interruption of such supply of Electricity is the result of damage to the System or Meter caused by actions or inactions of Host Customer.

Section 17.6 Output Guaranty

After year six (6) of the term of the Agreement, if the System fails to generate at least 50% of Projected Output adjusted annually based on a -0.5% system degradation rate in each 12-month

calendar period, and provided, however, that such reduced Output is not caused by a Force Majeure Event or act of Host Customer, the System Owner shall allow the Host Customer after written notification to remove the said system. The Host Customer shall provide a written notice to the System Owner outlining their intent to remove the system at 30 days prior to any action.

ARTICLE XVIII
INSURANCE

Section 18.1 Insurance Requirements.

18.1.1 Host Customer shall maintain without interruption from the Commencement Date until the expiration of the Term, with a company or companies rated A or above by A.M. Best, commercial general liability insurance in an amount not less than one million (\$1,000,000) dollars per occurrence. Such insurance shall name System Owner and its equity owners and any parties providing financing to System Owner for the System as additional insured. Host Customer shall furnish to System Owner within five (5) business days of issuance of notice of commencement of construction pursuant to Section 3.3 by System Owner and annually thereafter, a certificate of insurance for such coverage stating the name of the insurance company and policy number, the policy period, the named insured and address, a description of coverage, policy limits, a description of location of covered operations, the name and address of the certificate holder, a notice of cancellation provision, and an authorized signature and date. Such certificate shall further indicate that the insurance will not be cancelled unless thirty (30) days' prior written notice (10 days if cancellation is due to nonpayment of premium) has been given to System Owner and that System Owner is named as an additional insured under the commercial general liability policy. In the event the Host Customer's insurance carriers will not agree to this notice requirement, the Host Customer will provide written notice to the System Owner, the required notices within four working days of Host Customers receipt of notice from its insurance carrier(s) of cancellation or non-renewal of the required insurance. For the avoidance of doubt, the failure of Host Customer to provide such certificate shall not be deemed to be a waiver by System Owner of any of Host Customer's obligations hereunder.

18.1.2 At all times while this Agreement is in force, System Owner shall at its own expense maintain insurance in at least the amounts specified below. For the avoidance of doubt, such amounts are the minimum required and shall not be construed as a limitation on System Owner's liability or indemnification obligations hereunder:

- (a) Commercial general liability (including products liability, completed operations and contractual liability coverage) at \$3,000,000 per occurrence combined single limit and \$5,000,000 in the aggregate.
- (b) Commercial automobile liability insurance at \$3,000,000 combined single limit.
- (c) Workers' compensation insurance as required by Applicable Law.
- (d) Employer's liability insurance with the following limits:

Bodily Injury by Accident	\$500,000	Each Accident
Bodily Injury by Disease	\$500,000	Each Employee
Bodily Injury by Disease	\$500,000	Policy Limit

Without limiting the foregoing System Owner, at its sole cost and expense, shall keep in force at all times while this Agreement is in force an insurance policy which will provide All Risk Property insurance, including coverage for Earthquake, Machinery & Equipment coverage, on a Replacement Cost basis. Such policy shall include Business Interruption and, during any period of construction or reconstruction, Builders Risk coverage.

The insurance shall: (i) be maintained with insurers with a Best's rating of at least "A", Financial Class Size VIII, (ii) be in the name of System Owner, (iii) include Host Customer and its officials, officers, employees, agents, volunteers and representatives as additional insureds under the commercial general liability policy, and (iv) all policies shall be primary, without right of contribution, to any insurance maintained by Host Customer and its officials, officers, employees, agents, volunteers and representatives. System Owner shall furnish to Host Customer upon the issuance of notice of commencement of construction pursuant to Section 3.3 and annually thereafter a certificate of insurance for such coverage stating the name of the insurance company and policy number, the policy period, the named insured and address, a description of coverage, policy limits, a description of location of covered operations, the name and address of the certificate holder, a notice of cancellation provision, and an authorized signature and date. Such certificate shall further indicate that the insurance will not be cancelled unless thirty (30) days' (10 days if cancellation is due to nonpayment of premium) prior written notice has been given to Host Customer and that Host Customer and its officials, officers, employees, agents, volunteers and representatives are named as an additional insureds under the commercial general liability policy. In the event the System Owner's insurance carriers will not agree to this notice requirement, the System Owner will provide written notice to the Host Customer within four working days of System Owner's receipt of notice from its insurance carrier(s) of cancellation or non-renewal of the required insurance. For the avoidance of doubt, the failure of System Owner to provide such certificate shall not be deemed to be a waiver by Host Customer of any of System Owner's obligations hereunder.

*ARTICLE XIX
ASSIGNMENT*

Section 19.1 Assignment.

Neither party may assign this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed; provided, however, that no such consent shall be required if Host Customer assigns this Agreement to an affiliated entity or System Owner collaterally assigns its rights and obligations under this Agreement in connection with a financing of the System.

ARTICLE XX
MISCELLANEOUS

Section 20.1 Independent Contractors.

Nothing in this Agreement, and no action taken by the parties under this Agreement, shall constitute a partnership, association, joint venture or other co-operative entity between the parties or make one party the agent or legal representative of the other. Neither party is herein granted, nor shall it hold itself out as having, any right or authority to assume or create any obligation, express or implied, on behalf of or in the name of the other. In fulfilling its obligations hereunder, each party is acting as an independent contractor.

Section 20.2 Disputes.

Any dispute, controversy or claim (each, a “Dispute”) arising out of or relating to this Agreement or any breach or alleged breach hereof, either Party may request that the Dispute first be submitted to mediation for resolution. Prior to mediation (if requested by a Party) or the filing of a lawsuit, the parties, through a manager with authority to resolve the Dispute, shall meet and use their best efforts to resolve the Dispute. Mediation shall commence no later than thirty (30) days after submission of the Dispute and shall be conducted at the locality where the Premises is situated and in accordance with the then prevailing rules of the Construction Industry Mediation Rules of the American Arbitration Association. In the event that the Dispute is not resolved pursuant to mediation, each Party may pursue any rights and remedies as each may have, whether hereunder or in law or at equity. Except to the extent that this Agreement expressly permits a party to suspend performance pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement; provided, in no event shall System Owner be obligated to deliver Electricity to Host Customer in the event that Host Customer is in Default of its payment obligations to System Owner hereunder.

Section 20.3 No Third Party Beneficiaries.

No person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in their own right to enforce any provisions of this Agreement; except that any person who is expressly entitled to indemnification as provided in Article XVI hereof shall be entitled to enforce such rights as and to the extent provided therein.

Section 20.4 Notices.

Any written notice, direction, instruction, request or other communication required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt or refusal, and shall be delivered (a) personally to the Party to whom notice is to be given, (b) by facsimile (provided that the original of such facsimile is sent to the other Party by a recognized overnight delivery service with positive tracking of items on the same day as the day on which the facsimile transmission is received by such other Party) to the Party to whom notice is to be given, (c) by a recognized overnight delivery service with positive tracking of items, to the Party to whom notice is to be given, or (d) to the Party to whom notice is to be given, by first class

registered or certified mail, return receipt requested, postage prepaid, and addressed to the addressee at the address stated opposite its name below, or at the most recent address specified by written notice given to the other party in the manner provided in this Section 20.4:

If to Host Customer:

City of Santa Fe
200 Lincoln Ave
Santa Fe, New Mexico 87504
Attn.: Energy Specialist
naschiavo@santafenm.gov

If to System Owner:

MLH Cripple Creek Solar, LLC
Four Embarcadero CTE STE 3670
San Francisco, CA 94111
Attn. Brad Bauer
brad@mp2capital.com

Section 20.5 Applicable Law and Jurisdiction; Waiver.

This Agreement is made and shall be interpreted and enforced in accordance with the laws of the State of New Mexico.

Section 20.6 Complete Agreement.

This Agreement and any documents expressly incorporated herein or therein by reference shall constitute the entire Agreement between both Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, representations, and statements, including any marketing materials and sales presentations (including related any energy audit) whether oral or written. There are no agreements, understandings, or covenants between the parties of any kind, expressed or implied, or otherwise, pertaining to the rights and obligations set forth herein that have not been set forth in this Agreement.

Section 20.7 Right to Set-Off.

Neither Host Customer nor System Owner shall have any right to set-off any payment obligation under this Agreement against any obligations due to System Owner or Host Customer, as applicable, under any provision of this Agreement.

Section 20.8 Amendments and Modifications.

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both Parties.

Section 20.9 Further Assurances.

Each Party shall use its reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assignments, consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Agreement or to arrange financing for the System.

Section 20.10 Invalidity.

The invalidity or unenforceability, in whole or in part, of any portion or provision of this Agreement will not affect the validity and enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. Notwithstanding the provisions of the preceding sentence, should any term or provision of this Agreement be found invalid or unenforceable, the Parties shall immediately renegotiate in good faith such term or provision of this Agreement to effectuate the same intent and to eliminate such invalidity or unenforceability.

Section 20.11 Counterpart Execution.

This Agreement may be executed and delivered by the Parties in any number of counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 20.12 Neutral Interpretation.

The Parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party. Any headings or captions contained in this Agreement are for reference purposes only and are in no way to be construed to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

Section 20.13 No Waiver.

No waiver of any of the terms and conditions of this Agreement shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

Section 20.14 Survival.

Any provisions necessary to give effect to the intent of the Parties hereunder after the termination of this Agreement shall survive the termination of this Agreement, including, without limitation, the indemnification provisions set forth in Article XVI hereof.

Section 20.15 Obligations.

The Host Customer and the System Owner agree to satisfy their payment obligations in accordance with the terms of this Agreement.

Section 20.16 Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations to and authorization being made for the Host Customer for the performance of this Agreement. Host Customer shall make reasonable efforts to secure continuing appropriations and authorization to continue payments under this Agreement. In the event appropriations and authorization are not made, written notice shall be given by Host Customer to System Owner that payments under this Agreement may no longer be made; provided, that the Host Customer shall allow System Owner to continue to occupy the Site, to operate the System, and shall transfer environmental credits referred to in Article IX of this Agreement to System Owner.

Section 20.17 Improvement Loan.

(a) Host Customer shall advance to System Owner a portion of the funds required to construct, assemble and install the System on the Premises (the "Improvement Loan") in an amount equal to Two Hundred Thirty Seven Thousand Dollars (\$237,000). Interest shall accrue at an annual interest rate of two and three-tenths percent (2.3%). System Owner shall pay quarterly installments of principal and interest within thirty (30) days of the first Quarterly Date following the Commencement Date. Thereafter, System Owner shall pay equal quarterly installments of principal and interest within thirty (30) days of each Quarterly Date thereafter sufficient to amortize the Improvement Loan over a twenty (20) year term.

(b) The proceeds of the Improvement Loan may be used only to pay a portion of the costs of constructing, assembling and installing the System, including without limitation, engineering, permitting and related costs. The amount by which the total cost of constructing, assembling and installing the System and otherwise improving the Premises exceeds the Improvement Loan shall be paid by System Owner. Host Customer shall disburse a portion of the Improvement Loan from time to time, within thirty (30) days after receipt of a complete Application for Payment pursuant to Section 20.17 (c) below. Disbursements shall be paid to System Owner, where the disbursement is a reimbursement of costs actually paid by System Owner. Disbursements of the Improvement Loan shall be made monthly and shall be subject to an annual interest rate of two and three-tenths percent (2.3%) based on the average balance of outstanding loan for the preceding month. The first quarterly installment payment shall include the interest accrued pursuant to the preceding sentence and thereafter the Improvement Loan shall be repaid as provided in Section 20.17 (a) above.

(c) To request a disbursement of the Improvement Loan, System Owner shall submit a written application for payment, which shall include all of the following (collectively, the “Application for Payment”):

(i) a completed AIA form G702 (1992 Edition), Application and Certification for Payment, or other comparable form reasonably approved by Host Customer;

(ii) a certification from System Owner stating that the materials or work for which payment is being requested have been supplied and installed to the Premises (in the case of materials) or performed (in the case of work);

(iii) representation by System Owner that no default exists; and

(iv) Such other commercially reasonable documentation as Host Customer may require.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have each executed this Solar Energy Agreement, as of the Effective Date.

CITY OF SANTA FE

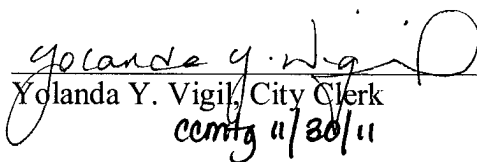


David Coss, Mayor
City of Santa Fe

12-5-11

Date

ATTEST:




Yolanda Y. Vigil, City Clerk
ccmtg 11/30/11

12-27-11

Date

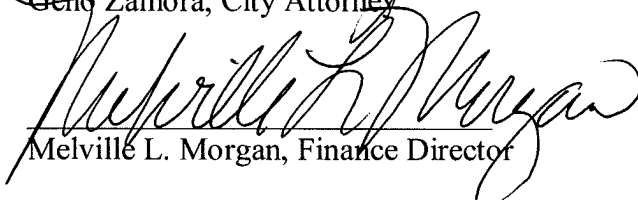
APPROVED AS TO FORM:



Geno Zamora, City Attorney

11/7/11

Date



Melville L. Morgan, Finance Director

12/9/11

Date

Business Unit/Line Item
52452/ 514050

MLH Cripple Creek Solar, LLC



12/16/11

Brad Bauer, President

Date

NM Taxation & Revenue
CRS # 03-202206-00-9

City of Santa Fe Business
Registration # 11 - 00109639

EXHIBIT A

System Description

100 kW DC photovoltaic system located at

73 Paseo Real Santa Fe, New Mexico 87507

A-1 Drawing of Premises and Site

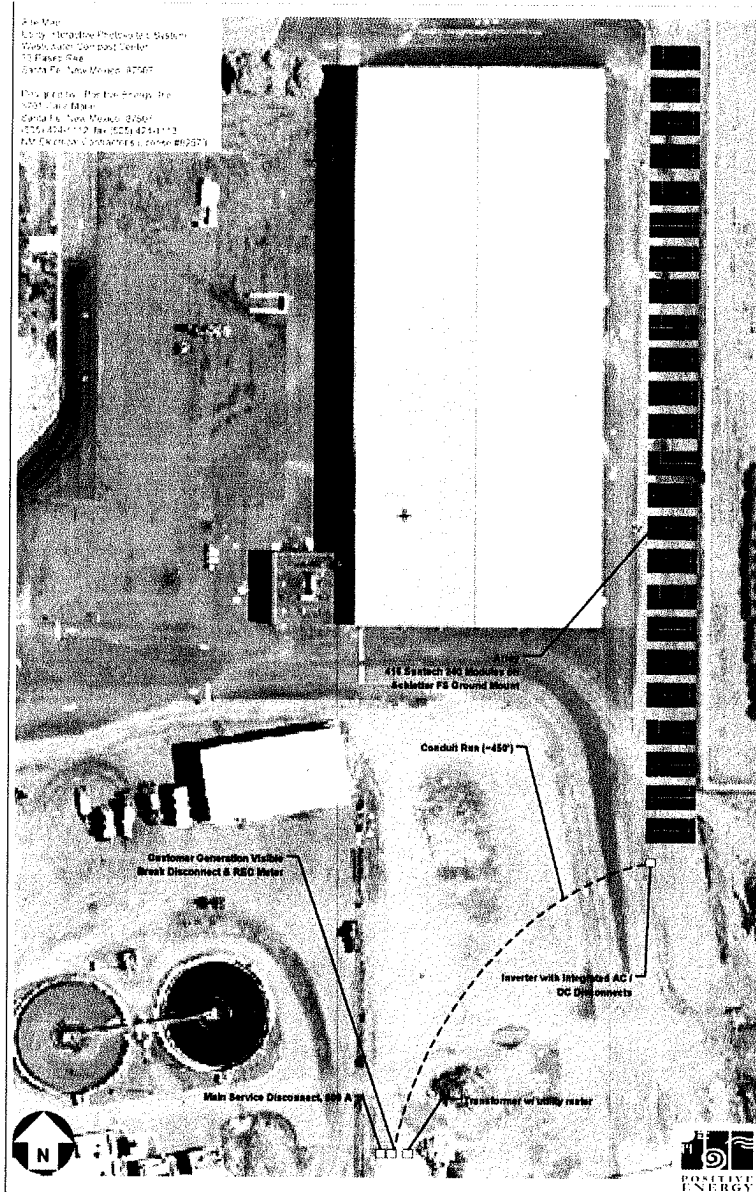


EXHIBIT B

Monthly Project System Production Estimates and Cost Estimates

B-1 Year 1: Quarterly Projected Output

QTR	Cost/kWh	kWh Generated Quarterly	Payments
1	\$0.1475	40,625	\$5,992
2	\$0.1475	40,625	\$5,992
3	\$0.1475	40,625	\$5,992
4	\$0.1475	40,625	\$5,992

B-2 20 Year Annual Projected Output

Year	Cost/kWh	kWh Generated Annually	Payments
1	\$0.1475	162,500	\$ 23,969
2	\$0.1475	161,688	\$ 23,849
3	\$0.1475	160,879	\$ 23,730
4	\$0.1475	160,075	\$ 23,611
5	\$0.1475	159,274	\$ 23,493
6	\$0.1475	158,478	\$ 23,375
7	\$0.1475	157,686	\$ 23,259
8	\$0.1475	156,897	\$ 23,142
9	\$0.1475	156,113	\$ 23,027
10	\$0.1475	155,332	\$ 22,911
11	\$0.1475	154,555	\$ 22,797
12	\$0.1475	153,783	\$ 22,683
13	\$0.1475	153,014	\$ 22,570
14	\$0.1475	152,249	\$ 22,457
15	\$0.1475	151,487	\$ 22,344
16	\$0.1475	150,730	\$ 22,233
17	\$0.1475	149,976	\$ 22,122
18	\$0.1475	149,226	\$ 22,011
19	\$0.1475	148,480	\$ 21,901
20	\$0.1475	147,738	\$ 21,791

EXHIBIT C

Sample Invoice

MLH Cripple Creek Solar, LLC
Four Embarcadero Center Suite 3670
San Francisco, CA 94111

Solar Energy Agreement Monthly Invoice

From:
MLH Cripple Creek Solar, LLC
Four Embarcadero Center Suite 3670,
San Francisco, CA 94111

To:
City of Santa Fe
Attn: Purchasing Division
200 LINCOLNAVE
SANTA FE, NM87504

Invoice #: XXXXXX

Invoice Date: x/xx/20xx

This Invoice is for the power generated by the system at Wastewater Management Division Compost Facility at 73 Paseo Real in Santa Fe, New Mexico between the dates of xx/xx/20xx and xx/xx/20xx. Please make checks payable to "MP2 CAPITAL, LLC."

Item	Description	Unit Cost	Total Cost
1	Output: xxx,xxx kWh	\$0.1475	\$xxxxxx
2	Potential Output: xxx,xxx kWh	\$0.1475	\$xxxxxx
	Total Due Net 30		\$xxxxxx

Submitted by:

, Controller

EXHIBIT D

Early Buyout Option/Termination Fee
(\$/W)

Year*	Buyout Price (\$/W)
1	\$434,000
2	\$404,000
3	\$374,000
4	\$344,000
5	\$315,000
6	\$188,000
7	\$177,000
8	\$166,000
9	\$155,000
10	\$144,000
11	\$132,000
12	\$120,000
13	\$108,000
14	\$ 96,000
15	\$ 83,000
16	\$ 70,000
17	\$ 56,000
18	\$ 43,000
19	\$ 29,000
20	\$ 15,000

* Each Year shall be a calendar year. The first Year shall begin on the January 1st following the Full Commercial Operation Date.

**CITY OF SANTA FE
AMENDMENT No. 1 TO
POWER PURCHASE AGREEMENT
(Compost Facility)**

AMENDMENT No. 1 (the “Amendment”) to the CITY OF SANTA FE POWER PURCHASE AGREEMENT, dated December 27, 2011 (the “Agreement”), between the City of Santa Fe (the “City”) and MLH Cripple Creek Solar, LLC (the “Contractor”). The date of this Amendment shall be the date when it is executed by the City.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to construct, own, operate and maintain a utility interconnected photovoltaic system at the Wastewater Management Division’s Compost Facility. The Contractor has further agreed to sell to the City 100 percent of the energy generated at that facility at a fixed price.

B. Pursuant to Article 20.8 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. SOLAR ELECTRICITY PRICE.

Article 6.1 of the Agreement is amended as follows:

The price for Output shall be a fixed price of \$0.1475 per kilowatt hour for years (1) one through twenty (20) (the “Solar Electricity Price”).

Article 6.2 of the Agreement is amended by deleting the third sentence of such section in its entirety and, in lieu thereof, inserting the following text:

“The amount due for the Output delivered or Potential Output for such month shall be determined by multiplying the Solar Electricity Price by the Output or Potential Output for such month. Such amount owed by Host Customer shall then be reduced by the amount of payment received by System owner for such month pursuant to that certain Standard Large Solar Renewable Energy Certificate Purchase Agreement among System Owner, Host Customer, and Public Service Company of New Mexico. Each invoice shall set forth in reasonable detail the calculation of all amounts owed, including any amounts owed pursuant to Section 5.4 and Section 6.1 of this Agreement”.

2. ENVIRONMENTAL CREDITS

Article 9.1 of the Agreement is amended by deleting such section in its entirety and, in lieu thereof, inserting the following text:

“All Environmental Certificates (Renewable Energy Credits), whether available directly or indirectly, shall be the property of the System Owner for the Term of this Agreement.”

Article 9.2 of the Agreement is amended by deleting such section in its entirety and, in lieu thereof, inserting the following text:

“Host Customer, at no additional cost to the System owner, agrees to fully cooperate and to timely complete any and all documentation reasonably required by any mandatory or voluntary program governing the existence or trade of Environmental Credits, including documentation required to verify the Environmental Credits, including Renewable Energy Credits.”

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.

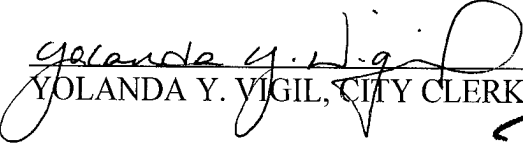
IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of Santa Fe Power Purchase Agreement as of the date set forth below:

CITY OF SANTA FE:

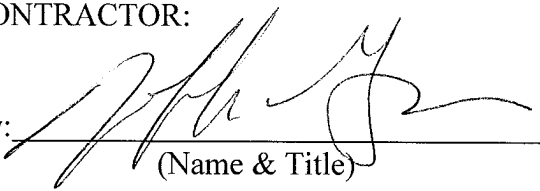

ROBERT ROMERO, CITY MANAGER

Date: 3.1.13


ATTEST:


YOLANDA Y. VIGIL, CITY CLERK
P.O.

CONTRACTOR:

By: 
(Name & Title)
JEFFREY G. CHAN,
PRESIDENT

APPROVED AS TO FORM:


GENO I. ZAMORA, CITY ATTORNEY

APPROVED:


MELVILLE L. MORGAN,
FINANCE DEPARTMENT DIRECTOR 2/27/13

**SECOND AMENDMENT TO AND CONSENT TO ASSIGNMENT OF
POWER PURCHASE AGREEMENT BY AND BETWEEN MLH CRIPPLE
CREEK SOLAR, LLC AND THE CITY OF SANTA FE (COMPOST FACILITY)**

THIS SECOND AMENDMENT TO AND CONSENT TO ASSIGNMENT OF THE POWER PURCHASE AGREEMENT BY AND BETWEEN MLH CRIPPLE CREEK SOLAR, LLC AND THE CITY OF SANTA FE (COMPOST FACILITY) ("Amendment and Consent to Assignment") is made and entered into as of July 27, 2016 (the "Effective Date") by and between the CITY OF SANTA FE, New Mexico ("City of Santa Fe") and MLH CRIPPLE CREEK SOLAR, LLC. The City of Santa Fe and MLH CRIPPLE CREEK SOLAR, LLC, are referred to individually herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the City of Santa Fe and MLH CRIPPLE CREEK SOLAR, LLC entered into that certain "Power Purchase Agreement By and Between MLH CRIPPLE CREEK SOLAR, LLC and The CITY OF SANTA FE (Compost Facility)" dated November 30, 2011 and as amended by "AMENDMENT No. 1 TO POWER PURCHASE AGREEMENT (Compost Facility)" dated March 1, 2013 (collectively the "Compost Facility PPA");

WHEREAS, MLH CRIPPLE CREEK SOLAR, LLC desires to assign the Compost Facility PPA to DISSIGNO HOLDINGS, LLC and the City of Santa Fe consents to such assignment;

WHEREAS, the City of Santa Fe and MLH CRIPPLE CREEK SOLAR, LLC desire to amend the Compost Facility PPA as set forth below to effectuate the assignment of the Compost Facility PPA to DISSIGNO HOLDINGS, LLC;

NOW THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration (the receipt and adequacy whereof is hereby acknowledged) the Parties agree as follows:

**ARTICLE I
INTERPRETATION**

- 1.1 Defined Terms.** Unless otherwise defined in this Amendment and Consent to Assignment, capitalized terms used and not otherwise defined herein shall have the meanings specified in the Compost Facility PPA.

**ARTICLE 2
CONSENT TO ASSIGNMENT**

- 2.1 Consent to Assignment.** Pursuant to Section 19.1 of the Compost Facility PPA, the City of Santa Fe hereby provides written consent for MLH CRIPPLE CREEK

SOLAR, LLC to assign its rights and responsibilities under the Compost Facility PPA to DISSIGNO HOLDINGS, LLC, an Oregon limited liability company with an address of 19547 Blue Lake Loop, Bend, OR, 97702.

ARTICLE 3 AMENDMENTS

3.1 **Amendments to the Compost Facility PPA.** Subject to the conditions precedent set forth in Section 4.1 hereof, the Parties agree to amend the Compost Facility PPA as follows:

3.1.1 *Introductory paragraph.* The following sentence shall be added at the end of the introductory paragraph: “Effective May____, 2016, System Owner shall be Dissigno Holdings, LLC.”

3.2.2 *Section 6.3.* Section 6.3 shall be amended by striking reference to “MLH CRIPPLE CREEK SOLAR, LLC” and replacing it with “DISSIGNO HOLDINGS, LLC”.

3.2.3 *Section 20.4.* Section 20.4 shall be amended by striking the name and address for System Owner and replacing it with:

Tara Doyle
Dissigno Holdings, LLC
19547 Blue Lake Loop
Bend, OR 97702
(510) 684-5546
tara@dissigno.com

3.2.4 *Exhibit A.* Exhibit A shall be amended by striking reference to “100 kW DC photovoltaic system” and replacing it with “94.9 kW DC photovoltaic system”.

3.2.5 *Exhibit C.* Exhibit C shall be amended by striking references to:

MLH Cripple Creek Solar, LLC
Four Embarcadero Center, Suite 3670
San Francisco, CA 94111

And replacing such references with:

Tara Doyle
Dissigno Holdings, LLC
19547 Blue Lake Loop
Bend, OR 97702

- 3.2.6 Exhibit C. Exhibit C shall be further amended by striking reference to “MP2 CAPITAL, LLC” and replacing it with “DISSIGNO HOLDINGS, LLC”.

ARTICLE 4

CONDITIONS PRECEDENT, EFFECT ON THE COMPOST FACILITY PPA

- 4.1 **Conditions Precedent to Amendment.** The amendments set forth in Article 3 shall have no force and effect unless and until MLH CRIPPLE CREEK SOLAR, LLC assigns its rights under the Compost Facility PPA to DISSIGNO HOLDINGS, LLC and notice of such assignment having been completed is provided to the City of Santa Fe.
- 4.2 **Compost Facility PPA to Remain in Full Effect.** Except as specifically amended in this Amendment and Consent to Assignment, the Compost Facility PPA shall continue in full force and effect and is hereby in all respects ratified and confirmed. The Compost Facility PPA shall henceforth be read and construed in conjunction with this Amendment and Consent to Assignment.

ARTICLE 5

REPRESENTATIONS

- 5.1 **Mutual Representations.** Each Party hereby represents and warrants to the other Party that:
- 5.1.1 it has the full power and authority to execute and deliver this Amendment and Consent to Assignment and to perform all of its obligations hereunder.
- 5.1.2 its obligations under the Amendment and Consent to Assignment constitute its legal, valid and binding obligations, enforceable in accordance with its respective terms.
- 5.1.3 all representations contained in this Amendment and Consent to Assignment are true and accurate as of the Effective Date.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the undersigned, which hereby declare under penalty of perjury to be the authorized representatives of the Parties named hereto, have executed this Amendment and Consent to Assignment on the dates specified below to be effective as of the Effective Date.

CITY OF SANTA FE	MLH CRIPPLE CREEK SOLAR, LLC
By: <u>[Signature]</u> Name: Javier M. Gonzales, Title: Mayor Date: <u>8/2/16</u>	By: <u>[Signature]</u> Name: <u>B Bauer</u> Title: <u>Authorized Representative</u> Date: <u>8/15/16</u>
Attest:	
<u>[Signature]</u> Yolanda Y. Vigil, City Clerk CC mtg 7/21/16	
Approved as to form:	
<u>[Signature]</u> <u>6/13/16</u> Kelley A. Brennan, City Attorney	
Approved: <u>[Signature]</u> <u>7-29-2016</u>	
Oscar Rodriguez, Finance Director	

ITEM # 13-0177

PUBLIC SERVICE COMPANY OF NEW MEXICO
AGREEMENT NO. 1035338

STANDARD LARGE SOLAR RENEWABLE ENERGY
CERTIFICATE PURCHASE AGREEMENT FOR
THIRD-PARTY OWNER
PARTICIPATION IN PNM'S SOLAR REC INCENTIVE PROGRAM

THIS AGREEMENT is made and entered into as of the Effective Date, as hereinafter defined, by and among (individually "Party" or collectively "Parties"); City SF 52452 Sewer PLT Compost Building ("Customer"), MHL Cripple Creek Solar, LLC ("Third-Party Owner") and Public Service Company of New Mexico ("PNM").

WHEREAS, Customer owns or leases the Premises on which the Large Solar Facility described in Section 1 below is located; and

WHEREAS, Third-Party Owner owns and/or operates the Large Solar Facility which is sized no greater than one hundred twenty percent (120%) of the average annual consumption of electricity in kWh by Customer at the Premises at which the Large Solar Facility is located; and

WHEREAS, in accordance with 17.9.572.13.C NMAC, Third-Party Owner is the owner of certain renewable energy certificates associated with the electricity generated by the Large Solar Facility and consumed by Customer on the Premises ("Solar RECs"); and

WHEREAS, Third-Party Owner desires to sell and PNM desires to purchase the Solar RECs pursuant to the terms of this Agreement and as provided in PNM Rate 32;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. **SOLAR FACILITY.** Customer owns or leases the Premises on which the following solar photovoltaic ("PV") or solar thermal electric facility rated larger than 10kW_{AC} up to 1 MW_{AC} (the "Large Solar Facility") is located. The Large Solar Facility is associated with PNM electric service account numbers: 115942955-1324334 ("Electric Service Account"), and 115993547-1324334 ("REC Payment Account"), and is interconnected to PNM's electric distribution system pursuant to Interconnection Agreement No. 1035338 ("Interconnection Agreement"), effective on March 28, 2013

Solar Facility address: 73 Paseo Real
Santa Fe, NM 87507

Rated solar generating capacity: 99.84 (kW_{DC} STC)

"kW_{DC} STC" is defined as the rated total capacity of the installed panels or collector at their DC output.

“Premises” is defined as the building, structure, or facility to which electricity is being or is to be furnished by the Solar Facility; two or more buildings, structures, or facilities located on one tract or contiguous tracts of land that are utilized by one Customer for residential, commercial, industrial, institutional, or governmental purposes constitutes one Premises, except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one Premises if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

2. OWNER OF LARGE SOLAR FACILITY. Customer and Third-Party Owner hereby certify that Third-Party Owner is the owner or long-term lessee of the Large Solar Facility. Third-Party Owner’s contact information is:

Name: MHL Cripple Creek Solar, LLC

Contact Person: Marc Pangburn

Address: 500 Sansome St, Ste 750

San Francisco, CA 94111

Telephone: 415-874-5360

REC Payment Account No. 115993547-1324334

3. PURCHASE AND DELIVERY OF LARGE SOLAR RECs. PNM will purchase from Third-Party Owner, and Third-Party Owner will deliver to PNM, the Solar RECs that are generated by the Solar Facility and associated with the energy consumed each month on the Premises as metered by PNM. The applicable rate is 8 cents per kWh as set forth by PNM in its Notice of Completion of Application and REC Reservation. The payment for the Solar RECs will be calculated by multiplying the applicable rate by the number of kWh of energy generated by the Solar Facility and consumed on the Premises as measured by a PNM meter as further described in Section 5 of this Agreement.

If the Solar Facility generates electricity in excess of the amount of electricity consumed each month on the Premises (“Excess Energy”), PNM shall purchase such Excess Energy from Customer at its avoided cost, and PNM shall receive from Third-Party Owner, without cost, all RECs associated with such Excess Energy, to the extent authorized by the New Mexico Renewable Energy Act.

Solar REC purchase payments that total in excess of \$200 will be paid to Third-Party Owner on a monthly basis. If the amount due for the Solar RECs is less than \$200 the amount will be carried forward to the following month until such time as the balance due exceeds \$200, at which time the total balance due will be paid directly to Third-Party Owner.

Payments by PNM to Third-Party Owner for Solar RECs will commence subsequent to the execution of a Standard Interconnection Agreement, PNM’s receipt and execution of this Agreement, and the billing cycle in which the meters on Customer’s Premises are read. Payments for Solar RECs shall be made within thirty (30) days of

the date the meters on the Premises are read by PNM. Purchase of Solar RECs produced by generating capacity added to the Large Solar System after execution of this Agreement will be made in accordance with Section 4 below.

4. **MODIFICATION OF GENERATING FACILITIES.** The rated capacity of the Solar Facility shall not be increased without prior approval of PNM and shall not be increased to a capacity greater than 1 MW_{AC} in any event. PNM will purchase Solar RECs generated by a modified Solar Facility only upon execution of a new REC Purchase Agreement, at the applicable rate as of the effective date of such agreement.
5. **METERING.** Third-Party Owner shall provide and install, at its own expense, a meter socket to accommodate a PNM meter that measures only the total output of the Large Solar Facility inverters. This meter socket shall be installed in accordance with PNM's standard meter specifications and shall be in addition to the PNM meter socket used for the normal billing meter. Unless otherwise approved by PNM, this second meter socket shall be physically located next to the Customer/Third-Party Owner-provided meter socket for the PNM electric billing meter. PNM shall furnish and install a standard kilowatt-hour meter for the purpose of measuring the total output of the Large Solar Facility inverter. In accordance with 17.9.570.10 NMAC, if provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, PNM shall not incur, and shall not be liable for, any incremental costs associated with installing the more costly metering equipment and facilities.

Attached hereto and incorporated herein as Appendix A is the application for interconnection and sale of Solar RECs, including a one-line diagram and three-line diagram showing the Large Solar Facility, the interconnection equipment, breaker panel(s), PNM required disconnect switches, PNM meters, PNM transformers and other required information. Customer and Third-Party Owner represent and warrant, jointly and severally, that the information contained in Appendix A is accurate as of the date of this Agreement.

6. **TERM OF AGREEMENT.** This Agreement shall be in effect for twenty (20) years from the Effective Date as stated in the Interconnection Agreement, unless terminated as provided herein.
7. **TERMINATION.** This Agreement shall automatically terminate (a) upon execution of a new REC Purchase Agreement among the Parties; (b) sixty (60) days after Customer closes the Electric Service Account unless Customer assigns this Agreement and the Interconnection Agreement as provided herein; or (c) upon termination of the Interconnection Agreement.

This Agreement may be terminated by a non-breaching Party if a material breach occurs with respect to any Party at any time during the term of this Agreement. A non-breaching Party may (a) terminate this Agreement upon five (5) business days' notice to the breaching Party with a copy to the other non-breaching Party, and (b)

exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement.

As used in this Agreement, "material breach" means, as to the breaching Party (a) failure to make, when due, any payment required under this Agreement if such failure is not subject to offset and is not remedied within ten (10) business days after written notice of such failure is given to the breaching Party; or (b) any representation or warranty made by the breaching Party in this Agreement shall prove to have been false or misleading in any material respect when made; or (c) failure to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations that are otherwise specifically covered as a separate material breach), and such failure is not cured by the breaching Party within thirty (30) days of written notice from any non-breaching Party, or, if such breach is not susceptible to cure within thirty (30) days, if the breaching Party has not commenced to cure the breach within thirty (30) days and/or fails to proceed with reasonable diligence to cure such breach; under no circumstances, however, shall the total cure period exceed ninety (90) days; or (d) making an assignment or any general arrangement for the benefit of creditors; or (e) filing a petition or otherwise commencing, authorizing or acquiescing in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or having such petition filed against it and such proceeding remains undismissed for thirty (30) days; or (f) otherwise becoming bankrupt or insolvent (however evidenced), or (g) being unable to pay its debts as they become due.

If this Agreement is terminated for any reason, the final Large Solar REC payment will be calculated based on PNM's last meter readings at the Premises and Solar Facility and the determination of whether or not any excess generation has occurred. The Third-Party Owner will be paid for RECs up to the amount of Customer's consumption at the Premises through the date of the last meter reading, except that PNM may offset such payment against any amounts owed to PNM by Third-Party Owner. PNM shall purchase any Excess Energy from Customer at PNM's avoided cost, except that PNM may offset such payment against any amounts owed to PNM by Customer, and PNM shall own outright all RECs associated with such Excess Energy to the extent authorized by the New Mexico Renewable Energy Act. Payment for any Excess Energy will be calculated and paid directly to Customer within thirty (30) calendar of the last meter reading.

8. **TRANSFER OF PREMISES; ASSIGNMENT OF AGREEMENT.** If Customer sells or leases the Premises, Customer may assign this Agreement and the Interconnection Agreement to the new owner or occupant of the Premises upon prior written consent of Third-Party Owner and PNM, which consent shall not be unreasonably withheld or delayed. Such assignments must be made within sixty (60) days of the date the Customer terminates the Electric Service Account. If this Agreement and the Interconnection Agreement are not assigned within the 60-day period, this Agreement terminates.
9. **TRANSFER OF LARGE SOLAR FACILITY; ASSIGNMENT OF AGREEMENT.** If Third-Party Owner sells the Large Solar Facility, Third-Party Owner may assign

this Agreement and the Interconnection Agreement to the new owner of the Large Solar Facility upon prior written consent of Customer and PNM, which consent shall not be unreasonably withheld or delayed. Such assignment must be made within thirty (30) days of the date the Third-Party Owner closes on the sale of the Large Solar Facility. If this Agreement and the Interconnection Agreement are not assigned within the 30-day period, this Agreement terminates.

10. RELOCATION OF SOLAR FACILITY.

- a. If Third-Party Owner relocates the Solar Facility in its entirety to a different property owned or leased by Customer within PNM's service area, Third-Party Owner shall: (a) notify PNM of such relocation within 30 days before the Solar Facility is relocated; (b) submit a new Application for Interconnection for the new Premises; and (c) complete the interconnection process. The Parties shall amend this Agreement to reflect the new Premises, the new Electric Service Account number and the new REC Payment Account number. The Parties understand and agree that the rated solar generation capacity of the Solar Facility shall not be modified, and the term of this Agreement shall not be extended, on account of the relocation.
- b. If Third-Party Owner relocates the Solar Facility in its entirety to a different property within PNM's service area, and such property is not owned by or leased by Customer, this Agreement shall terminate upon disconnection of the Solar Facility from PNM's system, unless earlier terminated as set forth in this Agreement. Third-Party Owner shall: (a) notify PNM of such relocation within 30 days before the Solar Facility is relocated; (b) submit a new Application for Interconnection for the new Premises; (c) complete the interconnection process; and (d) enter into a new REC purchase agreement at the applicable rate as of the effective date of such agreement.

11. INTERRUPTION OR REDUCTION OF DELIVERIES; DISCONTINUANCE OF SERVICE. PNM shall not be obligated to pay for a reduction in the number of Solar RECs caused by interruptions of utility service or by utility-required Large Solar Facility shutdowns as specified in the executed Standard Interconnection Agreement or due to actions caused by Customer or Third-Party Owner. If service to the Electric Service Account is discontinued for any time period for any reason permitted under applicable NMPRC rules: (a) PNM shall have no liability for and shall not pay Customer for any actual or potential generation that may or could have occurred while such service was discontinued; and (b) PNM shall have no liability for and shall not pay Third-Party Owner for any RECs associated with any actual or potential generation that may or could have occurred while service to the Electric Service Account is discontinued.

12. ACCESS TO PREMISES. PNM may enter Customer's Premises at all reasonable hours to read or test meters and for access to the Solar Facility.

13. NO WARRANTY OR GUARANTEE. The Parties agree that the sale and purchase of the Solar RECs is not an endorsement, confirmation, warranty, guarantee or representation concerning the safety, operating characteristics, durability or reliability of the Large Solar Facility. No Party assumes the duty of inspecting any other Party's

lines, wiring, apparatus, machinery or appliances, or any part thereof (collectively, "Associated Equipment") and shall not be responsible to any other Party therefore. PNM further disclaims any obligation to inspect, and any liability for, Associated Equipment owned by Third-Party Owner. Third-Party Owner and Customer agree to install and maintain, or to have installed and maintained, in a safe and efficient manner, and in accordance with good electrical practices and all applicable regulations, all of the Associated Equipment connected at the Premises to PNM's electric distribution system.

14. **POTENTIAL TAX LIABILITY.** Third-Party Owner understands that the sale and purchase of the Large Solar RECs may create a tax liability for Third-Party Owner. Third-Party Owner further understands that PNM may issue Internal Revenue Service Form 1099 or other tax form to Third-Party Owner relating to these transactions. By signing this Agreement, Third-Party Owner acknowledges and agrees that Third-Party Owner has the sole responsibility for paying any federal, state or local taxes, including federal income tax that may be due on amounts received by Third-Party Owner, as a result of transactions under this Agreement. Third-Party Owner hereby indemnifies and defends PNM and Customer, and their respective officers, directors, employees, boards, commission, agents, successors and assigns, from and against any and all such taxes and any and all charges or damages arising out of Third-Party Owner's failure to pay such taxes or any associated penalties.
15. **GOVERNING LAW.** This agreement shall be interpreted, governed, and construed under the laws of the state of New Mexico as if executed and to be performed wholly within the state of New Mexico.
16. **AMENDMENT, MODIFICATIONS OR WAIVER.** Any amendments or modifications to this Agreement shall be in writing and agreed to by the Parties. The failure of any Party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any Party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, shall be deemed to be, or construed as, a further or continuing waiver of any such breach or a waiver of the breach of any other term or covenant unless such waiver is in writing.
17. **NOTICES.** Except as expressly agreed in writing among the Parties, any notice, request, approval, consent, instruction, direction or other communication required or permitted under this Agreement shall be in writing and shall be deemed given if personally delivered, delivered by reputable overnight courier or sent by First Class Mail, postage prepaid, and shall be deemed received, if personally delivered, or delivered by courier, upon delivery, and if mailed, on the third day following deposit in the U. S. mail.

If to PNM:

Attention: Customer Owned Generation Programs
Public Service Company of New Mexico
414 Silver Ave SW
Albuquerque, NM 87102-1135

If to Customer:

City SF 52452 Sewer PLT Compost Building
2651 Siringo Rd, Bldg H
Santa Fe, NM 87505

If to Third-Party Owner:

MHL Cripple Creek Solar, LLC
Marc Pangburn
500 Sansome St, Ste 750
San Francisco, CA 94111

All notices under this Agreement shall refer to the Solar Facility address set forth in Section 1 of this Agreement.

18. ASSIGNMENT. Except as otherwise provided in this Section 18, no Party shall assign this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably conditioned, delayed or withheld.
- 18.1 Any Party may assign any of its rights, duties, or obligations under this Agreement to any Affiliate (which shall include a successor entity in a merger or acquisition transaction) of the assigning Party, provided such assignee (a) has a credit rating that is equal to or greater than the credit rating of the assigning Party's credit rating; (b) has the legal authority and operational ability to satisfy the assigning Party's obligations under this Agreement; and (c) agrees to be bound by the terms and conditions of this Agreement. In the event PNM makes such an assignment, it shall be relieved of all financial responsibility related to this Agreement.
- 18.2 Third-Party Owner may assign any of its rights, duties or obligations under this Agreement to one or more Affiliates or third parties in connection with a sale-and-leaseback or other debt and/or equity financing transaction to aid in financing of the Large Solar Facility. In connection with such an assignment, Third-Party Owner may pledge its interest in this Agreement, including any rights to payment, as collateral or security for loans or financing against its personal property. Any financing arrangement entered into by Third-Party Owner pursuant to this section will provide that, before or upon the exercise of the secured party's, trustee's, mortgagee's or other third party's assignment rights pursuant to such arrangement, the secured party, trustee, mortgagee or other third party will notify PNM of the date and particulars of any such exercise of assignment right(s).
- 18.3 Notwithstanding anything to the contrary herein, no assignment by Third-Party Owner or Customer shall be effective until Third-Party Owner or Customer has notified PNM of such assignment and has obtained all applicable consents from PNM. No assignment under this Agreement shall expand a Party's obligations under this Agreement. Any attempted assignment that violates this Section 18 is void and ineffective.

- 18.4 As used herein, "Affiliate(s)" of a Party means any other Person that, directly or indirectly, controls, is controlled by, or is under common control with such Party and any Person in which a Party has an ownership interest and to which the Party or an Affiliate of the Party provides services. For the purposes of this definition, (a) "control" means the power to direct the management or policies directly or indirectly whether through the ownership of voting securities, by contract, or otherwise; and (b) "Person" means an individual, partnership, corporation, limited liability company, company, business trust, joint stock company, trust, un incorporated association, joint venture, government authority or other legally recognized entity of whatever nature.
19. REGULATORY. This Agreement shall at all times be subject to such changes and modifications as shall be required from time to time by any legally constituted regulatory body, including the Commission, having jurisdiction to require such changes and modifications. Notice shall be given in accordance with the Commission's requirements if and when the Commission is requested to take action that could cause a change in terms of this Agreement.
20. CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES. Third-Party Owner acknowledges and agrees that the RECs generated from the Large Solar Facility represent all of the environmental attributes associated with the generation of electricity from the Large Solar Facility. Third-Party Owner certifies that the attributes represented by the Large Solar RECs are not being claimed by, delivered, sold and/or transferred to any other entity, in whole or in part. Third-Party Owner represents and warrants that Third-Party Owner has good and marketable title to the Solar RECs and will transfer good and marketable title, free and clear of all claims, liens, security interests and encumbrances of any kind. Customer understands and agrees that Solar REC payments to be made under this Agreement will be made to Third-Party Owner and that Customer has no right, title or interest in or to such Solar REC payments or the RECs generated by the Solar Facility.
21. THIRD PARTY BENEFICIARIES. Except as expressly provided in this Agreement, the Parties do not intend to create rights in, or grant remedies to, any third party beneficiary of this Agreement not specifically included herein.
22. ENTIRE AGREEMENT. It is understood and agreed that all representations and agreements among the Parties covering the subject matter hereof are expressed herein and that no other representation of any kind or nature, whether made by the officers or agents of either of the Parties, shall be binding. There shall be no presumption or burden of proof favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.
23. EFFECTIVE DATE. This Agreement is effective as of the last date of execution set forth below.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective as of the last date set forth below.

CUSTOMER

By: [Signature]
City Manager
Name: Robert Romero
Printed Name
Title: City Manager
e.g., "Homeowner, "Business Owner", etc.
Date: 3.27.13

By: [Signature]
City Attorney- Approved as to Form
Name: Geno Zamora
Printed Name
Title: _____
e.g., "Homeowner, "Business Owner", etc.
Date: 3/20/13

By: [Signature]
City Clerk
Name: Yolanda Yrigoin
Printed Name
Title: City Clerk
e.g., "Homeowner, "Business Owner", etc.
Date: 3.28.13

THIRD-PARTY OWNER

By: [Signature]
Signature
Name: JEFFREY BLAVAN
Printed Name
Title: SECRETARY
Date: 3/6/13

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: [Signature]
Signature
Name: Gerard Ortiz
Printed Name
Title: Vice President, PNM Regulatory Affairs
Date: March 28, 2013

APPENDIX A

APPLICATION FOR THE LARGE SOLAR REC INCENTIVE PROGRAM
THIRD-PARTY OWNER'S ONE-LINE AND THREE-LINE DIAGRAM AND
SITE DRAWING SHOWING LARGE SOLAR SYSTEM, METERING AND
PROTECTION EQUIPMENT

STANDARD LARGE SOLAR RENEWABLE ENERGY
CERTIFICATE PURCHASE AGREEMENT FOR
THIRD-PARTY OWNER
PARTICIPATION IN PNM'S SOLAR REC INCENTIVE PROGRAM

THIS AGREEMENT is made and entered into as of the Effective Date, as hereinafter defined, by and among (individually "Party" or collectively "Parties"): City SF 52102 SF Convention Center Marcy St ("Customer"), MLH Cripple Creek Solar, LLC ("Third-Party Owner") and Public Service Company of New Mexico ("PNM").

WHEREAS, Customer owns or leases the Premises on which the Large Solar Facility described in Section 1 below is located; and

WHEREAS, Third-Party Owner owns and/or operates the Large Solar Facility which is sized no greater than one hundred twenty percent (120%) of the average annual consumption of electricity in kWh by Customer at the Premises at which the Large Solar Facility is located; and

WHEREAS, in accordance with 17.9.572.13.C NMAC, Third-Party Owner is the owner of certain renewable energy certificates associated with the electricity generated by the Large Solar Facility and consumed by Customer on the Premises ("Solar RECs"); and

WHEREAS, Third-Party Owner desires to sell and PNM desires to purchase the Solar RECs pursuant to the terms of this Agreement and as provided in PNM Rate 32;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. **SOLAR FACILITY.** Customer owns or leases the Premises on which the following solar photovoltaic ("PV") or solar thermal electric facility rated larger than 10kW_{AC} up to 1 MW_{AC} (the "Large Solar Facility") is located. The Large Solar Facility is associated with PNM electric service account numbers: 115993535-1268887 ("Electric Service Account"), and 115993547-1268887 ("REC Payment Account"), and is interconnected to PNM's electric distribution system pursuant to Interconnection Agreement No. 1033681 ("Interconnection Agreement"), effective on July 6, 2012:

Solar Facility address:

200 Lincoln (Civic CNTR) Ave.
Santa Fe, NM 87501

Rated solar generating capacity: 99.84 (kW_{DC,STC})

“kW_{DC} STC” is defined as the rated total capacity of the installed panels or collector at their DC output.

“Premises” is defined as the building, structure, or facility to which electricity is being or is to be furnished by the Solar Facility; two or more buildings, structures, or facilities located on one tract or contiguous tracts of land that are utilized by one Customer for residential, commercial, industrial, institutional, or governmental purposes constitutes one Premises, except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one Premises if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

2. OWNER OF LARGE SOLAR FACILITY. Customer and Third-Party Owner hereby certify that Third-Party Owner is the owner or long-term lessee of the Large Solar Facility. Third-Party Owner’s contact information is:

Name: MLH Cripple Creek Solar, LLC

Contact Person: Marc Pangburn

Address: Four Embarcadero Center, Ste 3670

San Francisco, CA 94111

Telephone: (415) 874-5360

REC Payment Account No. 115993547-1268887

3. PURCHASE AND DELIVERY OF LARGE SOLAR RECs. PNM will purchase from Third-Party Owner, and Third-Party Owner will deliver to PNM, the Solar RECs that are generated by the Solar Facility and associated with the energy consumed each month on the Premises as metered by PNM. The applicable rate is 8 cents per kWh as set forth by PNM in its Notice of Completion of Application and REC Reservation. The payment for the Solar RECs will be calculated by multiplying the applicable rate by the number of kWh of energy generated by the Solar Facility and consumed on the Premises as measured by a PNM meter as further described in Section 5 of this Agreement.

If the Solar Facility generates electricity in excess of the amount of electricity consumed each month on the Premises (“Excess Energy”), PNM shall purchase such Excess Energy from Customer at its avoided cost, and PNM shall receive from Third-Party Owner, without cost, all RECs associated with such Excess Energy, to the extent authorized by the New Mexico Renewable Energy Act.

Solar REC purchase payments that total in excess of \$200 will be paid to Third-Party Owner on a monthly basis. If the amount due for the Solar RECs is less than \$200 the amount will be carried forward to the following month until such time as the balance due exceeds \$200, at which time the total balance due will be paid directly to Third-Party Owner.

Payments by PNM to Third-Party Owner for Solar RECs will commence subsequent to the execution of a Standard Interconnection Agreement, PNM's receipt and execution of this Agreement, and the billing cycle in which the meters on Customer's Premises are read. Payments for Solar RECs shall be made within thirty (30) days of the date the meters on the Premises are read by PNM. Purchase of Solar RECs produced by generating capacity added to the Large Solar System after execution of this Agreement will be made in accordance with Section 4 below.

4. **MODIFICATION OF GENERATING FACILITIES.** The rated capacity of the Solar Facility shall not be increased without prior approval of PNM and shall not be increased to a capacity greater than 1 MW_{AC} in any event. PNM will purchase Solar RECs generated by a modified Solar Facility only upon execution of a new REC Purchase Agreement, at the applicable rate as of the effective date of such agreement.
5. **METERING.** Third-Party Owner shall provide and install, at its own expense, a meter socket to accommodate a PNM meter that measures only the total output of the Large Solar Facility inverters. This meter socket shall be installed in accordance with PNM's standard meter specifications and shall be in addition to the PNM meter socket used for the normal billing meter. Unless otherwise approved by PNM, this second meter socket shall be physically located next to the Customer/Third-Party Owner-provided meter socket for the PNM electric billing meter. PNM shall furnish and install a standard kilowatt-hour meter for the purpose of measuring the total output of the Large Solar Facility inverter. In accordance with 17.9.570.10 NMAC, if provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, PNM shall not incur, and shall not be liable for, any incremental costs associated with installing the more costly metering equipment and facilities.

Attached hereto and incorporated herein as Appendix A is the application for interconnection and sale of Solar RECs, including a one-line diagram and three-line diagram showing the Large Solar Facility, the interconnection equipment, breaker panel(s), PNM required disconnect switches, PNM meters, PNM transformers and other required information. Customer and Third-Party Owner represent and warrant, jointly and severally, that the information contained in Appendix A is accurate as of the date of this Agreement.

6. **TERM OF AGREEMENT.** This Agreement shall be in effect for twenty (20) years from the Effective Date as stated in the Interconnection Agreement, unless terminated as provided herein.
7. **TERMINATION.** This Agreement shall automatically terminate (a) upon execution of a new REC Purchase Agreement among the Parties; (b) sixty (60) days after Customer closes the Electric Service Account unless Customer assigns this Agreement and the Interconnection Agreement as provided herein; or (c) upon termination of the Interconnection Agreement.

This Agreement may be terminated by a non-breaching Party if a material breach occurs with respect to any Party at any time during the term of this Agreement. A non-breaching Party may (a) terminate this Agreement upon five (5) business days' notice to the breaching Party with a copy to the other non-breaching Party, and (b) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement.

As used in this Agreement, "material breach" means, as to the breaching Party (a) failure to make, when due, any payment required under this Agreement if such failure is not subject to offset and is not remedied within ten (10) business days after written notice of such failure is given to the breaching Party; or (b) any representation or warranty made by the breaching Party in this Agreement shall prove to have been false or misleading in any material respect when made; or (c) failure to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations that are otherwise specifically covered as a separate material breach), and such failure is not cured by the breaching Party within thirty (30) days of written notice from any non-breaching Party, or, if such breach is not susceptible to cure within thirty (30) days, if the breaching Party has not commenced to cure the breach within thirty (30) days and/or fails to proceed with reasonable diligence to cure such breach; under no circumstances, however, shall the total cure period exceed ninety (90) days; or (d) making an assignment or any general arrangement for the benefit of creditors; or (e) filing a petition or otherwise commencing, authorizing or acquiescing in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or having such petition filed against it and such proceeding remains undismissed for thirty (30) days; or (f) otherwise becoming bankrupt or insolvent (however evidenced), or (g) being unable to pay its debts as they become due.

If this Agreement is terminated for any reason, the final Large Solar REC payment will be calculated based on PNM's last meter readings at the Premises and Solar Facility and the determination of whether or not any excess generation has occurred. The Third-Party Owner will be paid for RECs up to the amount of Customer's consumption at the Premises through the date of the last meter reading, except that PNM may offset such payment against any amounts owed to PNM by Third-Party Owner. PNM shall purchase any Excess Energy from Customer at PNM's avoided cost, except that PNM may offset such payment against any amounts owed to PNM by Customer, and PNM shall own outright all RECs associated with such Excess Energy to the extent authorized by the New Mexico Renewable Energy Act. Payment for any Excess Energy will be calculated and paid directly to Customer within thirty (30) calendar of the last meter reading.

8. **TRANSFER OF PREMISES; ASSIGNMENT OF AGREEMENT.** If Customer sells or leases the Premises, Customer may assign this Agreement and the Interconnection Agreement to the new owner or occupant of the Premises upon prior written consent of Third-Party Owner and PNM, which consent shall not be unreasonably withheld or delayed. Such assignments must be made within sixty (60) days of the date the Customer terminates the Electric Service Account. If this Agreement and the

Interconnection Agreement are not assigned within the 60-day period, this Agreement terminates.

9. TRANSFER OF LARGE SOLAR FACILITY; ASSIGNMENT OF AGREEMENT.

If Third-Party Owner sells the Large Solar Facility, Third-Party Owner may assign this Agreement and the Interconnection Agreement to the new owner of the Large Solar Facility upon prior written consent of Customer and PNM, which consent shall not be unreasonably withheld or delayed. Such assignment must be made within thirty (30) days of the date the Third-Party Owner closes on the sale of the Large Solar Facility. If this Agreement and the Interconnection Agreement are not assigned within the 30-day period, this Agreement terminates.

10. RELOCATION OF SOLAR FACILITY.

a. If Third-Party Owner relocates the Solar Facility in its entirety to a different property owned or leased by Customer within PNM's service area, Third-Party Owner shall: (a) notify PNM of such relocation within 30 days before the Solar Facility is relocated; (b) submit a new Application for Interconnection for the new Premises; and (c) complete the interconnection process. The Parties shall amend this Agreement to reflect the new Premises, the new Electric Service Account number and the new REC Payment Account number. The Parties understand and agree that the rated solar generation capacity of the Solar Facility shall not be modified, and the term of this Agreement shall not be extended, on account of the relocation.

b. If Third-Party Owner relocates the Solar Facility in its entirety to a different property within PNM's service area, and such property is not owned by or leased by Customer, this Agreement shall terminate upon disconnection of the Solar Facility from PNM's system, unless earlier terminated as set forth in this Agreement. Third-Party Owner shall: (a) notify PNM of such relocation within 30 days before the Solar Facility is relocated; (b) submit a new Application for Interconnection for the new Premises; (c) complete the interconnection process; and (d) enter into a new REC purchase agreement at the applicable rate as of the effective date of such agreement.

11. INTERRUPTION OR REDUCTION OF DELIVERIES; DISCONTINUANCE OF SERVICE.

PNM shall not be obligated to pay for a reduction in the number of Solar RECs caused by interruptions of utility service or by utility-required Large Solar Facility shutdowns as specified in the executed Standard Interconnection Agreement or due to actions caused by Customer or Third-Party Owner. If service to the Electric Service Account is discontinued for any time period for any reason permitted under applicable NMPRC rules: (a) PNM shall have no liability for and shall not pay Customer for any actual or potential generation that may or could have occurred while such service was discontinued; and (b) PNM shall have no liability for and shall not pay Third-Party Owner for any RECs associated with any actual or potential generation that may or could have occurred while service to the Electric Service Account is discontinued.

12. ACCESS TO PREMISES. PNM may enter Customer's Premises at all reasonable hours to read or test meters and for access to the Solar Facility.

13. **NO WARRANTY OR GUARANTEE.** The Parties agree that the sale and purchase of the Solar RECs is not an endorsement, confirmation, warranty, guarantee or representation concerning the safety, operating characteristics, durability or reliability of the Large Solar Facility. No Party assumes the duty of inspecting any other Party's lines, wiring, apparatus, machinery or appliances, or any part thereof (collectively, "Associated Equipment") and shall not be responsible to any other Party therefore. PNM further disclaims any obligation to inspect, and any liability for, Associated Equipment owned by Third-Party Owner. Third-Party Owner and Customer agree to install and maintain, or to have installed and maintained, in a safe and efficient manner, and in accordance with good electrical practices and all applicable regulations, all of the Associated Equipment connected at the Premises to PNM's electric distribution system.
14. **POTENTIAL TAX LIABILITY.** Third-Party Owner understands that the sale and purchase of the Large Solar RECs may create a tax liability for Third-Party Owner. Third-Party Owner further understands that PNM may issue Internal Revenue Service Form 1099 or other tax form to Third-Party Owner relating to these transactions. By signing this Agreement, Third-Party Owner acknowledges and agrees that Third-Party Owner has the sole responsibility for paying any federal, state or local taxes, including federal income tax that may be due on amounts received by Third-Party Owner, as a result of transactions under this Agreement. Third-Party Owner hereby indemnifies and defends PNM and Customer, and their respective officers, directors, employees, boards, commission, agents, successors and assigns, from and against any and all such taxes and any and all charges or damages arising out of Third-Party Owner's failure to pay such taxes or any associated penalties.
15. **GOVERNING LAW.** This agreement shall be interpreted, governed, and construed under the laws of the state of New Mexico as if executed and to be performed wholly within the state of New Mexico.
16. **AMENDMENT, MODIFICATIONS OR WAIVER.** Any amendments or modifications to this Agreement shall be in writing and agreed to by the Parties. The failure of any Party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any Party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, shall be deemed to be, or construed as, a further or continuing waiver of any such breach or a waiver of the breach of any other term or covenant unless such waiver is in writing.
17. **NOTICES.** Except as expressly agreed in writing among the Parties, any notice, request, approval, consent, instruction, direction or other communication required or permitted under this Agreement shall be in writing and shall be deemed given if personally delivered, delivered by reputable overnight courier or sent by First Class Mail, postage prepaid, and shall be deemed received, if personally delivered, or delivered by courier, upon delivery, and if mailed, on the third day following deposit in the U. S. mail.

If to PNM:

Attention: Customer Owned Generation Programs
Public Service Company of New Mexico
Alvarado Square
Albuquerque, NM 87158-0510

If to Customer:

City SF 52102 SF Convention Center Marcy St
2651 Siringo
Santa Fe, NM 87505-5229

If to Third-Party Owner:

MLH Cripple Creek Solar, LLC
Marc Pangburn
Four Embarcadero Center, Ste 3670
San Francisco, CA 94111

All notices under this Agreement shall refer to the Solar Facility address set forth in Section 1 of this Agreement.

18. ASSIGNMENT. Except as otherwise provided in this Section 18, no Party shall assign this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably conditioned, delayed or withheld.

18.1 Any Party may assign any of its rights, duties, or obligations under this Agreement to any Affiliate (which shall include a successor entity in a merger or acquisition transaction) of the assigning Party, provided such assignee (a) has a credit rating that is equal to or greater than the credit rating of the assigning Party's credit rating; (b) has the legal authority and operational ability to satisfy the assigning Party's obligations under this Agreement; and (c) agrees to be bound by the terms and conditions of this Agreement. In the event PNM makes such an assignment, it shall be relieved of all financial responsibility related to this Agreement.

18.2 Third-Party Owner may assign any of its rights, duties or obligations under this Agreement to one or more Affiliates or third parties in connection with a sale-and-leaseback or other debt and/or equity financing transaction to aid in financing of the Large Solar Facility. In connection with such an assignment, Third-Party Owner may pledge its interest in this Agreement, including any rights to payment, as collateral or security for loans or financing against its personal property. Any financing arrangement entered into by Third-Party Owner pursuant to this section will provide that, before or upon the exercise of the secured party's, trustee's, mortgagee's or other third party's assignment rights pursuant to such arrangement, the secured party, trustee, mortgagee or other third party will notify PNM of the date and particulars of any such exercise of assignment right(s).

- 18.3 Notwithstanding anything to the contrary herein, no assignment by Third-Party Owner or Customer shall be effective until Third-Party Owner or Customer has notified PNM of such assignment and has obtained all applicable consents from PNM. No assignment under this Agreement shall expand a Party's obligations under this Agreement. Any attempted assignment that violates this Section 18 is void and ineffective.
- 18.4 As used herein, "Affiliate(s)" of a Party means any other Person that, directly or indirectly, controls, is controlled by, or is under common control with such Party and any Person in which a Party has an ownership interest and to which the Party or an Affiliate of the Party provides services. For the purposes of this definition, (a) "control" means the power to direct the management or policies directly or indirectly whether through the ownership of voting securities, by contract, or otherwise; and (b) "Person" means an individual, partnership, corporation, limited liability company, company, business trust, joint stock company, trust, unincorporated association, joint venture, government authority or other legally recognized entity of whatever nature.
19. REGULATORY. This Agreement shall at all times be subject to such changes and modifications as shall be required from time to time by any legally constituted regulatory body, including the Commission, having jurisdiction to require such changes and modifications. Notice shall be given in accordance with the Commission's requirements if and when the Commission is requested to take action that could cause a change in terms of this Agreement.
20. CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES. Third-Party Owner acknowledges and agrees that the RECs generated from the Large Solar Facility represent all of the environmental attributes associated with the generation of electricity from the Large Solar Facility. Third-Party Owner certifies that the attributes represented by the Large Solar RECs are not being claimed by, delivered, sold and/or transferred to any other entity, in whole or in part. Third-Party Owner represents and warrants that Third-Party Owner has good and marketable title to the Solar RECs and will transfer good and marketable title, free and clear of all claims, liens, security interests and encumbrances of any kind. Customer understands and agrees that Solar REC payments to be made under this Agreement will be made to Third-Party Owner and that Customer has no right, title or interest in or to such Solar REC payments or the RECs generated by the Solar Facility.
21. THIRD PARTY BENEFICIARIES. Except as expressly provided in this Agreement, the Parties do not intend to create rights in, or grant remedies to, any third party beneficiary of this Agreement not specifically included herein.
22. ENTIRE AGREEMENT. It is understood and agreed that all representations and agreements among the Parties covering the subject matter hereof are expressed herein and that no other representation of any kind or nature, whether made by the officers or agents of either of the Parties, shall be binding. There shall be no presumption or burden of proof favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

23. EFFECTIVE DATE. This Agreement is effective as of the last date of execution set forth below.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective as of the last date set forth below.

CUSTOMER

By: Robert Romero
City Manager
Name: Robert Romero
Printed Name
Title: City Manager
e.g., "Homeowner, "Business Owner", etc.
Date: 6/14/12

By: Marcos Martinez
City Attorney- Approved as to Form
Name: MARCOS MARTINEZ
Printed Name
Title: ASST. CITY ATTORNEY
e.g., "Homeowner, "Business Owner", etc.
Date: 6/12/12

By: Yolanda Y. Vigil
City Clerk
Name: Yolanda Y. Vigil
Printed Name
Title: City Clerk
e.g., "Homeowner, "Business Owner", etc.
Date: 7-6-12

THIRD-PARTY OWNER

By: Jeffrey Glavan
Signature
Name: JEFFREY GLAVAN
Printed Name
Title: SECRETARY
Date: 6/22/12

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: Gerard Ortiz
Signature
Name: Gerard Ortiz
Printed Name
Title: Executive Director, New Mexico Retail Regulatory Services
Date: July 6, 2012

APPENDIX A

APPLICATION FOR THE LARGE SOLAR REC INCENTIVE PROGRAM
THIRD-PARTY OWNER'S ONE-LINE AND THREE-LINE DIAGRAM AND
SITE DRAWING SHOWING LARGE SOLAR SYSTEM, METERING AND
PROTECTION EQUIPMENT

Compost Anticipated Production per Contract #11-1170										Actual Compost Production 2017-2022				
Year	Contract effective date 11/30/2011	Production Value per kWh	RECs Value per kWh	Anticipated annual production (kWh)	Anticipated Value from Production	Anticipated Value from RECs	Actual Production (kWh)	Value of Production	Production Shortfall	Percentage of Anticipated Production	Lost Value due to Shortfall			
1	2012	\$0.1475	\$0.0800	162,500	\$23,968.75	\$13,000.00								
2	2013	\$0.1475	\$0.0800	161,688	\$23,848.98	\$12,935.04								
3	2104	\$0.1475	\$0.0800	160,879	\$23,729.65	\$12,870.32								
4	2015	\$0.1475	\$0.0800	160,075	\$23,611.06	\$12,806.00								
5	2016	\$0.1475	\$0.0800	159,274	\$23,492.92	\$12,741.92								
6	2017	\$0.1475	\$0.0800	158,478	\$23,375.51	\$12,678.24	150,147	\$12,011.76	8,331	94.74%	\$11,363.75			
7	2018	\$0.1475	\$0.0800	157,686	\$23,258.69	\$12,614.88	136,042	\$10,883.36	21,644	86.27%	\$12,375.33			
8	2019	\$0.1475	\$0.0800	156,897	\$23,142.31	\$12,551.76	83,553	\$6,684.24	73,344	53.25%	\$16,458.07			
9	2020	\$0.1475	\$0.0800	156,113	\$23,026.67	\$12,489.04	35,519	\$2,841.52	120,594	22.75%	\$20,185.15			
10	2021	\$0.1475	\$0.0800	155,332	\$22,911.47	\$12,426.56	12,901	\$1,032.08	142,431	8.31%	\$21,879.39			
11	2022	\$0.1475	\$0.0800	154,555	\$22,796.86	\$12,364.40	921	\$73.68	153,634	0.60%	\$22,723.18			
12	2023	\$0.1475	\$0.0800	153,783	\$22,682.99	\$12,302.64								
13	2024	\$0.1475	\$0.0800	153,014	\$22,569.57	\$12,241.12								
14	2025	\$0.1475	\$0.0800	152,249	\$22,456.73	\$12,179.92								
15	2026	\$0.1475	\$0.0800	151,487	\$22,344.33	\$12,118.96								
6	2027	\$0.1475	\$0.0800	150,730	\$22,232.68	\$12,058.40								
17	2028	\$0.1475	\$0.0800	149,976	\$22,121.46	\$11,998.08								
18	2029	\$0.1475	\$0.0800	149,226	\$22,010.84	\$11,938.08								
19	2030	\$0.1475	\$0.0800	148,480	\$21,900.80	\$11,878.40								
20	2031	\$0.1475	\$0.0800	147,738	\$21,791.36	\$11,819.04								

Convention Center Anticipated Production per Contract #11-1171										Actual Convention Center Production 2017-2022				
Year	Contract effective date 11/30/2011	Production Value per kWh	RECs Value per kWh	Anticipated annual production (kWh)	Anticipated Value from Production	Anticipated Value from RECs	Actual Production (kWh)	Value of Production	Production Shortfall	Percentage of Anticipated Production	Lost Value due to Shortfall			
1	2012	\$0.1475	\$0.0800	162,500	\$23,968.75	\$13,000.00								
2	2013	\$0.1475	\$0.0800	161,688	\$23,848.98	\$12,935.04								
3	2104	\$0.1475	\$0.0800	160,879	\$23,729.65	\$12,870.32								
4	2015	\$0.1475	\$0.0800	160,075	\$23,611.06	\$12,806.00								
5	2016	\$0.1475	\$0.0800	159,274	\$23,492.92	\$12,741.92								
6	2017	\$0.1475	\$0.0800	158,478	\$23,375.51	\$12,678.24	116,509	\$9,320.72	41,969	73.52%	\$ 14,054.79			
7	2018	\$0.1475	\$0.0800	157,686	\$23,258.69	\$12,614.88	131,277	\$10,502.16	26,409	83.25%	\$ 12,756.53			
8	2019	\$0.1475	\$0.0800	156,897	\$23,142.31	\$12,551.76	88,517	\$7,081.36	68,380	56.42%	\$ 16,060.95			
9	2020	\$0.1475	\$0.0800	156,113	\$23,026.67	\$12,489.04	61,162	\$4,892.96	94,951	39.18%	\$ 18,133.71			
10	2021	\$0.1475	\$0.0800	155,332	\$22,911.47	\$12,426.56	55,624	\$4,449.92	99,708	35.81%	\$ 18,461.55			
11	2022	\$0.1475	\$0.0800	154,555	\$22,796.86	\$12,364.40	29,249	\$2,339.92	125,306	18.92%	\$ 20,456.94			
12	2023	\$0.1475	\$0.0800	153,783	\$22,682.99	\$12,302.64								
13	2024	\$0.1475	\$0.0800	153,014	\$22,569.57	\$12,241.12								
14	2025	\$0.1475	\$0.0800	152,249	\$22,456.73	\$12,179.92								
15	2026	\$0.1475	\$0.0800	151,487	\$22,344.33	\$12,118.96								
6	2027	\$0.1475	\$0.0800	150,730	\$22,232.68	\$12,058.40								
17	2028	\$0.1475	\$0.0800	149,976	\$22,121.46	\$11,998.08								
18	2029	\$0.1475	\$0.0800	149,226	\$22,010.84	\$11,938.08								
19	2030	\$0.1475	\$0.0800	148,480	\$21,900.80	\$11,878.40								
20	2031	\$0.1475	\$0.0800	147,738	\$21,791.36	\$11,819.04								



Proposal for

City of Santa Fe Solar System Repairs

Compost & Convention Center

December 5, 2022

Contact:
Clark Simpson, VP Commercial Business
941-840-2280 cell
clark.simpson@positiveenergysolar.com

Contractor License #82573
Federal Tax EIN: 85-0452881
NM Tax & Rev ID 02-410476-000
Statewide Price Agreement
No. 80-00000-17-00017



December 5, 2022

Caryn Grosse
Project Administrator Sr
Public Works – Facilities Division
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87501

Re: Convention Center and Compost Solar Systems

Dear Ms. Grosse,

Positive Energy Solar, Inc. is pleased to present this inverter replacement proposal for the City of Santa Fe Convention Center and Compost Solar Systems. We appreciate the opportunity to partner with City of Santa Fe.

Positive Energy offers the benefit of our collective and significant experience in the successful design, development, construction, and operation of solar PV projects across the southwest. Our value proposition lies in our ability to provide a competitive price coupled with solid design, development and operational credentials.

Please do not hesitate to contact me directly with any questions or comments.

Sincerely,

Clark Simpson

VP Commercial Business | Employee Owner

T: 505.344.0071 | M: 941-840-2280

E: Clark.Simpson@positiveenergysolar.com

3651 Princeton Dr. NE | Albuquerque, NM 87107

Statement of Qualifications

Positive Energy Solar:



Positive Energy Solar, Inc (PES) has 25 years of dedicated New Mexico PV solar experience with over 4,500 installations installed throughout New Mexico. PES has grown from a single owner entity to 115+ employees, with the majority of the growth occurring from 2010 to present. Positive Energy has two major office locations in Santa Fe and Albuquerque. The company is employee owned with 75+ employee shareholders, all residents of New Mexico. The firm's chief officers are Taiyoko Sadewic, President, Mark Drummond, Director/Service Manager, Taylor Selby, VP of Residential, and Clark Simpson, VP Commercial. PES is B Corp Certified for People – Planet – Profit and is listed on the NM GSD State Price Agreement for Solar PV.

Brief Overview of the Services:

- Positive Energy Solar (PES) has deep expertise in Engineering, Procurement and Construction (EPC) of PV Solar Projects up to 3.0MW AC in size and has significant O&M experience of solar PV facilities. PES is a member of Amicus O&M Cooperative.
- PES has provided innovative and cost-effective solar PV facilities for commercial, government, schools, public & non-profit organizations throughout New Mexico (Roof Mounts, Carports, Ground Mounts). PES has designed and worked with local utility companies on approvals and successfully procured and installed solar PV systems across New Mexico for:
 - State of New Mexico
 - Bernalillo County
 - City of Las Cruces
 - Santa Fe Public Schools
 - City of Santa Fe
 - Rio Arriba County
 - Socorro County and School District
- PES is a New Mexico Licensed General Contractor and Commercial Electrical Contractor, a CES Contractor and self performs all work on its solar installations.
- PES has a NM Resident Business Certificate
- PES has NABCEP Certified Installers / Sales Professionals and Commercial & Residential Certified Electricians on Staff.

City of Santa Fe Convention Center System Overview

Positive Energy Solar provides this proposal for the procurement and installation of new inverters for the solar PV system at the City of Santa Fe Convention Center. We have determined that our team will need to re-string the solar array in order to achieve an operable voltage to work with the new inverters. The inverters come with a ten-year warranty.

City of Santa Fe Convention Center	
Inverters (10-Year) standard warranty	SMA Core 1 50kW (Qty = 2)
Old Inverter Removal	Included
Reconfigure Strings of Array	Included
New Monitoring System	eGauge
Price	\$47,290.00

SCOPE OF WORK

Work to complete the project includes:

- a) Perform a comprehensive site survey to review the existing condition of the solar system.
- b) Identify a current market available inverter(s) of the same total capacity as the existing inverters.
- c) Uninstall old inverters.
- d) Resize the strings to ensure an operable voltage for new inverters.
- e) Rewire and install new strings into new inverters.
- f) Commissioning and performance testing of installed system.
- g) Install eGauge monitoring, includes 5-year communication plan.
- h) 2-year installation workmanship warranty. Equipment warranties transferred to owner. Equipment warranties include a standard 10-year warranty on SMA inverters.

City of Santa Compost System Overview

Positive Energy Solar provides this proposal for the procurement and installation of new inverters for the solar PV system at the City of Santa Fe Convention Center. We have determined that our team will need to re-string the solar array in order to achieve an operable voltage to work with the new inverters. The inverters come with a ten-year warranty.

City of Santa Fe Compost System	
Inverters (10-Year) standard warranty	SMA Core 1 50kW (Qty = 2)
Old Inverter Removal	Included
Reconfigure Strings of Array	Included
New Monitoring System	eGauge
Price	\$47,290.00

SCOPE OF WORK

Work to complete the project includes:

- a) Perform a comprehensive site survey to review the existing condition of the solar system.
- b) Identify a current market available inverter(s) of the same total capacity as the existing inverters.
- c) Uninstall old inverters.
- d) Resize the strings to ensure an operable voltage for new inverters.
- e) Rewire and install new strings into new inverters.
- f) Commissioning and performance testing of installed system.
- g) Install eGauge monitoring, includes 5-year communication plan.
- h) 2-year installation workmanship warranty. Equipment warranties transferred to owner. Equipment warranties include a standard 10-year warranty on SMA inverters.

Assumptions & Exclusions

Costs for the following items are not included in this proposal but could be added upon request or by necessity:

- a) Utility reviews.
- b) Electrical permits.
- c) Weekend work.
- d) Temporary facilities such as water, sanitary and first aid facilities.
- e) No hazardous materials handling has been specified in this proposal. Should hazardous materials be encountered at the site, appropriate mitigation strategies will be developed with the client and may increase the cost of the project.
- f) Schedule changes that require work to be delayed or cause work to stop and restart. Positive Energy Solar will work closely with the client to set an installation schedule. Equipment should be ordered at least 32 weeks prior to the desired date for the start of construction
- g) Any additional required work that is not identified in this proposal.
- h) Cleaning of solar panels.
- i) Work required due to acts of others. For instance, if another trade or solar company moves the solar array, any repairs or maintenance required as a result will be the responsibility of the owner.
- j) In the event of working days lost due to adverse weather, the install schedule will be extended accordingly
- k) City of Santa Fe will maintain clear and safe access to work areas.
- l) Inverter availability may require a different manufacturer and repricing.

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

City of Santa Fe, New Mexico BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME TOURISM Santa Fe/SF Civic Center					DATE 12/8/2022	
ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE	
<u>EXPENDITURES</u>				<i>{enter as positive #}</i>	<i>{enter as negative #}</i>	
WIP Construction (Replace Inverter)	3159980	572970	SOLAR REP	51,221		
Civic Convention Ctr transfer to SOLAR CIP	5206600	760315		51,221		
<u>REVENUES</u>				<i>{enter as negative #}</i>	<i>{enter as positive #}</i>	
Transfer from Civic Convention Ctr-Ops	3159980	660520		(51,221)		
JUSTIFICATION: <i>(use additional page if needed)</i> <i>--Attach supporting documentation/memo</i>				\$	51,221	\$ -

See attached memo regarding Dissigno Termination Agreement and repairs to Convention Center Solar Array

<i>{Complete section below if BAR results in a net change to ANY Fund}</i>	
	Fund Balance
Fund(s) Affected	Increase/(Decrease)
520	(51,221)
TOTAL:	(51,221)

De Alva Calabaza	Date	<i>{Use this form for Finance Committee/ City Council agenda items ONLY}</i>	<i>Andy Hopkins</i> <small>Andy Hopkins (Dec 15, 2022 15:06 MST)</small>	Date
Prepared By <i>{print name}</i>	Date	CITY COUNCIL APPROVAL	Budget Officer	Date
 <small>Randy Randall (Dec 15, 2022 15:03 MST)</small>	Date	City Council Approval Date	Finance Director <i>{≤ \$5,000}</i>	Date
 <small>Randy Randall (Dec 15, 2022 15:03 MST)</small>	Date	Agenda Item #:	City Manager <i>{≤ \$60,000}</i>	Date









Copy of BAR solar SFCC

Final Audit Report

2022-12-15

Created:	2022-12-15
By:	Caryn Grosse (clgrosse@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAs8qQeSa0D1JvyJPPxJA_T1YuxMmAiQP

"Copy of BAR solar SFCC" History

-  Document created by Caryn Grosse (clgrosse@ci.santa-fe.nm.us)
2022-12-15 - 9:58:53 PM GMT- IP address: 63.232.20.2
-  Document emailed to Randy Randall (rrandall@santafenm.gov) for signature
2022-12-15 - 9:59:38 PM GMT
-  Email viewed by Randy Randall (rrandall@santafenm.gov)
2022-12-15 - 10:01:13 PM GMT- IP address: 104.47.65.254
-  Document e-signed by Randy Randall (rrandall@santafenm.gov)
Signature Date: 2022-12-15 - 10:03:53 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to Andy Hopkins (ajhopkins@santafenm.gov) for signature
2022-12-15 - 10:03:54 PM GMT
-  Email viewed by Andy Hopkins (ajhopkins@santafenm.gov)
2022-12-15 - 10:06:25 PM GMT- IP address: 104.47.64.254
-  Document e-signed by Andy Hopkins (ajhopkins@santafenm.gov)
Signature Date: 2022-12-15 - 10:06:40 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.
2022-12-15 - 10:06:40 PM GMT

Log # {Finance use <u>only</u> }: _____
Journal # {Finance use <u>only</u> }: _____

City of Santa Fe, New Mexico BUDGET AMENDMENT RESOLUTION (BAR)



DEPARTMENT / DIVISION NAME Public Utilities Department/Wastewater Management Division	DATE 12/7/2022
--	-------------------

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				{enter as <u>positive</u> #}	{enter as <u>negative</u> #}
Capital Transfer to Solar Projects CIP	5000361	760315		51,221	
WIP Construction (Replacement Inverter)	3159980	572970	SOLAR REP	51,221	

REVENUES				{enter as <u>negative</u> #}	{enter as <u>positive</u> #}
Capital Transfer from Wastewater Fun	3159980	660500		(51,211)	

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

Increase from WWMD Enterprise Fund Cash balance for the PRWRF Solar Array project	\$ 51,231 \$ -	
	{Complete section below if BAR results in a net change to ANY Fund}	
	Fund(s) Affected	Fund Balance Increase/(Decrease)
	500	(51,221)
	TOTAL:	(51,221)

Maya Martinez	12/8/2022	{Use this form for Finance Committee/ City Council agenda items ONLY}	Andy Hopkins	12/9/22		
Prepared By {print name}	Date	CITY COUNCIL APPROVAL	Budget Officer	Date		
 Michael Dozier (Dec 8, 2022 17:26 MST)	12/8/22		City Council			
Division Director Signature {optional}	Date		Approval Date	Finance Director {≤ \$5,000}	Date	
 Shannon Jones (Dec 8, 2022 17:45 MST)	12/8/2022		Agenda Item #:	City Manager {≤ \$60,000}	Date	
Department Director Signature	Date					


Copy of WWMD Solar Inverter BAR


Final Audit Report


2022-12-09


Created:	2022-12-08
By:	Maya Martinez (mfmartinez@ci.santa-fe.nm.us)
Status:	Canceled / Declined
Transaction ID:	CBJCHBCAABAA4wEWNLxXFC2RKOT4URuJzTwFK-Zelzki


"Copy of WWMD Solar Inverter BAR" History


 Document created by Maya Martinez (mfmartinez@ci.santa-fe.nm.us)
2022-12-08 - 11:11:06 PM GMT- IP address: 63.232.20.2


 Document emailed to mldozier@santafenm.gov for signature
2022-12-08 - 11:13:33 PM GMT


 Email viewed by mldozier@santafenm.gov
2022-12-09 - 0:16:31 AM GMT- IP address: 75.161.155.123


 Signer mldozier@santafenm.gov entered name at signing as Michael Dozier
2022-12-09 - 0:26:21 AM GMT- IP address: 75.161.155.123


 Document e-signed by Michael Dozier (mldozier@santafenm.gov)
Signature Date: 2022-12-09 - 0:26:23 AM GMT - Time Source: server- IP address: 75.161.155.123


 Document emailed to Shannon Jones (swjones@santafenm.gov) for signature
2022-12-09 - 0:26:24 AM GMT

 Email viewed by Shannon Jones (swjones@santafenm.gov)
2022-12-09 - 0:44:42 AM GMT- IP address: 174.28.243.237

 Document e-signed by Shannon Jones (swjones@santafenm.gov)
Signature Date: 2022-12-09 - 0:45:12 AM GMT - Time Source: server- IP address: 174.28.243.237

 Document emailed to Andy Hopkins (ajhopkins@ci.santa-fe.nm.us) for signature
2022-12-09 - 0:45:13 AM GMT

 Email viewed by Andy Hopkins (ajhopkins@ci.santa-fe.nm.us)
2022-12-09 - 4:10:02 PM GMT- IP address: 104.47.65.254

 Document declined by Andy Hopkins (ajhopkins@ci.santa-fe.nm.us)
Decline reason: I'm sorry I goofed, in my email I forgot to include the project code you had on your original BAR, which should have been added to the 3159980.572970 expense line...I forgot what it was but I recall it was "SOLAR..." something. I cannot add it in Adobe Sign and I forgot what it was, could you add it to JUST that line (not the transfer to or from lines) and resubmit? Sorry once again for my oversight. Thank!





State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
8 Vendors

Number: 20-00000-21-00029

Amendment No.: One

Term: February 13, 2022 – February 12, 2024

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

Procurement Specialist: Clarke J. Fountain

Telephone No.: (505) 629-2964

Email: ClarkeJ.Fountain@gsd.nm.gov

Invoice:
As Requested at Time of Order

Title: **Photovoltaic (Solar Electric) Systems**

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 February 13, 2023 to February 12, 2024 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: 10/18/2022

----- 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: D50738E9DF7C45F9BFBBAA4F37B06F852	Status: Completed
Subject: Please DocuSign: 20-00000-21-00029 A001	
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@gsd.nm.gov
	IP Address: 67.0.225.0

Record Tracking

Status: Original	Holder: Clarke Fountain	Location: DocuSign
10/17/2022 4:06:23 PM	ClarkeJ.Fountain@gsd.nm.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: GSD	Location: DocuSign

Signer Events

Signer Events	Signature	Timestamp
Michael Saavedra michael.saavedra@gsd.nm.gov New Mexico General Services Security Level: Email, Account Authentication (None)	<i>MS</i> Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 10/17/2022 4:08:48 PM Resent: 10/17/2022 4:27:26 PM Viewed: 10/18/2022 7:34:49 AM Signed: 10/18/2022 7:35:13 AM

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

Clarke Fountain clarkej.fountain@gsd.nm.gov Procurement Specialist New Mexico General Services Security Level: Email, Account Authentication (None)	<i>CF</i> Signature Adoption: Pre-selected Style Using IP Address: 67.0.225.0	Sent: 10/18/2022 7:35:14 AM Viewed: 10/18/2022 7:41:48 AM Signed: 10/18/2022 7:41:59 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Valerie Paulk Valerie.Paulk@gsd.nm.gov 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 Using IP Address: 67.0.221.253	Sent: 10/18/2022 7:42:00 AM Viewed: 10/18/2022 9:08:36 AM Signed: 10/18/2022 9:08:49 AM
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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
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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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Envelope Sent	Hashed/Encrypted	10/17/2022 4:08:48 PM
Certified Delivered	Security Checked	10/18/2022 9:08:36 AM
Signing Complete	Security Checked	10/18/2022 9:08:49 AM
Completed	Security Checked	10/18/2022 9:08:49 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure



State of New Mexico General Services Department

Statewide Price Agreement

Awarded Vendor:
8 Vendors – Starts on Page 6

Price Agreement Number: **20-00000-21-00029**

Payment Terms: **See Page 6**

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

Delivery: **See Page 6**

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

Procurement Specialist: **Mark Lujan**

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

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

Invoice:
As Requested at Time of Order

Title: Photovoltaic (Solar Electric) Systems

Term: February 13, 2022 thru February 12, 2023

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

Accepted for the State of New Mexico

Valerie Paulk

Date: 2/8/2022

Mark Hayden, New Mexico State Purchasing Agent

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

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

JDL MS

State of New Mexico
General Services Department
Purchasing Division
Statewide Price Agreement #: 20-00000-21-00029

Page-2

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.
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, 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

State of New Mexico
General Services Department
Purchasing Division
Statewide Price Agreement #: 20-00000-21-00029

Page-3

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

State of New Mexico
General Services Department
Purchasing Division
Statewide Price Agreement #: 20-00000-21-00029

Page-4

this agreement, to have in place, and agrees to maintain for the term of the contract, health insurance for its New Mexico Employees and offer that health insurance to its New Mexico Employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceeds \$250,000 dollars.

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

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

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

- (1) "New Mexico Employee" means any resident of the State of New Mexico employed by Contractor who performs the majority of the employee's work for Contractor within the State of New Mexico, regardless of the location of Contractor's office or offices; and
- (2) "offer" means to make available, without unreasonable restriction, enrollment in one or more health coverage plans and to actively seek and encourage participation in order to achieve the goals of Executive Order 2007-049. This could include State publicly financed public health coverage programs such as *Insure New Mexico!*

Statewide Price Agreement

Article I – Statement of Work

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

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

Article II – Term

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

Article III – Specifications

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

Article IV – Shipping and Billing Instructions

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

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)

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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.

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Awarded Vendors:

<p>(AA) 0000117314 Affordable Solar Group, LLC dba: Affordable Solar Installations 4840 Pan American E. Fwy NE Albuquerque, NM 87109 505-944-4220 dylan.connelly@affordable-solar.com service@affordable-solar.com</p>	<p>Payment Term: determined by contract</p> <p>Delivery: at job site</p>
<p>(AB) 0000082606 EverGuard Solar Energy LLC dba: EverGuard Roofing 512 Veranda Rd NW Albuquerque, NM 87107 505-242-6511 shaun@evergauroofing.com</p>	<p>Payment Term: Net 30</p> <p>Delivery: 512 Veranda Rd NW, Albuquerque, NM 87107</p>
<p>(AC) 0000134788 Los Ebanistas, Inc. PO Box 10 Dixon, NM 87527 505-455-8875 mark@sollunasolar.com</p>	<p>Payment Term: Net 30 (Negotiable)</p> <p>Delivery: FOB Destination Determined Per Project Award Location</p>
<p>(AD) 0000092230 Osceola Inc. 1300 1st Street NW Albuquerque, NM 87102 505-850-8863 info@osceolaenergy.com</p>	<p>Payment Term: Net 30</p> <p>Delivery: Deliver to 1300 1st Street NW, Albuquerque, NM 87102</p>
<p>(AE) 0000081451 Paradise Power Company Inc. dba: PPC Solar</p>	<p>Payment Term: Net 30</p> <p>Delivery:</p>

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**245 Paseo Del Canon East
Taos, NM 87571
575-737-5896 x 2002
charlie@ppcsolar.com or dan@ppcsolar.com**

**(AF) 0000052603
Positive Energy
dba: Positive Energy Solar
3209 Richards Lane
Santa Fe, NM 87507
505-424-1112
clark.simpson@positiveenergysolar.com**

Payment
Term: **Net30**

Delivery: **3651 Princeton Dr NE,
Albuquerque, NM 87107**

**(AG) 0000083297
Rio Grande Renewables, LLC
147 Via Oreada
Corrales, NM 87048
505-470-9876
peter@riogranderenewables.com**

Payment
Term: **Net 30**

Delivery: **To the Project site**

**(AH) 0000086365
Solar Smart Living, LLC
PO Box 1377
Santa Teresa, NM 88008
915-400-2995
info@solarsmartliving.com**

Payment
Term: **Net 30**

Delivery: **As requested**

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Specifications:

Establish a Statewide Price Agreement for Photovoltaic (Solar Electric) Systems. This Price Agreement may be utilized by all New Mexico State Agencies, commissions, political subdivisions and local public bodies applicable by law.

The term of this Price Agreement shall be for one (1) year from date of award with the option to extend for a period of two (2) additional years, on a year-to-year basis, by mutual agreement of all parties and approval of the New Mexico State Purchasing Agent at the same price, terms and conditions. This Price Agreement shall not exceed three (3) years.

Overview

The intent of the Invitation to Bid is to obtain bids for photovoltaic (PV) systems with system output power and support structure combinations that may be acquired for use by State and Local Government Facilities. Each PV system includes, but is not limited to, PV modules, inverter, wiring, conduit, display devices, disconnects, and support structure. System installation services shall include performing electrical system and structural system design, obtaining necessary permits, collaborating with utility and procuring agency staff, performing system installation including maintenance and related work. Additional system features are available through a variety of additive alternates.

Every six (6) months, an escalation/de-escalation clause may be incorporated into this Price Agreement based upon changes in retail or wholesale module prices as presented and compared by manufacturer/supplier quotes. Please be aware this measure is not intended to allow any increase in profit margin, only to compensate for an actual cost increase. Price decreases as well as increases shall apply. If vendor's prices are reduced for any reason, users shall receive the benefit of such reductions. Price increases will not be retroactive to orders already in house or backorders. Orders will be filled at the price in effect on the date of receipt of the order by the vendor.

It is requested that price information be provided for each base bid item and each additive alternate bid item below. The bid item descriptions and the attached specifications shall be the basis for bid item prices. Do not include Local and State taxes in prices for solar equipment, installation and labor due to the New Mexico Gross Receipts Exemption; they will be included after the vendor selection process for specific project sites, if applicable.

The Contractor shall provide all the equipment, materials and labor for a complete operable system that meets the attached specifications. The Contractor shall also provide the system design for review and approval by the using State or Local Governmental organization. After the vendor selection process is completed and project sites are selected, the Contractor shall meet with the Owner at a site audit meeting and final acceptance inspection, at a minimum, for each project site. On a project by project basis, if unforeseen or unusual conditions are found, the contractor may be allowed to add for additional costs to overcome these issues. Some examples could be: Rocky underground conditions or hidden underground utilities.

The PV systems will offset electricity consumption used in lighting, heating, cooling, and other facility energy needs of State and Local Government Facilities. It is the intent that each PV system installed will be interconnected with the utility grid and an interconnection agreement will be established, enabling the facility to receive reimbursement and/or credit from the utility company for electricity generated. It is also the intent to utilize the PV systems for educational purposes, related to the benefits of renewable energy, in the communities where the systems are located. Since installation of power storage (battery) systems is also included, there may be cases where the PV system is not interconnected with the utility grid.

In order to provide flexibility to the purchasing Agency in selecting PV systems for a variety of sites with different conditions, the bid form is subdivided into ten (10) parts. Two (2) base bid items are provided with eight (8) additive alternates. Once the Price Agreement is established, purchasing Agencies will select systems to install at specific sites. Both Owner and Contractor will be encouraged to collaborate during the design and installation process, understanding that an experienced vendor is likely to suggest design and installation options that will benefit overall performance and longevity of the proposed system installation.

Where discrepancies exist between the bid form and the specifications, the specifications shall govern.

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Data Communications and Monitoring

The Bid Form includes price quote requests for data communications and monitoring devices. The intention is to provide Owners with options in addition to the inverter for enhancing their understanding of the systems, to offer troubleshooting assistance to facility managers, and to support renewable energy education. Many modern data communication and monitoring systems allow remote access by internet, such that data monitoring also allows the installation vendor to monitor and troubleshoot each system as well as the facilities' manager.

Method of Award

The State of New Mexico reserves the right to make vendor selection decisions that are in the best interests of the State. This Invitation to Bid is intended to solicit bids from qualified bidders and could result in multiple awards. Bidders who at least meet the minimum qualifications and experience will have their bids tabulated for inclusion in the award. Once the Invitation to Bid results in a Statewide Price Agreement; purchasing Agencies may make their selection decisions based on cost-effectiveness over the twenty (20) year life of the system. The following subsections describe how the State of New Mexico plans to conduct the selection process.

Bidder Experience and Qualifications. This subsection describes information required for purposes of validating Bidder experience and qualifications. Multiple vendors may be selected for each zone and each system size class based on the information submitted. In order to verify that a bidder meets the minimum qualifications, each bidder shall provide:

- A brief statement of the number of years of experience the company has installing grid-connected and/or standalone PV systems;
- Experience in demand reduction technology- give any examples with savings;
- Information on each PV system that has been installed in the format of the table below. Enter details on at least twenty-five (25) systems for the smallest system size class, enter details on at least five (5) systems for the fifty (50)kW and over size class, etc. (note that a bidder may be qualified for one (1) or more of the system size classes based upon the experience information provided in this table).

kW system size class	Minimum # of installs required*	License required**	Customer Point of Contact	Utility of Interconnection	Size of system (kW)	Location	Date
1 – 50	25	EE98 OR GB98					
50.1 and over	5	EE98					

* A statement to the effect certifying the number of installs.

** The name of the license holder at the time of bid opening must be provided.

- A brief statement that describes the bidding firm's aggregate and individual contract bonding capacity and includes the name and address of the Bonding Company and Bonding Agent.
- Attach a copy of the bidding firm's standard insurance certificate indicating coverages and limits provided by your insurance carriers.
- A brief statement that describes whether the bidding firm has had any OSHA violations in the past five (5) years with an explanation of any violations.

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TECHNICAL SPECIFICATIONS:**A. GENERAL**

1. These specifications cover the procurement of equipment, hardware, documentation, labor, and supervision required for the installation of grid-connected photovoltaic (PV) systems for State and Local Government Facilities. There can be energy storage systems (e.g. Batteries) used.
2. Bids shall include a cost estimate identifying equipment necessary to complete system installations and their costs. The cost categories shall include, at a minimum, PV modules, inverter, disconnects, support structure and foundation, digital display unit, data communications devices, and labor. In addition, documentation on the design, configuration, installation, operation, and maintenance of the complete system must be provided prior to installation.
3. All systems shall be designed for outdoor installation based on the annual ambient temperature range of the facility location or nearest location having long-term temperature records, using the lowest-record-low and highest-monthly-average-high temperatures to determine the appropriate inverter temperature range. Supplied equipment must be rated and warranted to withstand and operate under these conditions.
4. Prior to hardware procurements, the selected vendor will provide Owner a complete design package for each system showing a complete parts/equipment list, full system electrical schematics, mechanical design, and all calculations required to meet the requirements of the National Electrical Code, New Mexico Electrical Code, and any applicable building codes. The design shall be stamped by a professional engineer if required by interconnection utility or state or local statute or if the system is twenty-five (25) kW or larger. Owner approval of this design package is required prior to any hardware being procured.
5. The Contractor shall provide pole mounting, ground mounting, or roof mounting that is acceptable to the Owner. This structure shall provide a tilt and orientation for the PV array that maximizes annual energy production. Alternative tilts and orientations require approval by the Owner.
6. The PV system shall be connected to the utility electric grid through a grid-interactive inverter. The Contractor shall provide a minimum of one (1) disconnect acceptable to the local utility for the utility company to access at any time providing that the disconnect is required by the utility for the installation. The design and specification of the PV modules, inverter, utility interconnection, PV system wiring and conduit, PV array support structure, and the entire installation shall be in full compliance with the National Electrical Code, the New Mexico Electrical Code, and any National, State, and Local Building Codes in effect.
7. The Contractor shall obtain a permit from the New Mexico Construction Industries Division and/or appropriate local authority and include associated costs in bid. The Contractor shall comply with all applicable Municipal, State, and National Codes.
8. The PV system installation shall be performed in a workmanlike manner by, or under, the direct supervision of a licensed electrician. No person shall act as a contractor without a license issued by the Construction Industries Division classified to cover the type of work to be undertaken. No bid on a contract shall be submitted unless the contractor has a valid license issued by the Construction Industries Division to bid and perform the type of work to be undertaken (reference: § 60-13-12, NMSA 1978).
9. Not Used
10. The Contractor shall provide a minimum system warranty on labor of two (2) years. Owner may extend the warranty an additional five (5) years upon selection of the Additive Alternate for this purpose. This does not extend the warranties of factory-warranted components, such as the modules or inverters, but includes any labor required to change out these or other components that fail during the minimum warranty or extended warranty.

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11. The Contractor shall conduct a site visit, jointly with the Owner to demonstrate the system is operating properly at final inspection and to accept the system after complete installation. An acceptance test shall be performed for all systems.
12. Each PV system purchased, installed, maintained, and warranted for a total cost exceeding twenty-five thousand (\$25,000) must require performance, payment, and labor bonds prior to execution of a contract.
13. The cost to the bidder of these bonds is to be included in the unit pricing for each item.
14. Wage Rate Requirements:
In submitting this bid, the Contractor must satisfy all terms and conditions of the Invitation to Bid. All work covered by this Invitation to Bid shall be in accordance with applicable state laws and, if the bid amount exceeds sixty thousand dollars (\$60,000) or more, is subject to the minimum wage rate determination issued by the New Mexico Department of Workforce Solutions, Labor and Industrial Division, for this project. If the bid amount of the contractor or any tier of the subcontractor exceeds sixty thousand dollars (\$60,000), the contractor and subcontractor must comply with the registration requirements pursuant to the Public Works Minimum Wage Act. Wage Decision No, SF-13-1102 B is part of this Contract. The user agency must verify the awarded vendor has an active registration with the New Mexico Department of Workforce Solutions.
15. The Contractor shall warranty all components of additive alternates for each base bid PV system, including the digital display unit and data communications devices, if installed, for the same warranty period given the base bid PV system.

B. PRODUCTS

1. PV Modules and Array
 - a. The PV modules for each system shall be in accordance with the requirements of the National Electrical Code and listed by a Nationally Recognized Testing Laboratory (NRTL).
 - b. The PV array shall be sized and configured to provide the DC input power necessary for efficient operation and power production of the inverter.
 - c. Each PV module shall be warranted by the manufacturer for at least ninety-five (95) percent of its minimum rated power for ten (10) years and at least ninety (90) percent for twenty-five (25) years from the date of system acceptance.
2. Inverter
 - a. The inverter or micro-inverters for each system shall be provided and installed in accordance with the requirements of the National Electrical Code and "listed" to Underwriters Laboratory 1741 specifically for utility grid interconnection of PV arrays.
 - b. The inverter or micro-inverters for each system shall be properly sized for the proposed PV system. The inverter shall be capable of connecting to multiple PV module strings, data communications with other compatible devices, and future system expansion. Derating of inverter shall be avoided to the maximum extent possible by configuration of the PV modules.
 - c. The inverter or system shall include an automatic visual indicator showing system status, as well as at least a two-line LCD display of PV system operation and performance. The inverter shall have a communications port to enable data connection to a computer (provided by agency). The data connection shall be functional in the electrical system environments of typical State and Local Government Facilities, including three (3) phase systems, heavy machinery, air-conditioners, and computers.
 - d. The inverter or system shall include an automatic visual indicator showing system status, as well as at least a two-line LCD display of PV system operation and performance. The inverter shall have a communications port to enable data

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connection to a computer (provided by agency). The data connection shall be functional in the electrical system environments of typical State and Local Government Facilities, including three (3) phase systems, heavy machinery, air-conditioners, and computers.

- e. The inverter shall have at least a ten (10) year repair or replacement warranty from the manufacturer.
- f. The inverter and any other required electronics installed in outdoor locations shall be designed for outdoor application in direct exposure to the elements or placed in lockable electrical enclosures suitable for housing these components. These enclosures shall be rated as NEMA 3R or better and have superior strength and corrosion resistance properties. These enclosures shall be pole and/or wall mountable, depending on the support structure. If inverter has exposure to south, east or west sun, shading will be required. Inverter shall be placed to avoid exposure to rain or snow fall from the building roof structure; however, if placement is unavoidable, protection from rain and snowfall from roof system will be required. Alternative enclosure and mounting configurations may be proposed by the contractor to the Owner and require approval by the Owner.
- g. The inverter and any other required electronics installed in indoor locations shall be securely mounted in rooms under control of the Owner. An indoor location will be made available at the facility and identified by the Owner. Inverters and electronics installed in indoor locations do not require additional electrical enclosures for weather protection.
- h. The inverter shall be provided with the wiring necessary to enable communications with a computer (provided by others) or digital display unit. Data communications wiring shall be CAT5e or better, or wireless as determined by manufacturer and installer.

3. Utility Company Disconnect

- a. A single system wide disconnect shall be provided and installed for use by the utility company and shall comply with all utility company requirements for interconnection of a PV system. This disconnect shall be in an outdoor location, and shall be in a location accessible by the utility company at all times.

4. Other Disconnects

- a. The following requirements exclude utility company disconnects. For utility company disconnect requirements, see the subsection above by that name.
- b. AC and DC disconnects shall be provided, located, and installed in accordance with the requirements of the National Electrical Code.
- c. One disconnect shall be located between the PV array and the inverter at the PV array and meet requirements of installation in outdoor locations.

5. Digital Display Unit

- a. The digital display unit shall be integrated with or compatible with the system inverter. The digital display unit shall have communications ports to enable communications with the system inverter. It shall also be capable of communications with a computer provided by others, if that additive alternate is selected.
- b. The digital display unit shall be capable of data acquisition and display of the PV array and the inverter. The digital display unit shall have an LCD display of PV system operation and performance. The system and display shall be capable of display and storage to include the following operation and performance parameters, at a minimum: instantaneous AC current of the inverter (amps), instantaneous AC voltage of the inverter (volts), instantaneous AC

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power output of the inverter (Watts), cumulative energy production of the current day (kW), and cumulative energy production since system installation (kW).

- c. The Contractor shall initiate operation of the digital display unit and verify proper operation.
- d. The digital display unit shall be provided with the wiring necessary to enable communications with a computer (provided by others), depending on the additive alternates selected.

6. Performance Monitoring Software

- a. The Contractor shall provide monitoring software that is compatible with the inverter and computers operating with a minimum of Microsoft Windows 7, or equivalent. The monitoring software shall be capable of accessing stored measurements of the inverter and enable the Owner to check operation of the PV system at any time.
- b. The Contractor shall purchase and provide the hardware for data transmission from the digital display unit or inverter to the computer (provided by others) or to the Internet.
- c. Performance monitoring software provided by the Contractor shall be installed on a computer provided by others. The computer shall operate on a minimum of Microsoft Windows 7, or equivalent. The Contractor shall demonstrate the monitoring software to the Owner.

C. EXECUTION

1. PV System Electrical Design

- a. The electrical design and installation for the PV system shall conform to the most recent New Mexico Electrical Code and National Electrical Code (NEC) in effect at time of installation.
- b. All wiring shall be listed for a minimum operation of six hundred (600) volts and temperature rating of ninety (90) degrees C in wet locations. All current carrying conductors shall be enclosed in conduit, with the exception of module wiring as allowed by the NEC. Smaller systems may not need to comply with this.
- c. Roof-mounted or pole mounted systems shall have array ground-fault protection devices included as part of the inverter packages as required by the NEC.
- d. System arrangement shall comply with utility company requirements. A licensed electrician must make all final AC connections and is recommended to make all electrical connections in the system

2. PV Array Mechanical Design

- a. The Contractor shall provide the mechanical hardware for mounting the photovoltaic arrays. The Contractor shall provide all other hardware required for assembling the photovoltaic modules and structurally attaching them to the base support structure.
- b. The PV array, including modules, hardware, support structure, pole, foundation, and attachments shall be structurally designed to withstand the minimum wind loads and seismic loads of the applicable building code for the project site.

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- c. Array mounting hardware supplied by the bidder shall be compatible with the site considerations and environment. Bolts shall have anti-theft heads to the extent provided by the rack manufacturers to prevent to the maximum extent possible the removal of PV modules. Special attention shall be paid to minimizing the risk from exposed fasteners, sharp edges, and potential damage to the modules or support structure. Corrosion resistance and durability of the mechanical hardware shall be provided by the use of stainless steel fasteners and an aluminum or polymer support structure. The use of other metals, or wood, components is not allowed, with the exception of the pole for pole mounted PV arrays. Galvanic corrosion shall be avoided.
- d. The pole for pole-mounted tracking and fixed PV arrays shall be structural steel pipe or square tubing. The bottom end shall be flanged for attachment to a concrete foundation. Embedment of the pole in the concrete foundation is not allowed. The pole shall have a non-corrosive protective coating, technique, or system for outdoor installation to maintain the design structural strength for a minimum of twenty (20) years. The concrete foundation mounting surface shall be a minimum of 1 foot above grade. For all pole or tracking mount pole systems, regardless of size, the pole and concrete foundation design shall be stamped by a professional engineer.
- e. The carport shade structure mounting option for PV systems greater than 50kW and less than 50kW shall be constructed of structural steel pipe or square tubing with a non-corrosive protective coating, technique, or system for outdoor installation to maintain the design structural strength for a minimum of twenty (20) years. All carport shade mounting structures pole systems, regardless of size shall have the structure and concrete foundation design stamped by a professional engineer. Snow stoppers will be an additional allowed cost if needed in any array where snow form the array has the potential to slough on the parking lot users.
- f. Spacing between individual modules shall be kept to a minimum to maximize utilization of the surrounding area. As much as possible, all mechanical hardware, conduit, junction boxes, and other equipment shall be concealed beneath and/or behind the array.
- g. The array layout shall be installed in a manner consistent with the ordering and labeling of source circuits. Ease of access for array troubleshooting, maintenance, and replacement shall be provided by allowing access to the back of the array. Removal/replacement of individual source circuits and modules must be possible.
- h. The Contractor shall consult with the Owner on where the PV mounting system shall be located. The Contractor shall verify with the Owner the location of utilities within the limits of the project site work area and include this information in the site audit report. Roof-mounted PV systems shall be designed to either be installed as ballasted systems that have no roof penetrations or to attach to roof stand-offs with roof contact points waterproofed as approved by the Owner. Ground-mounted PV systems shall be designed to attach to reinforced concrete support footings. The location of pole-, roof-, and ground-mounted base support structures and foundations require approval of the Owner. Disturbance to the roof, soil, and/or vegetation in contact with or adjacent to the PV mounting systems shall be repaired to original condition at the expense of the Contractor and shall be assessed 6 months and one year after completion of the project. Damage to utilities by the Contractor which were previously verified with the Owner and included in the site audit report shall be repaired to original condition at the expense of the Contractor.

3. Related Documents

- a. The Contractor shall conduct a site audit and provide a report of the project site to the Owner and, for State Agencies, to EMNRD before the installation begins. The site audit report shall address work and conditions within the limits of the

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project site work area, including a proposed system layout plan, work area plan, existing utilities plan, unusual soils conditions needing evaluation (if applicable), solar access evaluation, grid-interconnection schematic, and building electrical panel connection schematic.

- b. The Contractor shall provide electrical schematics and one-line diagrams showing all major components and devices, including conductor types and sizes, connections of individual modules and array source circuits, terminations at junction boxes, connection to surge suppression devices and the inverter, and the inverter interface with the utility grid.
- c. The Contractor shall be responsible for obtaining all necessary permits and payments of permit fees. The Contractor shall be responsible for preparing and submitting the required Utility interconnection agreements and payment of all interconnection application fees. These fees will be allowable and listed individually as a line item(s) on a project quote.
- d. The Contractor shall provide a complete parts lists of all items needed for the installed PV system, excluding small parts. Parts lists information shall include the description, make, and quantity of all electrical components, mechanical hardware, and other equipment required. Model/part number and manufacturer are also required for the PV modules, inverter, and digital display unit.
- e. The Contractor shall provide mechanical drawings showing details of module/array mechanical supports. Manufacturer's literature providing this information is acceptable.
- f. The Contractor shall provide installation instructions for mounting array, junction boxes, and enclosures; wiring arrays; and terminating conductors at array and the inverter. Manufacturer's literature providing this information is acceptable.
- g. The Contractor shall provide procedures for commissioning, operating, disconnecting, servicing, and maintaining the complete system and individual components. Manufacturer's literature providing this information is acceptable.
- h. The Contractor shall demonstrate operation of the inverter and digital display unit to the Owner.
- i. The Contractor shall demonstrate operation of the monitoring software to the Owner.
- j. The Contractor shall provide to the Owner estimates of the rated DC and AC delivered output of the PV system, as installed, at the site based upon location, weather, mounting and installation approach, irradiation and shading. The modeled projection of first-year annual AC energy production shall be from DOE-NREL's PV-Watts Calculator and must use default inputs unless alternate inputs are supported with product documentation.

D. RECORDS AND DOCUMENTATION

The Contractor shall maintain a written record of the results of all acceptance tests. The acceptance test form will be provided by Owner. The Contractor shall provide acceptance test results and a completed acceptance test form to Owner.

- 1. Information to be provided by Contractor to Owner Prior to Approval of PV System Installation
 - a. As-built sizing and configuration data for inverter and PV modules. Vendor must include as built rendered drawings for roof, ground, or carport shade structure mounts.
 - b. Clear physical permanent labeling of installed array components such as inverters, disconnects and electrical panel inputs.
 - c. As-built schematics and one-line diagrams indicating overall layout and location of entire system, including PV array, balance-of-system hardware, digital display unit, and inverter. As-built shall also include subsurface wire and conduit locations clearly located using tie-line distances to fixed site features, at a minimum.
 - d. A copy of the permit obtained from the appropriate legal authority for system installation.

State of New Mexico
General Services Department
Purchasing Division
Statewide Price Agreement #: 20-00000-21-00029

- e. The Contractor's system warranty, including parts and labor.
 - f. PV system electrical design information stamped by a professional engineer. Manufacturer's literature for electrical equipment used in the installation stamped by a professional engineer is acceptable for projects smaller than twenty-five (25) kW. Projects for systems sized twenty-five (25) kW or larger will require project-specific electrical design information stamped by a professional engineer. For these larger systems, stamped Manufacturer's literature is not sufficient.
 - g. PV array structural design information stamped by a professional engineer. Manufacturer's literature for structural equipment used in the installation stamped by a professional engineer is acceptable for projects smaller than twenty-five (25) kW. Projects for systems sized twenty-five (25) kW or larger will require project-specific structural design information by a professional engineer. For these largest systems, sealed Manufacturer's literature is not sufficient.
 - h. A completed interconnection request or interconnection application package to the utility company, as applicable. Include appropriate payment to the utility company for interconnection services or application fees for submittal by the Owner to the utility company. Supplemental Review Fees are not included in base price (Must be at COST).
2. Information to be provided by Contractor to Owner upon completion of PV System Installation
- a. One complete copy of manuals for installation, operations and maintenance, and related documents noted in Section A-2.D-3 and E-1.
 - b. Report of Acceptance Test required upon completion of installation.



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3201933

Contractor: Dissigno Holdings, LLC

Description: Termination of Power Purchase Agreements between City of Santa Fe and Dissigno Holdings, LLC.

Contract Agreement Lease / Rent Amendment

Term Start Date: _____ Term End Date: upon execution

Approved by Council Date: _____

Contract / Lease:

Amendment # Termination to the Original Contract / Lease # 11-1170, 11-1171

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 (CVB) 11-1171, Amendment#1 12-0571, Amendment #2 16-0702

Original Contract (Compost) 11-1170, Amendment #1 13-0118, Amendment #2 16-0701

3. **Procurement History:** _____

JoAnn Lovato
JoAnn Lovato (Jan 10, 2023 15:25 MST)

Jan 10, 2023

Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: No procurement

4. **Funding Source:** _____ **Org / Object:** 3159980.572970

Andy Hopkins
Andy Hopkins (Jan 10, 2023 13:44 MST)

Jan 10, 2023

Budget Officer Approval: _____ Date: _____

Comment & Exceptions: _____

Staff Contact who completed this form: Caryn Grosse Phone # 505-955-5938

Email: clgrosse@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

ITT Representative (attesting that all information is reviewed)

Title

Date

Signature: Halona Crowe
Halona Crowe (Jan 6, 2023 07:42 MST)

Email: hjcrowe@santafenm.gov



City of Santa Fe, New Mexico

Memorandum



DATE: December 21, 2022

TO: Mayor Webber and Governing Body
Finance and Quality of Life Committee

Emily Oster, Finance Department Director

Kyra Ochoa, Community Health and Safety Department Director ^{NO}

VIA: Maria Sanchez-Tucker, Community Services Department Director ^{MT}

Julie Sanchez, Youth and Family Services Division Director ^{JS}

FROM: Sophie Andar, Youth and Family Services Program Manager *Sophie Andar*

ITEM AND ISSUE:

Request for Approval to Enter into Memorandum of Agreement No. 2022-0233-CSD/MM with Santa Fe County to receive \$100,000.00 in County American Rescue Plan Act (ARPA) funding for prevention and intervention programs to address youth and community violence through a collaborative Violence Prevention Unit. (Julie Sanchez, jjisanchez@santafenm.gov, (505) 955-6678; Sophie Andar, sxandar@santafenm.gov, (505) 955-6236)

BACKGROUND AND SUMMARY:

The Santa Fe County Community Services Department (CSD) has received approval from Board of County Commissioners for the Memorandum of Agreement (MOA) NO. 2022-0233-CSD/MM to the City of Santa Fe to procure the services of a qualified service provider. The provider will pilot, evaluate, improve, and expand a program to recruit, support, educate, and employ youth at high risk for violence, building their capacity to serve as community support workers and contribute to youth violence prevention over time. Santa Fe County Community Services will provide the City of Santa Fe the sum of \$100,000.00 to procure a qualified service provider to deliver services in northern Santa Fe County. The City of Santa Fe Youth and Family Services Division will use ARPA funds to match that sum to procure a qualified service provider to deliver services in the City of Santa Fe.

The City and County will endeavor to continue their mutual cooperation to continue this program for longer than one year if the program demonstrates sufficient success. The City and County will work together to establish a coordinated community response to community violence to include but not limited to youth violence, domestic violence, gun violence, etc. The financial contributions will be split evenly between the City and County for the qualified service provider, though that does not reflect the City's total contribution toward the initiative. The City has hired a Violence Prevention Program Manager – Sophie Andar – who will the lead administrative role, providing programmatic and administrative capacity for the initiative.

The City will be eligible to apply for grant funds related to the initiative regardless of its audit status, as the audit status only influences capital outlay appropriations, which are not contemplated in this memorandum of understanding or for this initiate at this time.

In the past few years, our community has expressed growing concerns with what appears to be an increase in violence involving youth, guns, and drugs. While violence weakens communities and pulls people apart, strong community connections provide safety and support, helping to prevent violence. Santa Fe County and the City of Santa Fe have been working towards a collaborative response along with other community partners.

Through a collaborative process, the City and County have identified that the creation of a Violence Prevention Unit requires a public health approach that aims to address youth and community violence effectively and comprehensively, including by supporting youth who are at high risk for violence. The goals of this initiative are to maximize violence prevention impact, invest in community health and safety workforce, and develop a sustainable infrastructure to address community needs.

CONTRACT NUMBER:

The FY23 Munis Contract number is 3203841

PROJECT LEDGER:

The project ledger number is COM2324002

PROCUREMENT METHOD:

Memorandum of Agreement with funding attached.

FUNDING SOURCE:

Fund Name/Number: Santa Fe County

Munis Org Number: 2400122

Munis Object 491010

ACTION REQUESTED:

The Community Health and Safety Department respectfully requests your review and approval.

Signature: 

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

Signature: *Maria E. Tucker*

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

Signature: 
Kyra Ochoa (Dec 22, 2022 09:09 MST)

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



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3203841

Contractor: Santa Fe County Youth and Community Violence

Description: Memorandum of Agreement No. 2022-0233-CSD/MM with Santa Fe County to receive \$1000,000.00 in County American Rescue Plan Act (ARPA) funding for prevention and intervention programs to address youth and community violence.

Contract Agreement Lease / Rent Amendment

Term Start Date: 02/01/2022 Term End Date: 06/30/2025

Approved by Council Date: _____

Contract / Lease:

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ 100,000.00

Extend Termination Date to: _____

Approved by Council Date: _____

Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)

3. **Procurement History: MOA / Project Ledger #COM2324002**

JoAnn Lovato
JoAnn Lovato (Jan 6, 2023 13:14 MST)

Purchasing Officer Review:

Jan 6, 2023

Date:

Comment & Exceptions: Govt entity to govt entity

4. **Funding Source: Santa Fe County**

Org / Object: 2400122.491010

Andy Hopkins
Andy Hopkins (Jan 6, 2023 10:21 MST)

Budget Officer Approval:

Jan 6, 2023

Date:

Comment & Exceptions: _____

Staff Contact who completed this form: Melissa Perea Phone # (505) 955-6826

Email: maperea@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Santa Fe County Youth and Community Violence

Procurement Title: Memorandum of Agreement

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting Community Health & Safety Staff Name Melissa Perea

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:

Sophie Andar, Youth & Family Program Manager 12/21/2022

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

JoAnn Lovato Contracts Supervisor Jan 6, 2023
JoAnn Lovato (Jan 6, 2023 13:14 MST)

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

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



City of Santa Fe New Mexico

Finance Department

Project Ledger Request Form



Date of Request: 11/18/2022

Project Title: Santa Fe County Youth and Community Violence

Project Type: CIP Grant Internal tracking

Department: Community Services (240) Project Manager: Sophie Andar, sxandar@santafenm.gov
(505) 955-6236

Project Date Range: 12/01/2022 – 06/30/2025

Create Fixed Asset

Multi-Funding (complete all funding sources, should equal 100%)

Funding Source: Santa Fe County

% of Funding: 100

MUNIS Org: 2400122

MUNIS Object: 510400

Awarded Amount: \$100,000.00

Funding Source:

% of Funding:

MUNIS Org:

MUNIS Object:

Awarded Amount:

Expense String Phase

A project must have at least one phase identified, this can be used as an additional level of tracking, for example, CIP - design, start-up cost, etc. For grants can be used as reimbursable types, such as transportation, salaries.

(You can create more than one phase and you can default MUNIS Orgs and Objects, optional)

Phase: 1 Santa Fe County Youth and Community Violence (2400122.51040)

Grants Only (list all grants if applicable)

Grantor Name: Santa Fe County Community Services Department

Awarded Amount: \$100,000.00

AR Charge Code: _____

Grant funds multiple projects
(Complete a form for each project)

Grantor Id: SF COUNTY MOU 2022-233-CSD/MM

Federal CFDA (if applicable)

Grantor Name: _____ Awarded Amount: _____

AR Charge Code: _____

Grant funds multiple projects
(Complete a form for each project)

Grantor Id: _____ Federal CFDA (if applicable) _____

(If grants please provide all grant award documents with form) Attached to Grant

Log # <i>{Finance use only}</i> :	
Journal # <i>{Finance use only}</i> :	

City of Santa Fe, New Mexico BUDGET AMENDMENT RESOLUTION (BAR)



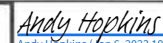
DEPARTMENT / DIVISION NAME Community Health and Safety/Youth and Family				DATE 12/22/2022	
ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				<i>{enter as positive #}</i>	<i>{enter as negative #}</i>
Community Services/ Children & Youth Activities/ Grants and Services	2400122	510400	COM2324002	100,000	
REVENUES				<i>{enter as negative #}</i>	<i>{enter as positive #}</i>
Santa Fe County	2400122	491010	COM2324002	(100,000)	

JUSTIFICATION: *{use additional page if needed}*
 –Attach supporting documentation/memo

\$ - \$ -

Funds for prevention and intervention programs to address youth and community violence received from Santa Fe County 2022-0233-CSD/MM

<i>{Complete section below if BAR results in a net change to ANY Fund}</i>	
	Fund Balance Increase/(Decrease)
Fund(s) Affected	
TOTAL:	0

Manuel Sanchez Prepared By <i>{print name}</i>  Division Director Signature <i>{optional}</i>  Department Director Signature	12/20/2022 Date 12/20/2022 Date	<i>{Use this form for Finance Committee/ City Council agenda items ONLY}</i> CITY COUNCIL APPROVAL City Council Approval Date: <input type="text"/> Agenda Item #: <input type="text"/>	 Andy Hopkins <small>{Jan 6, 2023 10:21 MST}</small> Budget Officer Finance Director <i>{≤ \$5,000}</i> City Manager <i>{≤ \$60,000}</i>	Jan 6, 2023 Date
---	--	---	--	---------------------

**MEMORANDUM OF AGREEMENT
BETWEEN SANTA FE COUNTY and THE CITY OF SANTA FE
REGARDING**

**Use of Santa Fe County Funds for Prevention and Intervention Programs
That Address Issues of Youth and Community Violence**

THIS MEMORANDUM OF AGREEMENT ("MOU") is entered into on this 11th day of October, 2022, between the CITY OF SANTA FE, a municipal corporation ("CITY"), and SANTA FE COUNTY, a political subdivision of the state of New Mexico ("COUNTY"), regarding the Use of Santa Fe County funds for Prevention and Intervention Programs That Address Issues of Youth and Community Violence.

WHEREAS, violent crime,¹ gun-related deaths,² and suicide³ have increased in recent years in New Mexico;

WHEREAS, trends observed by local first responders and advocates suggest an increase in violence occurring between people under the age of 25 in the County;⁴

WHEREAS, the individual and community consequences of violence include death, injury, emotional traumatization, incarceration, financial loss, family separation, and behavioral health problems (substance use disorder, mental illness, and further violent victimization or perpetuation) that can result from any of these harms;⁵

WHEREAS, responding to violence strains public service provider systems and organizations, including police departments, schools, and emergency medical response services, violence attributes to an estimated 2.3 million emergency department visits and 376,500 hospitalizations, with an estimated total medical cost of about \$8.7 billion;⁶

¹ Daniel Chacón, "Report: Violent crime up 30 percent while clearance rate drops 25 percent," *Santa Fe New Mexican*, December 1, 2021, https://www.santafenewmexican.com/news/local_news/report-violent-crime-up-30-percent-while-clearance-rate-drops-25-percent/article_30b0d656-5239-11ea-9747-c7ee3b9d5aac.html.

² NMDOH, "New Mexico Firearm-Related Deaths Increased in 2020 and Sustainability Since 2010," December 23, 2021, <https://www.nmhealth.org/news/awareness/2021/12/?view=1760>.

³ NMDOH, "New Mexico Suicide Deaths Increase in 2020," December 6, 2021, <https://www.nmhealth.org/news/information/2021/12/?view=1739>.

⁴ Sophie Andar, "City of Santa Fe Department of Community Health and Safety Violence Prevention Initiative - Phase 1: Research and Development Report," February 2022.

⁵ Daniel Flannery, Alexander Vazsonyi, & Irwin Waldman. *The Cambridge Handbook of Violent Behavior and Aggression* (New York: Cambridge University Press, 2007).

⁶ i.e. David Grossman and Beohara Chouhair, "Violence And The US Health Care Sector: Burden And Response," *Health Aff (Millwood)*, (October 2019) 38(10):1638-1645, <https://pubmed.ncbi.nlm.nih.gov/31589530/>.

WHEREAS, emotional distress, lack of involvement in conventional activities, and diminished economic opportunities are youth violence risk factors⁷ that have increased due to the COVID-19 virus pandemic;

WHEREAS, local stakeholders with expert level knowledge of violence have reported the following as factors contributing to youth violence in Santa Fe: lack of meaningful out of school engagement and employment; lack of free and safe places to hang out with peers outside of school; lack of consistent presence of trusting adult advocates; parents'/guardians' serious economic need combined with their absence and/or unavailability due to working multiple jobs and managing multiple other responsibilities; vulnerability to predation, exploitation, and/or violent victimization by adults or youth peers who present the potential to fill a need to belong and/or matter to others; and serious economic need combined with a perceived path to wealth from selling guns and/or drugs;⁸

WHEREAS, violence is a preventable and treatable public health problem;⁹

WHEREAS, best practices exist for preventing youth violence;¹⁰

WHEREAS, the following community level factors have been found to protect youth mental health and contribute to positive development: the presence of mentors and support for development of skills and interests, opportunities for community engagement, positive norms, clear expectations for behavior, and physical and psychological safety;¹¹

WHEREAS, meaningful peer engagement and emotional support can lead to positive behavior change;¹²

⁷ CDC, "Violence Prevention – Risk Factors and Prevention," 2022, <https://www.cdc.gov/violenceprevention/youthviolence/riskprotectivefactors.html>.

⁸ Andar, "R and D Report."

⁹ Linda Dahlberg and James Mercy, "History of Violence as A Public Health Problem," *Virtual Mentor*. 2009;11(2):167-172. doi: 10.1001/virtualmentor.2009.11.2.mhst1-0902.

¹⁰ Abigail Fagan and Richard Catalano, "What Works in Youth Violence Prevention: A Review of the Literature," *Research on Social Work Practice*, 2013; 23: 141.

¹¹ National Research Council (US) and Institute of Medicine (US) Committee on the Prevention of Mental Disorders and Substance Abuse Among Children, Youth, and Young Adults: Research Advances and Promising Interventions; O'Connell ME, Boat T, Warner KE, editors. Preventing Mental, Emotional, and Behavioral Disorders Among Young People: Progress and Possibilities. Washington (DC): National Academies Press (US); 2009. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK32773/> doi: 10.17226/12480

¹² Child Welfare Information Gateway, "Protective Factors -- Approaches in Child Welfare," 2020, https://www.childwelfare.gov/pubpdfs/protective_factors.pdf

WHEREAS, investment in credible peer influencers to serve as community outreach workers and violence interrupters has contributed to a reduction in shootings in multiple U.S. cities;¹³

WHEREAS, investment in anti-violence workforce development has been identified as one of 10 essential actions cities can take to reduce violence;¹⁴ and

WHEREAS, Santa Fe youth who are at high risk of violent victimization or perpetration could benefit from a safe, reliable, healing, and educative service that can offer support, mentorship, and personal growth and violence prevention career development opportunities.

WHEREAS, the City and the County have decided to mutually work together to address issues of violence through this agreement.

NOW, THEREFORE, the parties agree as follows:

1. SCOPE OF AGREEMENT.

A. The County Community Services Department will provide the City with funds in the sum of \$100,000.00 per fiscal year, for the City to procure the services of a qualified service provider who has positive youth development expertise and community credibility.

B. The City will contract with the selected service provider to pilot, evaluate, improve, and expand a program to recruit, support, educate, and employ youth at high risk for violence, to serve as community support workers and contribute to youth violence prevention.

C. The City and County will endeavor to continue their mutual cooperation to continue this program for longer than one year if the program demonstrates sufficient success.

D. The City and County will work together to establish a coordinated community response to community violence to include but not limited to youth violence, domestic violence, gun violence, etc.

E. The City and County will research and co-invest in best practice interventions that reduce and end violent behavior in perpetrators.

F. The City and County will ensure that young people have an array of free, safe, welcoming, and accessible options for public places where they can connect and socialize, including through sports and music.

¹³ Cure Violence, "Evidence Summary," 2022, <https://cvg.org/impact/>.

¹⁴ Council on Criminal Justice (CCJ), "Saving Lives: Ten Essential Actions Cities Can Take to Reduce Violence Now," 2022, <https://counciloncj.org/10-essential-actions/>.

2. TERM. This MOU shall be in effect upon the date of the last signature by the parties and shall terminate June 30, 2025, unless earlier terminated pursuant to Article 3 below (Termination).

3. TERMINATION. This MOU may be terminated by either party upon written notice delivered to the other party at least 30 days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

4. AMENDMENT. This MOU shall not be altered, changed, or amended except by an instrument in writing signed by the parties.

5. LIABILITY. Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of this MOU. Each party shall be liable for its actions in accordance with this MOU.

6. NEW MEXICO TORT CLAIMS ACT. Any liability incurred by the City or County in connection with this MOU 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 the County and their "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.

7. APPROPRIATIONS. The City and County's performance of the duties under this MOU are contingent upon sufficient appropriations and authorization being made by the City Council for the City's, and the Santa Fe County Board of County Commissioners for the County's performance of duties under this MOU. If sufficient appropriations and authorization are not made by the City or County's respective governing council or board, this MOU shall terminate immediately upon written notice being given by the City or County to the other party. The City or County's decision as to whether sufficient appropriations are available shall be accepted by the other party and shall be final.

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

9. ASSIGNMENT. Neither the City nor County nor Authority shall assign or transfer any interest in this MOA or assign any claims for money due or to become due under this MOU without the prior written approval of the other party.

IN WITNESS WHEREOF, the parties have duly executed this MOU as of the last signature of the parties hereto.

CITY OF SANTA FE:

ALAN M. WEBBER, MAYOR

DATE :

ATTEST:

KRISTINE BUSTOS MIHELICIC, CITY CLERK

DATE

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Oct 19, 2022 11:18 MDT)

Oct 19, 2022

SENIOR ASSISTANT CITY ATTORNEY

DATE

APPROVED FOR FINANCES:

FINANCE DIRECTOR

DATE

SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS:

Anna T. Hamilton
Anna T. Hamilton
Chair, Santa Fe County Board of County Commissioners



ATTESTATION:
Katharine E. Clark
Katharine E. Clark
Santa Fe County Clerk

10/12/2022
DATE

Approved as to form:

Roberta D. Joe for J.Y.
Jeff Young
Santa Fe County Attorney

August 12, 2022
Date

Finance Division:

Yvonne S. Herrera
Yvonne S. Herrera
Finance Director

8/16/2022
Date



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/16/2022

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 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 Integral Insurance Solutions 555 1st St Ste 302 Benicia CA 94510	CONTACT NAME: Philip Thomas PHONE (A/C, No, Ext): 707-400-0636 E-MAIL ADDRESS: mail@integralins.net	FAX (A/C, No): 707-742-2888
	INSURER(S) AFFORDING COVERAGE	
INSURED FII-National (A NonProfit) dba: UpTogether 663 13th St Ste 200 Oakland CA 94612	INSURER A: CFC Underwriting Limited (Lloyd's) NAIC # ---	
	INSURER B: Stratford Insurance Company 40436	
	INSURER C: HSB Specialty Insurance Company 14438	
	INSURER D: Travelers Casualty and Surety Co of America 19046	
	INSURER E: Hartford Fire Insurance Company 19682	
	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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	Y	PSL0339503178	08/05/2022	08/05/2023	EACH OCCURRENCE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 250,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS			PSL0339503178	08/05/2022	08/05/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AGGREGATE LIMIT \$ 3,000,000
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
E	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	72WECAV3F70	12/14/2022	12/14/2023	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A B C D	Errors & Omissions Directors & Officers Cyber Liability Crime Insurance			PSL0339503178 NFP9001299 6605020-03 107694199	08/05/2022 08/04/2023 07/05/2022 09/02/2022	08/05/2023 08/04/2023 07/05/2023 09/02/2023	OCCURRENCE / AGGREGATE \$1,000,000 / \$3,000,000 OCCURRENCE / AGGREGATE \$2,000,000 / \$2,000,000 OCCURRENCE / AGGREGATE \$1,000,000 / \$1,000,000 OCCURRENCE / AGGREGATE \$5,000,000 / \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
****The City of Sante Fe is additional insured in regards to general liability and auto liability per blanket additional insured endorsement**. Waiver of Subrogation is included in favor of the City of Sante Fe for General Liability and Auto Liability policies when required by written contact. Certificate Holder will be notified of any cancellations 30 days prior to cancel date.**

****Additional Insured blanket verbiage on page 27 under "Conditions" at Section 2**
*****Waiver of Subrogation blanket verbiage on page 31 under "Conditions" at Section 16**

CERTIFICATE HOLDER City of Sante Fe 500 Market Street, Suite 200 P.O. Box 909 Santa Fe NM 87501	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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City of Santa Fe, New Mexico

Memorandum



DATE: January 9, 2023

TO: Governing Body
Quality of Life Committee
Finance Committee

VIA: Kyra Ochoa, Community Health and Safety Director 
Maria Sanchez-Tucker, Community Services Director 

FROM: Anya Alarid, Volunteer Program Manager 

ITEM AND ISSUE:

Request for the Approval of State of New Mexico Aging and Long Term Services Department Grant Agreement in the Total Amount of \$ 268,841.12 for the Foster Grandparent, Senior Companion, and Retired Senior Companion Volunteer Programs, Term Ending June 30, 2023 (Anya Alarid, Senior Services Program Manager: alarid@santafenm.gov , 505-955-4744).

BACKGROUND AND SUMMARY:

The Senior Services Department is requesting the approval of the State of New Mexico Aging and Long Term Services Department Contract for the Senior Volunteer Programs. The Grant Award is for the Foster Grandparent, Senior Companion, and Retired Senior Companion Volunteer Programs. The attached Contract reflects the Fiscal Year 2023 awarded appropriations for all three Volunteer Programs. The allocations are as follows; Foster Grandparent Program \$76,654.97, Senior Companion Program \$136,316.89, and the Retired Senior Volunteer Program \$ 55,869.26.

Our Foster Grandparent Program provides opportunities for our senior volunteers to assist children (with special or exceptional needs) in classrooms or Head Starts. The Senior Companion Program arranges for active seniors to visit and assist frail, homebound elderly clients in their homes helping them avoid expensive institutionalization.

CONTRACT NUMBER:

The FY23 Munis contract number is 3203842.
Project Ledger #'s- (FGP) COM2324110, (RSVP) COM2324112, (SCP) COM2324111

FUNDING SOURCE:

The funding source is:
Fund Name/Number: Senior Citizens Grant/Fund 241
Munis Org Name/Number: Senior Volunteer Programs/2410116

ACTION REQUESTED:

Department Name respectfully requests your review and approval.



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: State of New Mexico Aging and Long Term Services Department

Procurement Title: FY 23 Senior Volunteer Program Contract

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 Senior Services Staff Name Anya Alarid

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:

Anya Alarid Program Manager 12/23/2022

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

JoAnn Lovato
JoAnn Lovato (Jan 11, 2023 12:50 MST)

Contracts Supervisor Jan 11, 2023

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

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



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3203842

Contractor: State of New Mexico- Aging and Long Term Services Department

Description: **Administer the Senior Volunteer Programs- Foster Grandparent Program, Senior Companion Program, and the Retired Senior Volunteer Program**

Contract Agreement Lease / Rent Amendment

Term Start Date: Upon Approval Term End Date: 06/30/23

Approved by Council Date: _____

Contract / Lease:

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)**
The City of Santa Fe, Division of Senior Services has been receiving grant funds from the State of New Mexico over 20+ years to administer the Senior Volunteer Programs.

3. **Procurement History:** _____

JoAnn Lovato Jan 11, 2023
JoAnn Lovato (Jan 11, 2023 12:50 MST) Date: _____

Purchasing Officer Review: _____
Comment & Exceptions: Grant funding gov't entity to gov't entity.

4. **Funding Source:** State of New Mexico **Org / Object:** 2410116/490240

Andy Hopkins Jan 10, 2023
Andy Hopkins (Jan 10, 2023 13:45 MST) Date: _____

Budget Officer Approval: _____
Comment & Exceptions: _____

Staff Contact who completed this form: Anya Alarid Phone # 505-955-4744

Email: aalarid@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

STATE OF NEW MEXICO

**AGING & LONG-TERM SERVICES DEPARTMENT
INTERGOVERNMENTAL AGREEMENT #23-624-4000-0024**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Aging and Long-Term Services Department**, hereinafter referred to as the “Department,” and **City of Santa Fe**, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the Department and collectively as the “Parties.”

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the work outlined in the Scope of Work, which is hereby incorporated and made a part of this contract as Attachment 1.

2. Compensation.

A. The Department shall pay to the Contractor in full payment for services satisfactorily performed based upon deliverables as outlined in the Scope of Work. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed \$268,841.12 as listed in Attachment 2. 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 Department when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the Parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the Department. All invoices **MUST BE** received by the Department 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. Reimbursements shall be made by the Department on a monthly basis upon receipt of monthly expenditures and reports furnished by the Contractor. If the Department 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 Department 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 Department shall not incur late charges, interest, or penalties for failure

to make payment within the time specified herein.

For purchases funded by state or federal grants to the Contractor, if the Contractor has not received the funds from the federal or state funding Department but has already certified that the services or items of tangible personal property have been received and accepted, payment shall be tendered to the Contractor within five working days of receipt of funds from that funding Department.

3. Term.

THIS AGREEMENT SHALL BECOME EFFECTIVE December 1, 2022, and terminate on **June 30, 2023**, unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations) or for any other reason allowed by law. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

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

B. Notice; Department Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Department shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

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

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Department'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 Department's other legal rights and remedies caused by the Contractor's default/breach of this Agreement.

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

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Department to the Contractor. The Department's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Department 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 Department and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax, unless the contract is between two public entities. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Department.

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 Department. 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 Department.

9. Release.

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

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Department.

Disclosure of confidential information shall only be made in accordance with the Inspection of Public Records Act or the applicable state or federal law or regulations.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Department 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. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Department employee while such employee was or is employed by the Department and participating directly or indirectly in the Department's contracting process;

2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(A) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Department's making this Agreement;

4) this Agreement complies with Section 10-16-9(A) NMSA 1978 because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by Section 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

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

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

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

13. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Department proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Department.

19. Records and Financial Audit.

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

If, pursuant to this Agreement, the Contractor receives federal funds subject to the Single Audit Act, the Contractor shall submit to the Department an audit conducted by a certified public accountant in compliance with the Single Audit Act.

20. Indemnification.

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act.

21. 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.

22. 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.

23. 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 Department: Andrea Segura
Aging and Long-Term Services Department
2550 Cerrillos Rd
Santa Fe, NM 87505

To the Contractor: City of Santa Fe
PO Box 909
Santa Fe, NM 87504-0909

24. 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.

ATTACHMENT 1

SCOPE OF WORK

Contract # 23-624-4000-0024

Between

**New Mexico Aging & Long-Term Services Department and
CITY OF SANTA FE**

A. SCOPE OF WORK

1. PURPOSE

The purpose of the Contract is to ensure that volunteer programs (Services) authorized by the Aging and Long-Term Services Department (Department) provide meaningful opportunities for older adults to engage in their communities and help address critical community needs. For the purposes of this Scope of Work, “Services” is defined as the Foster Grandparent Program, the Senior Companion Program, and the RSVP (formally Retired Senior Volunteer Program). Descriptions and authorizations for the Services are set forth below. The Services should produce results that support ALTSD’s mission and goals set forth in its Strategic Plan. The Services provided for in this Contract shall address the following specific issue and/or deliverable: supporting older adults to remain independent, at home and contributing to the community.

Services provided for under this Contract are as follows:

- a. The **Foster Grandparent Program (FGP)** is authorized under Title II, Part B, of the Domestic Volunteer Service Act of 1973, as amended (Public Law 93-113). The purpose of the program is to provide opportunities for persons aged 55 or older with low incomes to provide supportive person-to-person services to help alleviate the physical, mental, or emotional problems of youth, less than 21 years of age, with special or exceptional needs.
- b. The **Senior Companion Program (SCP)** is authorized under Title II, Part C, of the Domestic Volunteer Service Act of 1973, as amended (Public Law 93-113). The purpose of the program is to provide opportunities for persons aged 55 or older with low incomes to provide supportive person-to-person services to older adults with health and functional limitations to enable them to remain as independent as possible in their own homes.

Both the **Foster Grandparent Program (FGP)** and the **Senior Companion Program (SCP)** engage persons aged 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs and provide a high-quality experience to enrich the lives of the volunteers.

- c. **RSVP (formally Retired Senior Volunteer Program)** secures and facilitates a variety of opportunities for persons aged 55 and older to contribute their skills and expertise to community projects and organizations. RSVP is authorized under Title II, Part A, of the Domestic Volunteer Service Act of 1973, as amended (Public Law 93-113). The purpose

of the program is to provide opportunities for persons aged 55 or older to engage in volunteer activities designed to meet critical community needs.

2. POPULATIONS TO BE SERVED

1. **FGP** volunteers shall serve children under the age of 21 who have special or exceptional needs, through one-on-one tutoring and mentoring, to maintain or improve the children's health status and psychosocial functioning.
2. **SCP** volunteers shall serve adults, primarily older adults, with physical, emotional and/or mental health limitations, by providing person-to-person support and companionship necessary to maintain the adults' independent living and an enhanced quality of life.
3. **RSVP** volunteers shall serve their communities by participating in special projects and supporting organizations to meet identified critical needs.

The Contractor shall be responsible for the provision of Services in: Santa Fe County, which shall be referred to as the "Service Area."

3. RESPONSIBILITIES OF THE CONTRACTOR

1. Program Requirements:

- a. The Contractor must be designated as an official AmeriCorps Seniors program through the federal AmeriCorps (formerly known as Corporation for National and Community Service) organization in the designated Service Area.
- b. As required by the Department, the Contractor shall administer all or part of the Services in the designated Service Area, in accordance with the finalized, fully executed contract.
- c. The Contractor shall comply with all current rules and regulations pursuant to the Laws of the State of New Mexico (9.2.14 NMAC; 9.2.15 NMAC; 9.2.16 NMAC), Department policies and procedures, and AmeriCorps Seniors federal statutes and guidelines applicable to each of the Services.
- d. The Contractor shall establish and maintain staff positions to perform all contractual obligations including but not limited to management, supervision, service provision coordination, accounting, data collection and reporting.
- e. The Contractor shall be responsible for outreach, recruitment, and placement of volunteers in Volunteer Station(s). As used in this Contract, Volunteer Stations are public agencies, secular or faith-based private non-profit organizations, or health

care organizations that accept the responsibility of assignment and supervision of volunteers. The placement of volunteers shall be governed by a Memorandum of Understanding (MOU) between the Contractor and the Volunteer Station(s). If a MOU does not exist between the Contractor and the Volunteer Station, the Contractor shall execute said MOU within 15 days of final execution of this Contract.

- f. In conjunction with a Volunteer Station, the Contractor shall develop an assignment plan which clearly sets forth the outcomes and activities by which each volunteer will be measured as well as documentation demonstrating whether deliverables as set forth in the Contract have been met. The activity plan shall be in writing and implemented within 15 days of a volunteer's start date. The Contractor shall provide to the Department each volunteer's assignment plan within 5 days of the Department's written request.
- g. The Contractor shall comply with the National Service Criminal History Check (Criminal Check) requirements for volunteers and employees, as mandated by AmeriCorps Seniors prior to a volunteer's start date. All required Criminal Checks will be completed at the Contractor's expense. Criminal Checks are an allowable expense under the contract.
- h. The Contractor shall ensure that each volunteer meets the eligibility criteria as specified by AmeriCorps Seniors program guidelines as required in the federal program regulations.
- i. The Contractor shall ensure that all required paperwork and forms are completed and current for all volunteers in accordance with the AmeriCorps Seniors handbook. The Contractor shall provide to the Department all AmeriCorps Seniors required paperwork and forms within 5 days of the Department's written request.
- j. The Contractor shall plan and implement annual recognition events for volunteers in accordance with the AmeriCorps Seniors program handbook and in coordination with its Advisory Council. Recognition events shall be provided as resources permit one time per state fiscal year (per FGP, SCP, RSVP program if held separately), without prior written permission from the Department. The Contractor shall include documentation, including the number of recognition event attendees in its bi-annual report to the Department.

2. Performance Measures/ Fiscal Requirements:

- i. The Contractor shall develop and submit an annual work plan and budget that identifies all projected services, expenditures, and outlines how all funds will be spent, including justification for each program to coincide with awarded amounts within the Department's deadline. Separate budgets, justifications and program plans are to be submitted for each program - FGP, SCP, RSVP, and each service area, administered by the Contractor.
- ii. The Contractor shall submit to the Department monthly an invoice for reimbursement. The invoice for reimbursement shall be due the 12th day of the month, for the prior month's expenditures until all funds are spent, and a final report shall be due as required by the Department each year. Failure to expend contract appropriation (until all funds are spent) may result in reduction in the contract appropriation. All invoices for reimbursement must include supporting documentation from the entity's accounting system.
- iii. The Contractor shall submit to the Department, as required by the Department at its sole discretion, any Budget Adjustment Request(s) (BARs) for review and approval.

The Contractor shall provide records, reports, other documents, and access to facilities as requested by Department staff upon request.

3. Performance Measures/ Reporting Requirements:

- a. The Contractor shall submit semi-annual narrative reports for the purpose of reporting program activities for the contract year using a standardized reporting template provided by the Department. The due dates for the reports are as follows:
 1. **February 1st for the period July 1–December 31**
 2. **August 1st for the period January 1– June 30**
- b. The Contractor shall submit quarterly volunteer data reports for the contract year utilizing the Quarterly Data template provided by the Department. Each report is due no later than the 15th of the month following the end of the quarter for which data is being reported.
- c. The Contractor shall submit a copy of the current Progress Report Supplement for funded program(s) as required by AmeriCorps Seniors to the Department by December 1.

- d. The Contractor shall keep all documentation, including, but not limited to, reports, data, forms, and invoices for a minimum of 6 years. Such documentation shall be made available to the Department within 5 days of its request.

4. DEPARTMENT OVERSIGHT

1. Department staff shall conduct periodic site visits (with or without notice) with the Contractor, at the sole discretion of the Department, to evaluate progress, identify best practices or problem areas, and to determine actions to be taken by parties to resolve any issues that the Department identifies. The site visits will include, but not limited to visiting volunteer stations, clients, Contractor place of business, etc.
2. Department staff shall conduct monitoring of the Contractor for compliance with performance measures and scope of work deliverables throughout the term of the contract, which may include desk reviews of fiscal and programmatic documentation, and on-site monitoring, the frequency of which shall be determined by the Department, at its sole discretion. The Department shall produce, and provide to the Contractor, a report(s) of its findings. The Contractor shall cooperate with Department staff in the monitoring process by granting access to the Contractors program and fiscal records (for all funding sources, both electronic and hard copy).
3. The Department shall disburse reimbursements to the Contractor, upon receipt of complete and accurate monthly invoice and supporting documentation. The Department shall determine at its sole discretion whether the request for reimbursement is sufficient and accurate to permit disbursement of funds.
4. Department staff shall review and certify at its sole discretion all Contractor requests for reimbursement.
5. The Contractor authorizes the Department, the federal government, or their designees, to perform audits and/or inspections of its records, at any reasonable time, to assure compliance with state or federal government terms and/or to evaluate the Contractor's performance for all funding sources.

5. SERVICE PROVISION

- a. The Department has adopted the AmeriCorps Seniors Volunteer Program Handbook based on federal regulations and AmeriCorps Seniors for each respective program as the operating standard for state funded projects. The Services are intended to benefit the clients served, the community, and the senior volunteers themselves. One Volunteer Service Year (VSY) is equal to 1,044 hours of volunteer service. One VSY is not representative of a single volunteer but rather a volunteer or grouping of volunteers performing hours of service that equal 1,044

hours cumulative. Volunteer stipends are paid at \$3.15 per hour from July 2022-March 2023 and \$4.00 per hour from April 2023-June 2023. RSVP does not provide stipends or allowance to volunteers.

The Contractor will provide the following Services in accordance with the final, fully executed contract and monitored through the Contractor's submission of monthly invoices for reimbursement, Quarterly Reports, Narrative Reports, and Department annual program monitoring reviews:

- a. **Foster Grandparent Program (FGP):** Recruit and place a minimum of 12 Volunteer Service Years (VSYs) in schools, childcare centers, and other congregate settings for children or as allowable by AmeriCorps Seniors in Santa Fe County, to provide a minimum of 12,528 hours of service during the contract period.

The goals of FGP are to:

Enable persons aged 55 and older with low incomes to remain physically and mentally active and to enhance their self-esteem through continued participation in community services.

Enable children with either exceptional or special needs to achieve improved physical, mental, emotional, and/or social development.

- b. **Senior Companion Program (SCP):** Recruit and place a minimum of 22 Volunteer Service Years (VSY's) in the homes of frail and disabled elders or as allowable by AmeriCorps Seniors in Santa Fe County, to provide a minimum of 22,968 hours of service during the contract period.

The goals of SCP are to:

Enable persons aged 55 and older with low incomes to remain physically and mentally active and to enhance their self-esteem through continued participation in community services.

Enable older adults with health and functional limitations to remain as independent as possible in their own homes.

- c. **RSVP:** Recruit and place a minimum of 400 volunteers in community placements in Santa Fe County, to provide a minimum of 100,000 hours of service during the contract period.

The goals of RSVP are to:

Enable persons aged 55 and older to remain physically and mentally active and to enhance their self-esteem through continued participation in community services.

Enable communities to enhance their efforts in meeting identified needs through using the skills of older adult volunteers.

- b. Refer and/or provide information to volunteers interested in becoming Older Adult Peer Specialist certified through HSD, Community Health Workers certified through DOH, or Ombudsman volunteers with ALTSD by providing opportunities through MOUs to RSVP participates to use their existing experience, skills, and training to work with older adults living with behavioral health challenges.

- HSD contact info.
- DOH contact info.
- Ombudsman contact info.

**ATTACHMENT 2
BUDGET
Contract # 23-624-4000-0024
CITY OF SANTA FE
Volunteer Programs**

The Contractor shall provide the Services identified below as required by the Department based on the assessed need of the community and individuals receiving Services under this Contract. The amount payable under this Contract shall be made on a fixed rate for the provision of the identified Services.

The contract amendment is to provide funding for FY23 as follows:

PROGRAM	AMOUNT
Foster Grandparent Program	\$76,654.97
Senior Companion Program	\$136,316.89
RSVP	\$55,869.26

The total amount payable under this Contract shall not exceed \$268,841.12.

**Services will be provided to ALTSD-approved participants every month of the contract year in:
Santa Fe County.**

EXECUTED AND AGREED TO by signatures below.

By: _____ Date: _____
Katrina Hotrum-Lopez, Cabinet Secretary
Aging and Long-Term Services Department

By: _____ Date: _____
Anastasia Martin, General Counsel – Certifying legal sufficiency
Aging & Long-Term Services Department

By: _____ Date: _____
Valerie Garcia, Chief Financial Officer
Aging & Long-Term Services Department

By: _____ Date: _____
Mayor, Alan M. Webber

By: _____ Date: _____
Kristine Bustos-Mihelcic, City Clerk

By: Marcos Martinez Date: Dec 16, 2022
Marcos Martinez (Dec 16, 2022 10:39 MST)
Marcos Martinez, Senior Assistant City Attorney

By: _____ Date: _____
Emily Oster, Finance Director

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

KRISTINE BUSTOS-MIHELICIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Dec 16, 2022 10:39 MST)
MARCOS MARTINEZ, SENIOR ASSISTANT CITY ATTORNEY

APPROVED:

EMILY OSTER, FINANCE DIRECTOR

2410116/490240 AH
AH

ORG/OBJECT



City of Santa Fe, New Mexico


Memorandum



Date: November 22, 2022

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

Via: Rich Brown, Director, Community and Economic Development Department

From: Terry Lease, Asset Development Manager, Economic Development 

RE: **Las Estrellas Disposition of Tract 6A for Affordable Housing and Sale of other Las Estrellas Tracts**

EXECUTIVE SUMMARY:

This resolution, if approved, will provide direction regarding donating or otherwise disposing of Las Estrellas Tract 6A to a developer that is a “Qualifying Grantee” under the New Mexico Affordable Housing Act and the sale of seven other Las Estrellas Tracts with a local preference.

BACKGROUND:

On December 17, 2019, the City of Santa Fe (“City”) and Santa Fe Estates, Incorporated, a New Mexico corporation (“Santa Fe Estates”), terminated a 90-year-old agreement between the parties. The City conducted an extensive due diligence process before obtaining the property. During the due diligence process, the City identified that, under the agreement, Santa Fe Estates owed the City approximately \$3,016,171. In order to pay back its debt to the City, Santa Fe Estates agreed to i) give the City full ownership of the remaining 250.1 acres of Santa Fe Estates land, ii) assign the rights of declarant under the master and residential covenant conditions and restrictions, and iii) provide for 30-acre feet of water to be deposited in the City’s water bank.

The transferred land was last appraised on November 15, 2021, with the value for the total 250.1 acres of land as \$5,199,000.00; this consists of the entire nine tracts of land the City received from terminating its agreement with Santa Fe Estates, known as: Tract NPR1, Tract NPR3, Tract NPR4, Tract NPR5, Tract NPR6, Tract NPR7, Tract 2, Tract 6A, Tract 8B-1A.

On March 10, 2011, the Governing Body adopted Resolution No. 2021-16, which requires the Governing Body to approve the public announcement of sale prior to the City posting property for sale publicly. The Resolution exempted properties already announced as “for sale” at the time of the adoption of the resolution. Las Estrellas was announced as “for sale” at the time of the adoption of the Resolution 2021-16, but since that time the structure of the sale has changed and staff is proceeding with the attached Resolution.

The nine tracts of land owned by the City are all subject to certain covenants, conditions, restrictions, and the Las Estrellas Master Plan, which governs the area’s zoning, density, minimum requirements for affordable housing, and the location of open spaces (“Master Plan”). The proposed Resolution approves the public announcement of sale of seven of the nine parcels in Las Estrellas which are all located north of Veterans Memorial Highway 599: Tract NPR1, Tract NPR3, Tract NPR4, Tract NPR5, Tract NPR6, Tract

NPR7, and Tract 2, to a purchaser who will develop it according to the applicable covenants, conditions, restrictions, and Master Plan. This Resolution offers a preference for bids from local purchasers, requires minimum criteria which includes an offer of at least the appraised value of the seven parcels. While the City retains ownership of the nine tracts of land, it is also the Declarant under both the Master Plan and Residential the Declaration of Covenants, Conditions, and Restrictions.

The Resolution would adopt a strategy for donating or selling at a discount Tract 6A for the development of homes that meet the definition in SFCC 26-1 and 26-1 as “Santa Fe Homes Program Homes” (“SFHP”), Low-Priced Dwelling Units” (“LPDU”), or other affordability definitions either as rental, homeownership or land trust homes.

The second parcel that is located south of Veterans Memorial Highway 599, and that staff recommends that the City retain, is Tract 8B-1A. Tract 8B-1A is zoned as Commercial, Senior Living, Recreation, and may be developed in the future. Tracts 6A and Tract 8B-1A are both shown on the attached Exhibit “A.” As "Declarant" under the Residential Covenants affecting the property (including Tract 6A), the City has the right to remove Tract 6A from the Residential Covenants (but not the Non-Residential Covenants). In addition, the City could request the Las Estrellas Residential Association and/or Master Association Board limit the assessments for Tract 6A to support greater affordability. If the successful awardee deems removal from the Residential Covenants necessary to provide affordable housing, the resolution provides that the City shall either remove Tract 6A from the Residential Declaration of Covenants, Conditions and Restrictions prior to selling the other seven parcels, or request the Las Estrellas Residential Association Board and Master Association Board limit the assessments on Tract 6A.

ATTACHMENTS:

- Resolution
- Exhibit A – Map of existing Tracts
- Exhibit B – Ariel map of Tract 6A
- Fiscal Impact Report

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CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2022-__

INTRODUCED BY:

Councilor Michael Garcia

Councilor Renee Villarreal

Mayor Alan Webber

A RESOLUTION

ADOPTING A STRATEGY FOR DONATING OR SELLING, AT BELOW-MARKET VALUE, A PROPERTY IDENTIFIED AS “LAS ESTRELLAS TRACT 6A” TO A DEVELOPER CERTIFIED AS A “QUALIFYING GRANTEE” UNDER THE NEW MEXICO AFFORDABLE HOUSING ACT TO DEVELOP SANTA FE HOMES PROGRAM HOMES, LOW-PRICED DWELLING UNITS, OR UNITS PRICE-RESTRICTED THROUGH ANOTHER AFFORDABLE HOUSING SUBSIDY; AND APPROVING AN ANNOUNCEMENT TO SELL THE REMAINING SEVEN LAS ESTRELLAS LOTS WITH A LOCAL PREFERENCE.

WHEREAS, it is a policy goal of the City of Santa Fe (“City”) to provide incentives and encourage proposals that support the production, acquisition, and redevelopment of affordably priced homes in mixed-income developments; and

WHEREAS, according to Santa Fe Housing Act Coalition, market-rate rents in Santa Fe have increased by almost 50% since 2014, and 65% of Santa Fe renters cannot afford the median priced home; and

1 **WHEREAS**, according to the Santa Fe Association of Realtors’ Summer 2022 quarterly
2 property statistics report, the median sales price in Santa Fe increased over 20% since 2021; and

3 **WHEREAS**, on December 17, 2019, the City and Santa Fe Estates, Incorporated, a New
4 Mexico corporation (“Santa Fe Estates”) terminated a 90-year-old development and profit-sharing
5 agreement between the parties, which resulted in the City reacquiring fee simple title to 250.1 acres
6 in the Northwest Quadrant of the City (“Las Estrellas”); and

7 **WHEREAS**, Las Estrellas consists of nine tracts of land: Tract NPR1, Tract NPR3, Tract
8 NPR4, Tract NPR5, Tract NPR6, Tract NPR7, Tract 2, Tract 6A, and Tract 8B-1A; and

9 **WHEREAS**, these nine tracts of land are all subject to certain covenants, conditions, and
10 restrictions and the Las Estrellas Master Plan, which governs the area’s zoning, density, minimum
11 requirements for affordable housing, and the location of open spaces (“Master Plan”); and

12 **WHEREAS**, the Governing Body wishes to sell seven of the nine parcels in Las Estrellas
13 (Tract NPR1, Tract NPR3, Tract NPR4, Tract NPR5, Tract NPR6, Tract NPR7, and Tract 2) to a
14 purchaser who will develop the parcels according to the applicable covenants, conditions,
15 restrictions, and Master Plan; and

16 **WHEREAS**, for the seven parcels it intends to sell, the Governing Body wishes to offer a
17 preference to local purchasers; and

18 **WHEREAS**, in addition to the local preference and applicable restrictions, the Governing
19 Body wishes to obtain at least the appraised value of the seven parcels; and

20 **WHEREAS**, while the City retains ownership of Las Estrellas, it is also the “Declarant”
21 under both the Residential the Declaration of Covenants, Conditions and Restrictions (“Residential
22 Covenants”) and Non-Residential (AKA "Master") Declaration of Covenants, Conditions, and
23 Restrictions (“Non-Residential Covenants”); and

24 **WHEREAS**, the Governing Body wishes to make Tract 6A available for an affordable
25 housing project; and

1 **WHEREAS**, the eighth parcel is designated “Community Services”, and, therefore, the
2 City will retain it for one of the following uses: Police, Fire, Library, Administrative Offices, or
3 Recreational Uses; and

4 **WHEREAS**, as the "Declarant" under the Residential Covenants affecting the property
5 (including Tract 6A), the City has the right to remove Tract 6A from the Residential Covenants
6 (but not the Non-Residential Covenants); and

7 **WHEREAS**, in addition, or in lieu, the City may request the Las Estrellas Residential
8 Association and/or Master Association Board limit the assessments for Tract 6A to support greater
9 affordability; and

10 **WHEREAS**, the City intends to donate or sell at a discount Tract 6A as identified in the
11 attached Exhibit A and Exhibit B for the development of homes that meet the definition in SFCC
12 1987, Sections 26-1 and 26-1 as “Santa Fe Homes Program Homes” (“SFHP”) or Low Priced
13 Dwelling Units” (“LPDU”), or other affordability definitions either as rental units, owned units, or
14 land trust homes; and

15 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**
16 **CITY OF SANTA FE**, that the City Manager shall create an Evaluation Committee that will
17 release a Request for Qualifications (“RFQ”) and select a “Qualified Grantee,” or a consortium that
18 includes a “Qualified Grantee,” to develop Tract 6A for residential uses, offering a mix of housing
19 types, tenures, and affordability levels. The City shall award a disposal contract pursuant to the
20 RFQ based on the following evaluation criteria, as applied to the applicants’ proposed project(s):

- 21 • Funding Feasibility – the proposed project budget is realistic, funds are leveraged at
22 least at a 3:1 ratio from other committed funding sources, revenue is sufficient to
23 accomplish the proposed project.
- 24 • Need/Benefit and Project Feasibility – the project concept is responsive to
25 current/future market demand and the applicant provides a realistic timeframe for the

1 completion of the proposed activities.

- 2 • Affordability – the proposed project effectively meets the income eligibility
3 requirements of the New Mexico Affordable Housing Act, and the applicant describes
4 how it will achieve affordability targets; how the applicant and/or the City may monitor
5 the project over time for compliance; and how the applicant will secure.
- 6 • Organizational Capacity and Management – the applicant adequately demonstrates
7 experience and expertise in this type of housing construction, including work samples
8 and funding commitments.
- 9 • Innovative Design and Sustainability Targets – the applicant demonstrates the ability
10 to design and construct buildings that achieve high standards of sustainability, have
11 innovative designs, and exceed the green building criteria in City code.

12 **BE IT FURTHER RESOLVED** that, based on the criteria above, the Evaluation
13 Committee shall identify a development partner and potential future owner of Tract 6A, in order
14 for staff to prepare an agreement regarding the proposed project for approval by the Governing
15 Body.

16 **BE IT FURTHER RESOLVED** that the City Manager shall order an update to the
17 November 16, 2021 appraisal, of Tract 6A and an updated appraisal for the seven parcels it intends
18 to sell.

19 **BE IT FURTHER RESOLVED** that the City Manager shall develop a Real Estate
20 Donation Agreement and Special Warranty Deed for Governing Body approval, imposing a land
21 use restriction that will ensure an affordability period of no less than forty-five years and that will
22 run concurrently with any requirements imposed by any other subsidy provider, to be executed
23 upon transfer of Tract 6A.

24 **BE IT FURTHER RESOLVED** that, if the Qualifying Entity that is awarded Tract 6A
25 deems it necessary to provide affordable housing, the City shall either remove Tract 6A from the

1 Residential Declaration of Covenants, Conditions, and Restrictions, prior to selling the other seven
2 parcels, or the City shall request the Las Estrellas Residential Association Board and Master
3 Association Board limit the assessments on Tract 6A.

4 **BE IT FURTHER RESOLVED** that the Governing Body approves the public
5 announcement of sale for the seven parcels of Las Estrellas with the following minimum criteria:

- 6 1. a minimum bid of the appraised price or higher;
- 7 2. documentation of financial ability to pay for the land; and
- 8 3. documentation of financial viability to develop the land in accordance with the
9 Master Plan.

10 **BE IT FURTHER RESOLVED** that the City will select a purchaser for the seven parcels
11 of Las Estrellas as follows:

- 12 1. Requiring the minimum criteria, listed above;
- 13 2. Applying a local preference for local purchasers of up to six percent (6%), which
14 is consistent with the weight of the local preference offered in City and State
15 procurement; and
- 16 3. Selecting the offer that meets the minimum criteria and offers the highest purchase
17 price, as adjusted by the local preference.

18 **BE IT FURTHER RESOLVED** that, to receive the local preference, a purchaser must
19 meet one or both of the two following criteria, which may result in a cumulative six percent (6%)
20 local preference if both criteria are met:

- 21 1. Hold a current City of Santa Fe or Santa Fe County business license, and have held
22 said license for the proceeding three (3) years, to receive a 3% local preference, or
- 23 2. Provide a New Mexico Tax and Revenue Department Resident Business
24 Certificate to receive a 3% local preference.

25 PASSED, APPROVED, and ADOPTED this _____ day of _____, 2022.

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ALAN WEBBER, MAYOR

ATTEST:

KRISTINE MIHELICIC, CITY CLERK

APPROVED AS TO FORM:



ERIN K. McSHERRY, CITY ATTORNEY

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO RESOLUTION NO. 2023-__
(Las Estrellas Tract 6A and Seven Parcel Disposition)

Members of the Governing Body:

I propose the following amendment(s) to Resolution No. 2023-__:

This amendment does ___ Does not X change the caption.

1. On page 5, line 25, *insert* the following paragraphs:

“**BE IT FURTHER RESOLVED** that the purchase agreement shall stipulate that, in the event the purchaser is awarded a local preference, the purchaser shall not sell the property for a period of ten (10) years, unless it sells to a buyer who meets the qualifications for an equal or greater percentage of the local preference offered in the Request for Qualifications, except that the purchaser may sell developed homes or ready-to-build individual plots to individual homeowners. In the event the purchaser breaches this provision, it shall be required to reimburse the City the monetary amount equivalent to the local preference it received.

BE IT FURTHER RESOLVED that the purchase agreements shall require the purchaser to begin development of the property, which may include spine infrastructure, engineering, and horizontal development, within three years of the completion of purchase.”

Respectfully submitted,

Jamie Cassutt, Councilor

Approved as to Form:



Erin K. McSherry, City Attorney

ADOPTED: _____

NOT ADOPTED: _____

DATE: _____

Kristine Mihelcic, City Clerk

10467.4(A)

10467.4(A)






Amendment A - (Cassutt Amendment)

Final Audit Report

2023-01-26

Created:	2023-01-26
By:	Jeff Norris (jtnorris@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAiz1H50MVENgQDu0rRU9ckY03aGGHSuyX

"Amendment A - (Cassutt Amendment)" History

-  Document created by Jeff Norris (jtnorris@ci.santa-fe.nm.us)
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-  Document emailed to Erin Mcsherry (ekmcsherry@ci.santa-fe.nm.us) for signature
2023-01-26 - 0:26:57 AM GMT
-  Email viewed by Erin Mcsherry (ekmcsherry@ci.santa-fe.nm.us)
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-  Document e-signed by Erin Mcsherry (ekmcsherry@ci.santa-fe.nm.us)
Signature Date: 2023-01-26 - 0:47:32 AM GMT - Time Source: server- IP address: 216.207.130.218
-  Agreement completed.
2023-01-26 - 0:47:32 AM GMT

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO RESOLUTION NO. 2023-__
(Las Estrellas Tract 6A and Seven Parcel Disposition)

Members of the Governing Body:

I propose the following amendment(s) to Resolution No. 2023-__:

This amendment does ___ Does not X change the caption.

1. On page 5, line 25, *insert* **“BE IT FURTHER RESOLVED** that the purchase agreement shall stipulate that, in the event the purchaser is awarded a local preference, the purchaser shall not sell the property for a period of three (3) years, unless selling to a buyer who meets the qualifications for an equal or greater percentage of the local preference offered in the Request for Qualifications, except that the sale of developed homes or ready-to-build individual plots to individual homeowners is permitted. The purchase agreement shall require the purchaser to secure this requirement with a letter of credit in the amount of 2% of the contracted purchase price.

BE IT FURTHER RESOLVED that the purchase agreement shall stipulate that a purchaser awarded a local preference shall begin development of the property, including spine infrastructure, engineering, and utility development, within five (5) years of the completion of purchase and shall require the purchaser to secure compliance with this requirement with a letter of credit in the amount of 1% of the contracted purchase price.”

Respectfully submitted,

Signe Lindell, Councilor

Carol Romero-Wirth, Councilor

Approved as to Form:



Erin K. McSherry, City Attorney

ADOPTED: _____

NOT ADOPTED: _____

DATE: _____

Kristine Mihelcic, City Clerk

10467.4(B)

10467.4(B)

Amendment B - (Romero-Wirth and Lindell)

Final Audit Report

2023-01-25

Created:	2023-01-25
By:	Jeff Norris (jtnorris@ci.santa-fe.nm.us)
Status:	Signed
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"Amendment B - (Romero-Wirth and Lindell)" History






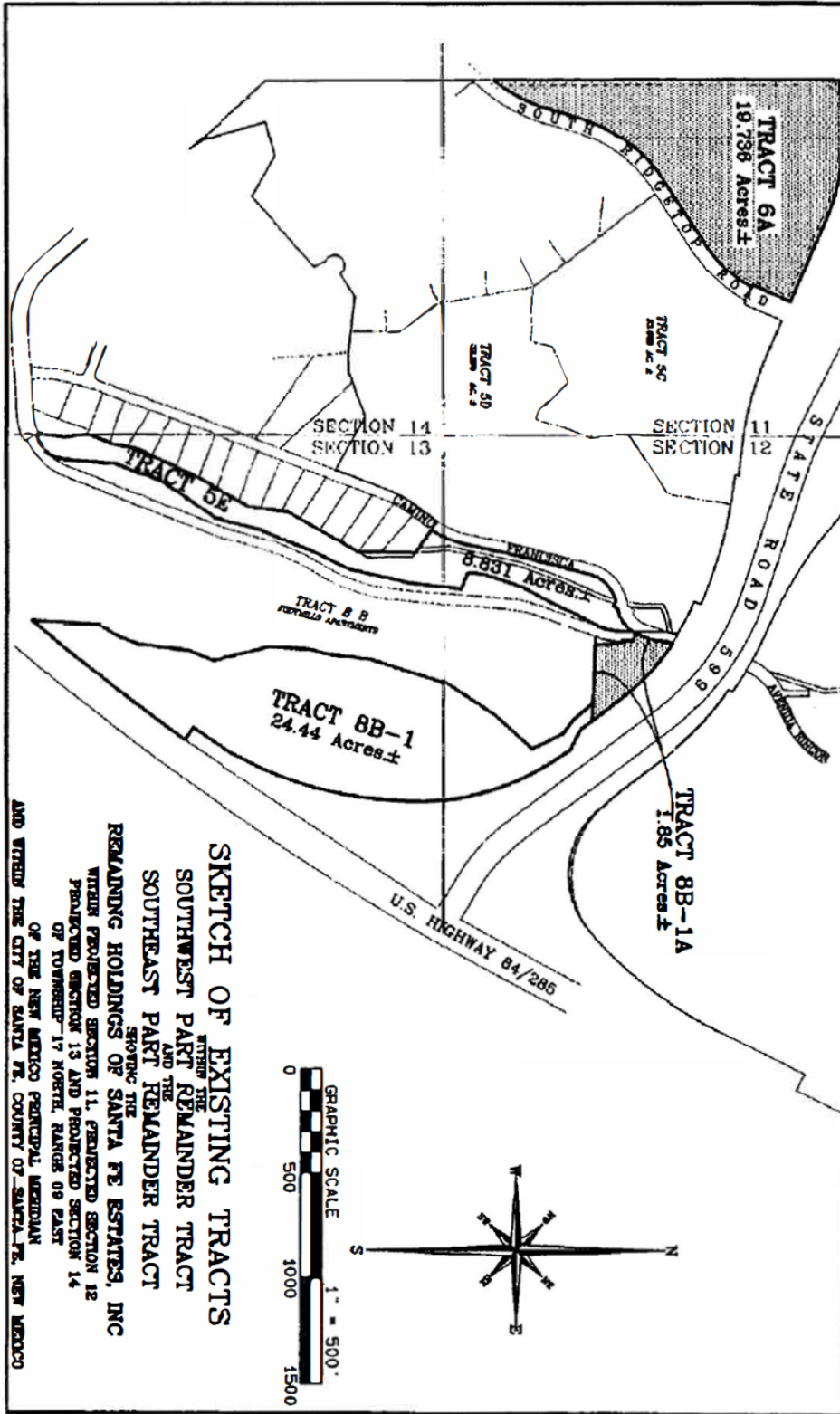
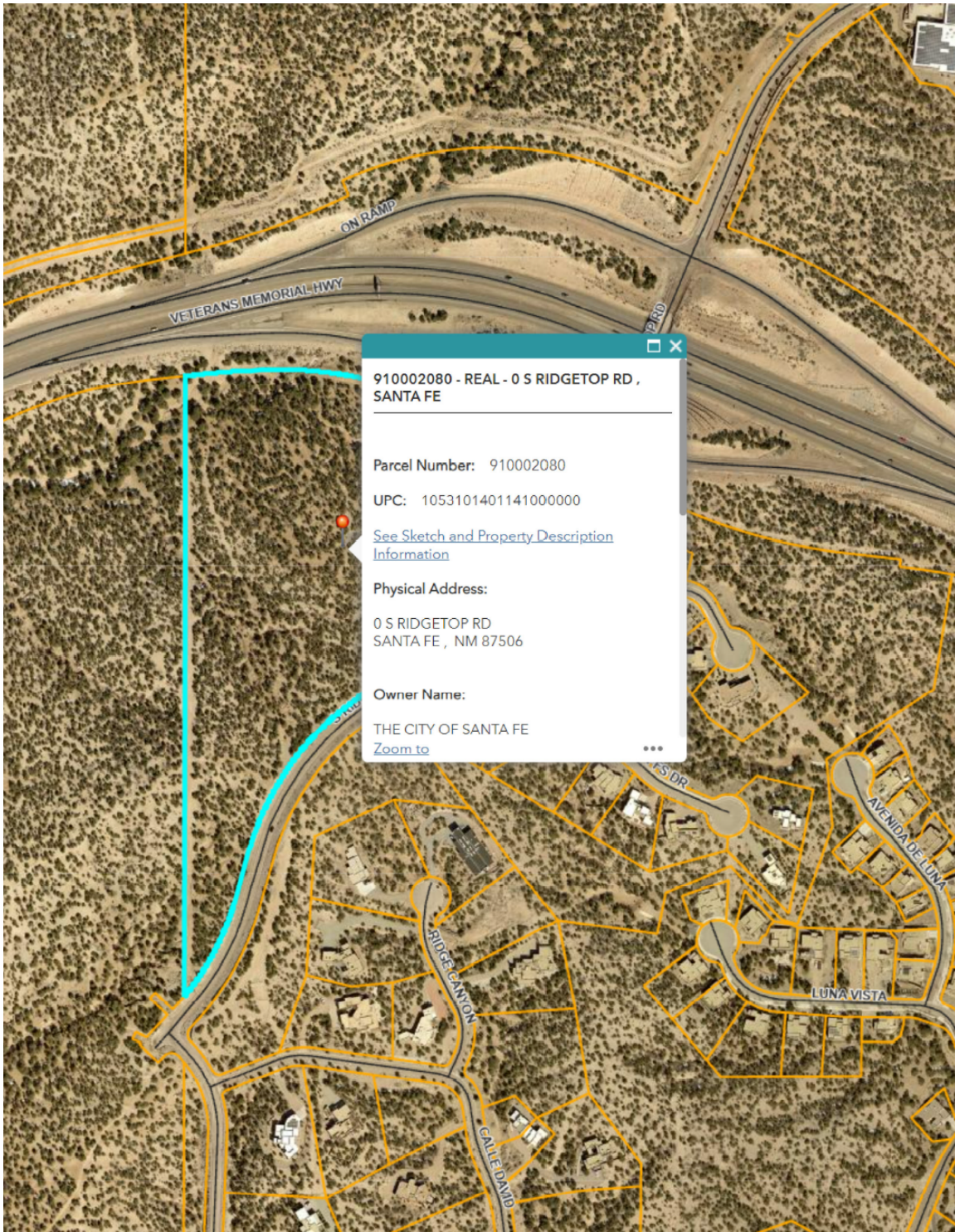
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-  Document emailed to Erin Mcsherry (ekmcsberry@ci.santa-fe.nm.us) for signature
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-  Document e-signed by Erin Mcsherry (ekmcsberry@ci.santa-fe.nm.us)
Signature Date: 2023-01-25 - 11:27:16 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.
2023-01-25 - 11:27:16 PM GMT

EXHIBIT A



SKETCH OF EXISTING TRACTS
 WITHIN THE
 SOUTHWEST PART REMAINDER TRACT
 AND THE
 SOUTHEAST PART REMAINDER TRACT
 SHOWING THE
 REMAINING HOLDINGS OF SANTA FE ESTATES, INC
 WITHIN PROJECTED SECTION 11, PROJECTED SECTION 12
 PROJECTED SECTION 13 AND PROJECTED SECTION 14
 OF TOWNSHIP 17 NORTH, RANGE 09 EAST
 OF THE NEW MEXICO PRINCIPAL MERIDIAN
 AND WITHIN THE CITY OF SANTA FE, COUNTY OF SANGRA, N.M., NEW MEXICO

EXHIBIT B



FISCAL IMPACT REPORT

General Information:

(Check) Bill: _____ Resolution: X

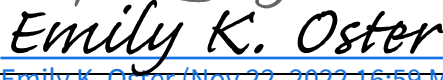
Short Title(s): Las Estrellas Tract 6A and Seven Parcel Disposition

Sponsor(s): Councilwoman Villarreal, Councilor M. Garcia, and Mayor Webber

Reviewing Department(s): Community and Economic Development

Staff Completing FIR: Terry Lease Date: 10/20/22 Phone: 505-629-2206

Reviewed by City Attorney:  Date: Nov 23, 2022

Reviewed by Finance Director:  Date: Nov 22, 2022
Emily K. Oster (Nov 22, 2022 16:59 MST)

Summary:

The Resolution would adopt a strategy for the disposition of Las Estrellas Tract 6A for an affordable housing development and approve the public announcement for sale with certain criteria for the sale of seven additional Las Estrellas parcels. In particular, the Resolution specifies that, for the sale of the six parcels, the City will consider the purchase amount offered by an offerer, in combination with a local preference for the purchaser if applicable, who will build out the land pursuant to the Las Estrellas Master Plan and honor the conditions, covenants, and restrictions of both the master and residential associations.

Departments Affected:

Office of Economic Development, Office of Affordable Housing, Finance (General Fund)

Consequences of Not Enacting Legislation:

If this Resolution is not enacted the City might not offer the seven parcels of land for sale with a local preference and the City might not offer 6A as and Affordable Housing Project.

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

None

Performance and Administrative Implications:

The Resolution will require the overseeing the administration of a request for bid with a local preference of up to 6% for "local purchasers" and overseeing a request for qualifications for Tract 6A.

Fiscal Implications:

The Resolution requires new appraisals for the sale and donation parcels, advertising and marketing for the parcels, and the loss of revenue for donating a parcel and potentially receiving a lower price for giving a local preference on the sale of the seven parcels.

Fiscal Impact

_____ Check here if no fiscal impact

Expenditures

Expenditure Type	FYE 23	FYE 24	FYE 25	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
Personnel and	\$ _____	\$ _____	\$ _____	_____	_____	_____	
Benefits*							
Capital Outlay	\$ _____	\$ _____	\$ _____	_____	_____	_____	
Contractual/	\$10,000	\$ _____	\$ _____		N	1000220	
Professional Services						_____	
Operating	\$ _____	\$ _____	\$ _____		_____		\$ _____
Total:	\$10,000	\$ _____	\$ _____				\$10,000

* This includes all staff time associated with executing the job functions of the proposed legislation and an updated appraisal for Tract 6A.

Expenditure Narrative:

To insure a successful offering marketing expenditures will be required. These expenditures include costs to place online, in the newspaper, and other marketing expenses. Cost of the new appraisal is estimated to be \$7,500.00 and marketing is estimated to be \$2,500.00

Revenue

Revenue Type	FYE 22	FYE __	FYE __	Recurring (R) or Non-recurring (NR)	Fund
General Fund	\$4,709,000	\$ _____	\$ _____	NR	_____
Special Revenue	\$ _____	\$ _____	\$ _____	_____	_____
CIP	\$ _____	\$ _____	\$ _____	_____	_____
Enterprise	\$ _____	\$ _____	\$ _____	_____	_____
Internal Service	\$ _____	\$ _____	\$ _____	_____	_____
Trust and Agency	\$ _____	\$ _____	\$ _____	_____	_____
Federal	\$ _____	\$ _____	\$ _____	_____	_____
Other	\$ _____	\$ _____	\$ _____	_____	_____
Total	\$4,709,000	\$ _____	\$ _____		

Revenue Narrative:

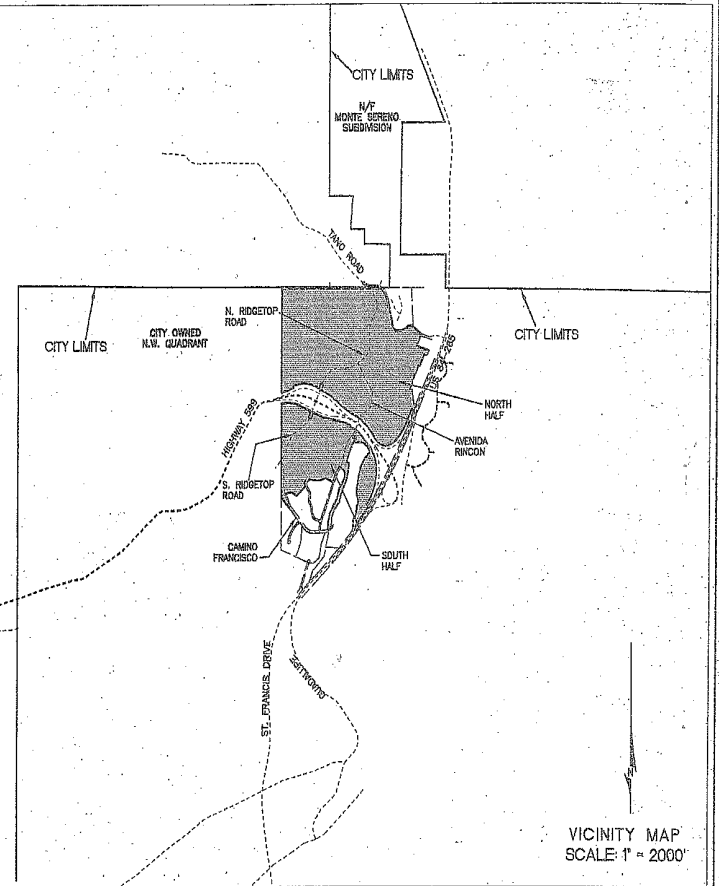
\$5,199,000.00 is the November 15, 2021 appraised value of the all Las Estrellas properties and \$4,709,000.00 is the value after removing the two retained tracts. Placing Las Estrellas on the market will remove an asset that the City cannot develop, and it will bring in revenue in excess of the amount that the former Santa Fe Estates Developers owed the City at the time the land was returned to City ownership. To ensure a successful offering, certain marketing expenditures for advertising will also be required as identified in the expenditures listed above.

Signature: *Richard Brown*

Email: rdbrown@santafenm.gov

Signature:

Email: tjlease@santafenm.gov



VICINITY MAP
SCALE: 1" = 2000'

SHEET NO.	DESCRIPTION
1.	COVER SHEET
2.	AMENDED LAS ESTRELLAS MASTERPLAN
3.	AMENDED MASTER TRAIL PLAN
4.	CONDITIONS, NOTES, DATA (RECORDED)
5.	CONDITIONS, NOTES, DATA (AMENDMENTS)
6.	COMPARISON OF ORIGINAL AND AMENDED MASTERPLAN
7.	CURRENT STATUS OF DEVELOPMENT
8.	MASTERPLAN - NORTH WITH TOPOGRAPHY
9.	MASTERPLAN - SOUTH WITH TOPOGRAPHY
10.	ESCARPMENT OVERLAY - NORTH
11.	ESCARPMENT OVERLAY - SOUTH
12.	PHASING PLAN
13.	30% SLOPE ANALYSIS - NORTH
14.	30% SLOPE ANALYSIS - SOUTH
15.	SLOPE ANALYSIS - NORTH
16.	SLOPE ANALYSIS - SOUTH
17.	SANITARY SEWER PLAN
18.	WATER SUPPLY PLAN
19.	DRAINAGE PLAN
20.	EXISTING TOPOGRAPHY
21.	ORIGINAL 1979 MASTERPLAN
22.	ORIGINAL 1996 MASTERPLAN

OCTOBER 8, 2004

REVISIONS	
DATE	BY
10/27/04	CRW
10/28/05	CRW
12/8/05	C.R.W.

OWNER: SANTA FE ESTATES, INC.

PROPERTY MANAGERS: PHASE ONE REALTY, INC. SANTA FE

PLANNING CONSULTANTS: RICHARD GORMAN & ASSOCIATES, INC., SANTA FE

ENGINEERING CONSULTANTS: C.R. WALBRIDGE & ASSOCIATES, L.L.C., SANTA FE



C.R. Walbridge
C.R. WALBRIDGE P.E. NO. 6025 DATE 12/8/05

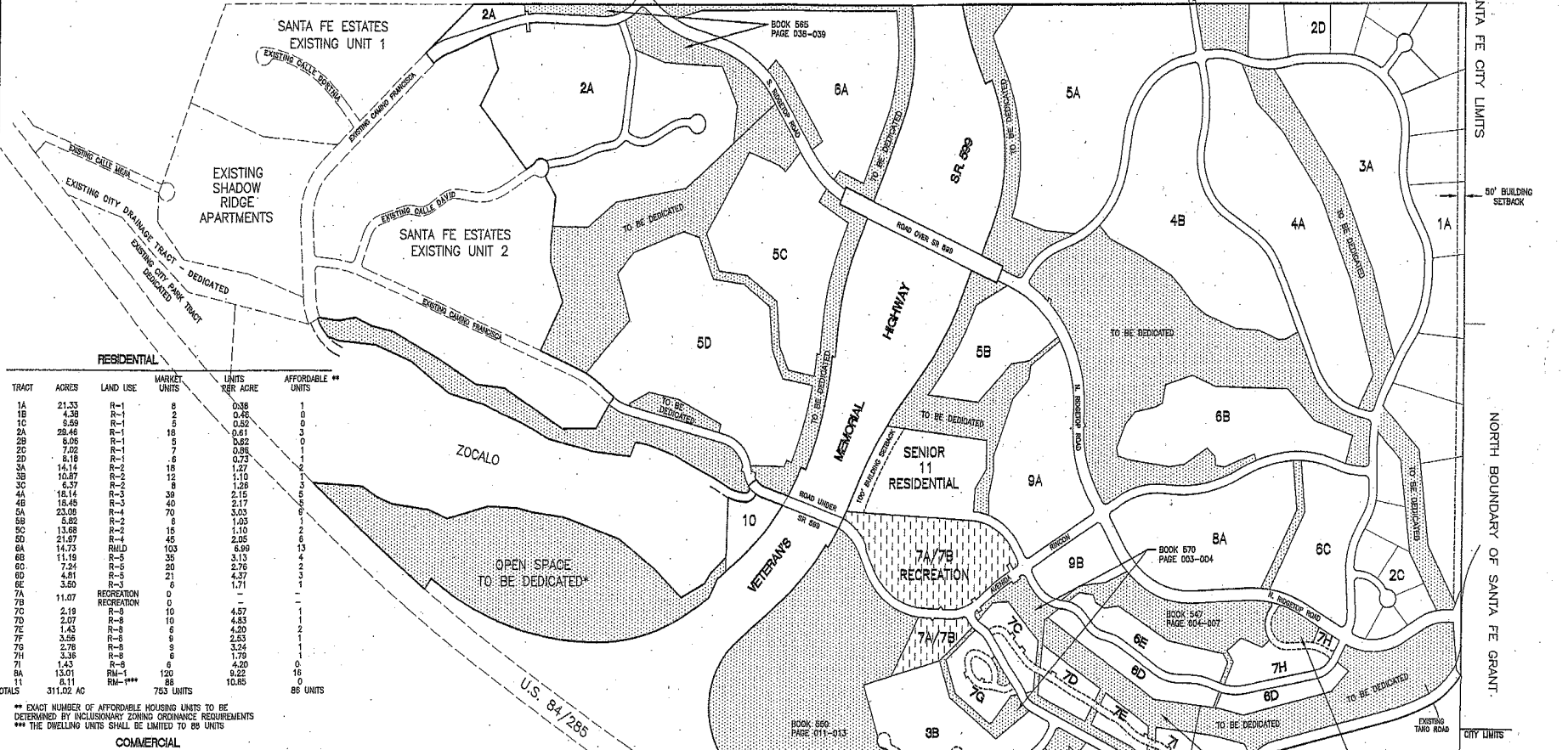
2005 AMENDED
LAS ESTRELLAS
MASTERPLAN

PLANNED RESIDENTIAL COMMUNITY
(FORMERLY SANTA FE ESTATES MASTERPLAN)

2005 AMENDED
LAS ESTRELLAS
MASTERPLAN

NOTE: THIS MASTERPLAN IS COMPRISED OF 22 SHEETS. SHEETS 2 THRU 6 ARE RECORDED AT THE SANTA FE COUNTY COURTHOUSE. SHEETS 7 THRU 22 ARE ON FILE AT THE SANTA FE CITY PLAT ROOM. INCLUDING ON THESE SHEETS ARE CONCEPTUAL DRAINAGE PLAN, A SANITARY SEWER PLAN, A WATER SUPPLY PLAN, A SLOPE ANALYSIS, THE ESCARPMENT DISTRICT, EXISTING TOPOGRAPHY, AND THE ORIGINAL 1979 MASTERPLAN AND THE 1988 MASTER PLAN ARE INCLUDED.

FUTURE EXTENSION TO CITY LAND CITY LAND NORTHWEST QUADRANT FUTURE EXTENSION TO CITY LAND



RESIDENTIAL					
TRACT	ACRES	LAND USE	MARKET UNITS	UNITS PER ACRE	AFFORDABLE ** UNITS
1A	21.33	R-1	8	0.38	1
1B	4.38	R-1	2	0.46	0
1C	9.59	R-1	2	0.22	0
2A	28.46	R-1	18	0.61	3
2B	6.06	R-1	5	0.82	1
2C	7.02	R-1	7	0.98	1
2D	8.18	R-1	6	0.73	1
3A	16.14	R-2	18	1.10	1
3B	10.87	R-2	12	1.28	1
3C	6.37	R-2	8	1.05	1
4A	18.14	R-3	38	2.15	6
4B	18.48	R-3	40	2.17	6
4C	23.09	R-4	70	3.03	13
5A	6.82	R-2	8	1.05	1
5C	13.68	R-2	16	1.10	2
5D	21.97	R-4	45	2.05	6
6A	14.73	RMD	103	6.99	13
6B	11.19	R-5	35	3.13	4
6C	7.24	R-5	20	2.76	2
6D	4.81	R-5	21	4.37	3
6E	3.50	R-3	6	1.71	1
7A	11.07	RECREATION	0	-	-
7B	2.19	R-9	10	4.57	1
7C	2.07	R-8	10	4.83	2
7D	1.43	R-8	6	4.20	1
7E	3.58	R-8	9	2.53	1
7F	2.78	R-8	9	3.24	1
7H	3.38	R-8	9	1.79	1
7I	1.43	R-8	6	4.20	0
8A	13.01	RM-1	120	9.22	16
11	8.11	RM-1***	86	13.83	0
TOTALS	311.02 AC		763 UNITS		86 UNITS

** EXACT NUMBER OF AFFORDABLE HOUSING UNITS TO BE DETERMINED BY INCLUSIONARY ZONING ORDINANCE REQUIREMENTS
 *** THE DWELLING UNITS SHALL BE LIMITED TO 86 UNITS

COMMERCIAL		
TRACT	ACRES	LAND USE
8A	10.84	SC-1 VILLAGE CENTER USES *
9B	3.06	SC-1 VILLAGE CENTER USES *
TOTAL	14.00	

*AS OUTLINED IN THE VISION STATEMENT SHEETS 5 AND 6.
 WITHIN THE TOTAL 14 ACRES, THE FOLLOWING IS APPROVED:
 1. UP TO 6.5 ACRES OF IMPERVIOUS VILLAGE CENTER COMMERCIAL DEVELOPMENT.
 2. UP TO 1.78 ACRES OF APPROPRIATE COMMUNITY USES.
 3. UP TO 49 RESIDENTIAL UNITS (MARKET AND AFFORDABLE), ON UP TO 3.0 ACRES.

COMMUNITY SERVICE		
TRACT	ACRES	LAND USE
10	1.86	SEE PERMITTED USES FOR COMMUNITY SERVICES, SHEET 5

THIS TRACT IS IN ADDITION TO THE COMMUNITY SERVICE USES WITHIN THE VILLAGE CENTER.

OPEN SPACE	
ACTIVE	PASSIVE
11.07 AC. (RECREATION - TRACT 7A/7B)	160.88 AC.
RECREATED PASSIVE	24.29 AC.
TOTAL	196.46 AC. = 35.73%

ROADS	
ACRES	
37.65	
TOTAL PROJECT ACREAGE = 549.82 AC.	

APPROVED BY THE SANTA FE PLANNING COMMISSION AT THEIR MEETING OF JANUARY 13, 2005, AS P+DR CASE NO. M04-44.
 CHAIRMAN: *Michael Warner* DATE: 1/13/2006
 SECRETARY: *John M. M. M. M.* DATE: 1/13/2006

APPROVED BY THE CITY COUNCIL AT THEIR MEETING OF MARCH 9, 2005, AS P+DR CASE NO. M04-44.
 MAYOR: *David Cox* DATE: 4/27/06
 ATTEST: *Maria G. O'Neil* DATE: 4/27/06
 TINA Y. DOMINIQUEZ, ACTING CLERK DATE: 4/27/06

REVIEWED BY: *Chris Smith* DATE: 2/9/06
 CITY PLANNER: *Chris Smith* DATE: 2/9/06
 PERMIT AND DEVELOPMENT REVIEW DIVISION DATE: 04.27.06

NOTE: FOR MASTERPLAN CONDITIONS, NOTES AND DATA, SEE SHEETS 4, 5, AND 6. FOR MASTER PLAN TRAIL PLAN SEE SHEET 3.

LEGEND
 [Symbol] TRACT DESIGNATION (SEE TABLE)
 [Symbol] PASSIVE OPEN SPACE
 [Symbol] ACTIVE OPEN SPACE
 [Symbol] LIMITS OF THIS MASTERPLAN
 [Symbol] PUBLIC ROADS
 [Symbol] PRIVATE ROADS
 * OPEN SPACE ADDED TO THE LAS ESTRELLAS MASTERPLAN

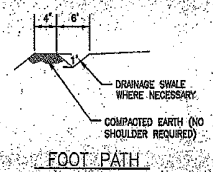
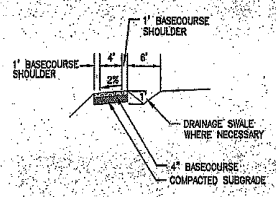
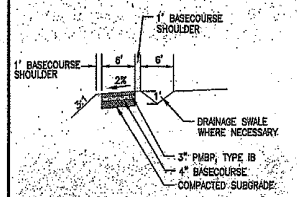
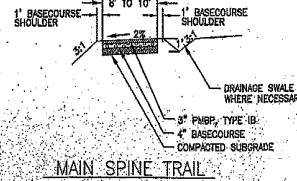
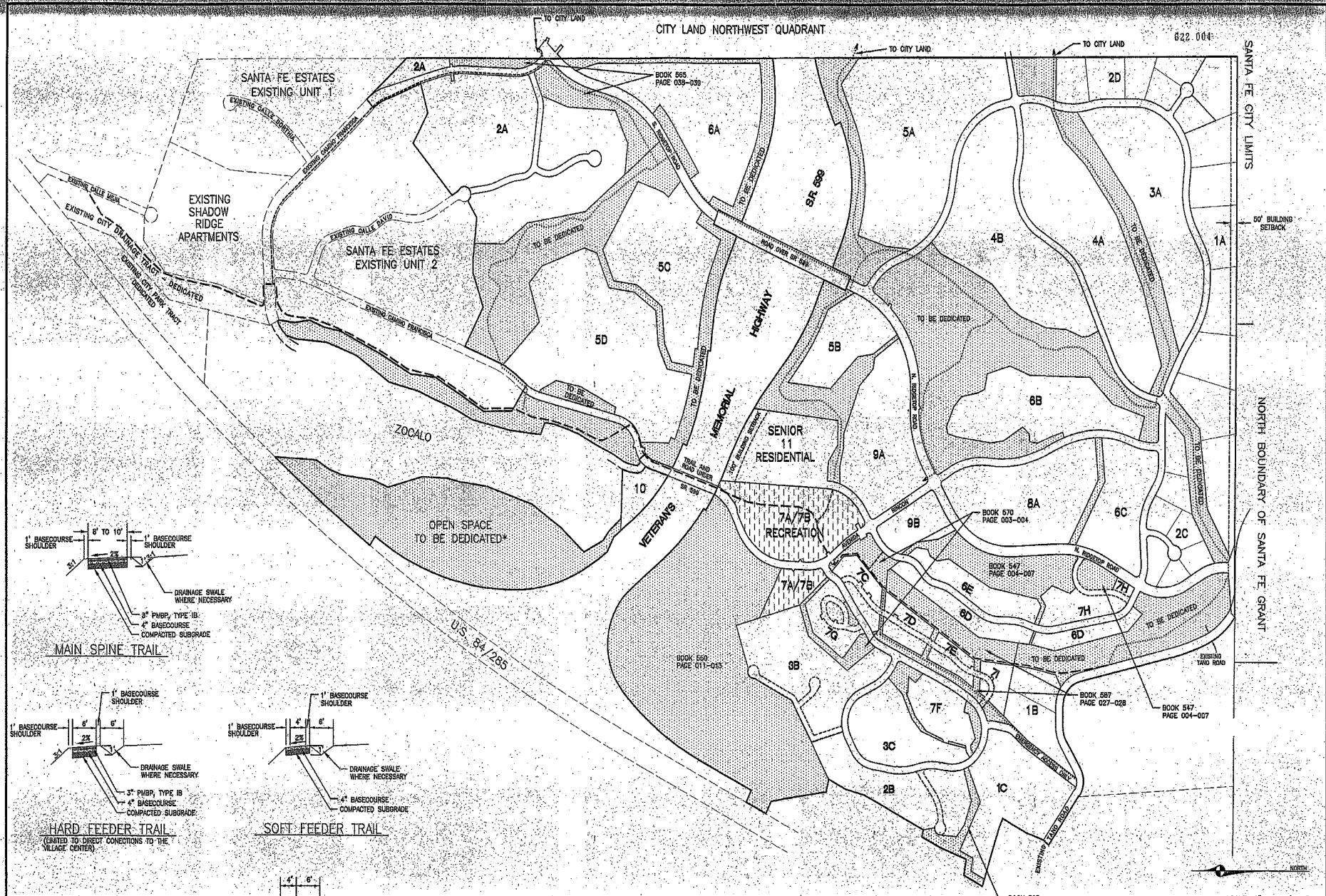
1430.014
 COUNTY OF SANTA FE
 STATE OF NEW MEXICO
 I, VALERIE ESPINOZA, County Clerk, Santa Fe County, N.M., do hereby certify that this instrument was filed for record on the 21 day of April 2006 at 10:00 A.M. and was duly recorded in Book 022, Page 2-7 of the records of Santa Fe County.
 Witness my hand and Seal of Office
 VALERIE ESPINOZA
 County Clerk, Santa Fe County, N.M.
 Deputy: *Marcelo*

SCALE: 1" = 300'
 300 0 300
 REVISIONS
 DATE BY
 10/27/04 CRJ
 10/24/05 CRJ
 11/16/05 ALM
 2005 AMENDED LAS ESTRELLAS MASTER PLAN (PREVIOUSLY SANTA FE ESTATES MASTER PLAN)
 SCALE: 1"=300' DATE: OCTOBER 08, 2004 DRAWN BY: YP
 C.R. WALBRIDGE & ASSOCIATES, LLC
 1421 LUISA STREET SUITE E
 SANTA FE NEW MEXICO
 (505) 982-9711

2
 06-57

CITY LAND NORTHWEST QUADRANT

622 004



NOTES:
 1. ALL TRAIL BASE COURSE TO BE TREATED WITH PRE-EMERGENT HERBICIDE CONTAINING TRIFLURALIN AT MANUFACTURER RECOMMENDED RATES FOR USE UNDER ASPHALT.
 2. TRAIL AND FOOT PATH SECTIONS SHALL PROVIDE FOR 3:1 MAXIMUM CUT-AND-FILL SLOPES.
 3. BASECOURSE SHALL BE DEFINED AS CONFORMING TO MNDOT STANDARD SPECIFICATIONS TYPE II FOR AGGREGATED BASECOURSE.

LEGEND
 - - - SPINE TRAIL
 - - - - - HARD FEEDER TRAIL
 - - - - - SOFT FEEDER TRAIL
 - - - - - FOOT PATH
 [] PASSIVE OPEN SPACE

TRAIL LOCATIONS SHOWN ARE CONCEPTUAL AND ACTUAL LOCATIONS WILL BE DETERMINED BY THE FIELD WITH THE CITY OPEN SPACE PLANNER.



FINAL PAPER CASE # MD4-44

REVISIONS	
DATE	BY
10/27/04	CRW
10/29/04	CRW
11/16/05	CEW

2005 AMENDED MASTER TRAIL PLAN
AMENDED LAS ESTRELLAS MASTER PLAN
 (PREVIOUSLY SANTA FE ESTATES MASTER PLAN)
 SCALE: 1"=300' | DATE: OCTOBER 08, 2004 | DRAWN BY: VP
 C.R. WALBRIDGE & ASSOCIATES, LLC
 1421 LUISA STREET, SUITE E
 SANTA FE, NEW MEXICO
 (505) 982-9711

SCALE: 1" = 300'
 300 0 300

MP SHEET 2-5

06-57

2005 AMENDMENTS TO NOTES AND CONDITIONS OF 1996 MASTER PLAN

GENERAL

A. THE NAME OF THE MASTER PLAN AREA IS CHANGED FROM SANTA FE ESTATES TO LAS ESTRELLAS, AND ALL REFERENCES SHALL FOLLOW ACCORDINGLY.

B. REFERENCE TO "CAMINO LA TIERRA" IS HEREBY REPLACED WITH VETERAN'S MEMORIAL HIGHWAY.

C. REFERENCE TO "PLAN 83" IS REPLACED WITH "THE CITY OF SANTA FE GENERAL PLAN".

D. REFERENCE TO CITY CODES SHALL TRACK UPDATED VERSIONS OF THE CODE.

MASTER PLAN CONDITIONAL NOTES

E. THE FOLLOWING SENTENCE OF "CONDITION" #9 OF THE 1996 MASTER PLAN IS HEREBY DELETED IN ITS ENTIRETY. THE DELETED SENTENCE READ AS FOLLOWS:

BOUNDARIES OF TRACTS 9A, 9B, 9C, 9D AND 9E SHALL BE MODIFIED TO CREATE ONE OR TWO NEIGHBORHOOD COMMERCIAL USE TRACTS AND ONE OR TWO AFFORDABLE HOUSING TRACTS.

F. IN BOTH QUANTITY AND LOCATION, INCLUDING IN THE VILLAGE CENTER, AFFORDABLE HOUSING SHALL CONFORM TO THE REQUIREMENTS OF THE INCLUSIONARY ZONING ORDINANCE. THIS IS A MODIFICATION OF CONDITION #6 OF THE 1996 MASTER PLAN.

G. THE CHART ON THE REVISED MASTER PLAN REPRESENTS DEVELOPER'S ESTIMATE OF LIKELY DENSITIES BASED ON THE ACTUAL DENSITIES ACHIEVED WITHIN APPROVED / DEVELOPED TRACTS, AND THE CURRENT PLANNING FOR THE VILLAGE CENTER AND SURROUNDING AREA. DENSITY TRANSFERS OF MARKET-RATE RESIDENTIAL UNITS AMONG TRACTS SHALL BE ALLOWED BY APPROVAL OF THE PLANNING COMMISSION AS LONG AS (1) THE RESULTING DENSITY OF ANY TRACT DOES NOT EXCEED THE DENSITY ALLOWED BY THE TRACT ZONING DESIGNATION, AND (2) THE TOTAL MARKET UNITS DOES NOT EXCEED 763 UNITS. NO INCREASES OF MARKET RATE DENSITY SHALL BE ALLOWED ON TRACTS 1A, 1B, 1C, 2C, AND 2D.

H. STAFF CONDITIONS NUMBER 3 OF THE AMENDED MASTER PLAN WAS DELETED BY THE PLANNING COMMISSION. THE DELETED SENTENCE READS AS FOLLOWS: "A NOTE SHALL BE ADDED THAT ANTICIPATED VILLAGE CENTER USES NOT CORRECTLY PERMITTED IN THE SO-1 DISTRICT WOULD REQUIRE FUTURE AMENDMENTS TO CHAPTER 14."

I. RECORDED COVENANTS, CONDITIONS AND RESTRICTIONS SHALL INCLUDE PROVISIONS WHEREBY THE ASSOCIATION SHALL SUPPLY TO THE CITY OF SANTA FE AN ANNUAL REPORT COMPILED BY A REGISTERED PROFESSIONAL ENGINEER VERIFYING ADEQUATE MAINTENANCE AND ENFORCEMENT OF THE CENTRALIZED STORM WATER DETENTION STRUCTURES.

MASTER PLAN NOTES

J. CONDITION #1 OF THE 1996 MASTER PLAN IS MODIFIED AS FOLLOWS: THE OPEN SPACE TRACTS SHOWN ON THIS MASTER PLAN ARE RESERVED FOR FUTURE DEDICATION AS ADJACENT TRACTS ARE DEVELOPED AND SUCH DEDICATIONS SHALL MEET THE OPEN SPACE REQUIREMENTS OF THE CITY CODES.

K. CONDITION #2 OF THE 1996 MASTER PLAN IS REPLACED ENTIRELY WITH THE FOLLOWING: ALL DEVELOPMENT IS SUBJECT TO THE LAS ESTRELLAS MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (hereby) THE LAS ESTRELLAS RESIDENTIAL DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (hereby), AND THE LAS ESTRELLAS COMMERCIAL DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (to be filed). THE CITY WILL NOT ENFORCE THESE COVENANTS EXCEPT AS PROVIDED BY THE VARIOUS RECORDED DECLARATIONS OR BY FUTURE DEVELOPMENT PLAN APPROVALS.

L. TRAIL STANDARDS ARE HEREBY ADOPTED (SEE SHEET 3) AS A GUIDE TO THE LOCATION AND DESIGN SPECIFICATIONS FOR VARIOUS TYPES OF TRAILS.

VILLAGE CENTER VISION STATEMENT

M. NO CHANGES

DRAINAGE PLAN VISION

THE FOLLOWING CONDITIONS ARE ADDED TO (1) ACKNOWLEDGE THE CREATION OF A FORMAL MECHANISM FOR MAINTAINING STORM WATER DRAINAGE FACILITIES IN ACCORDANCE WITH CONDITION #14 OF THE MASTER PLAN CONDITIONAL NOTES, AND (2) TO REFLECT A CHANGE IN THE CITY'S PHILOSOPHY REGARDING STORM WATER MANAGEMENT.

O. TO ADDRESS THE GOALS AND INTENTS OF THE DRAINAGE PLAN THE DEVELOPER, BY AGREEMENT WITH THE CITY OF SANTA FE, HAS ESTABLISHED THE "LAS ESTRELLAS MASTER ASSOCIATION," AS THE CENTRAL AUTHORITY RESPONSIBLE FOR MAINTENANCE OF CONTRACTED DRAINAGE FACILITIES. THE MASTER DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS FILED BY SANTA FE ESTATES, INC. (FILED INSTRUMENT NO. 1333331 AND INSTRUMENT NO. 1333332) ENCUMBERS ALL DEVELOPED LANDS WITHIN LAS ESTRELLAS AND PROVIDES A FUND TO COVER THE COST OF MAINTENANCE. EACH DEVELOPER CONTRIBUTES TO THIS FUND ACCORDING TO THE NUMBER OF RESIDENTIAL UNITS OR SQUARE FEET OF COMMERCIAL SPACE ATTRIBUTED TO THE DEVELOPED TRACT. SUBSEQUENT CONTRIBUTIONS BY THE END USERS OR OCCUPANTS OF THESE DEVELOPED TRACTS MAY BE IMPOSED BY THE MASTER ASSOCIATION AS A COMPONENT OF THE ASSOCIATION'S ANNUAL BUDGET.

P. THE CURRENT PHILOSOPHY OF STORM WATER MANAGEMENT IS TWO FOLD: (1) UTILIZE CENTRALIZED STORM WATER DETENTION PONDS FOR BOTH ROADS AND LOT IMPROVEMENTS TO THE EXTENT POSSIBLE. THE DETENTION PONDS WILL HAVE OUTLET STRUCTURES THAT CONTROL THE 2-YR., 10-YR., 50-YR., AND 100-YR. STORMS. IT IS INCUMBENT ON THE TRACT DEVELOPERS TO TRANSMIT STORM WATER FLOWS TO THE CENTRALIZED PONDS WITH SUFFICIENT EROSION CONTROL DEVICES TO MINIMIZE EROSION. ON-LOT PONDING WILL BE UTILIZED WHEN CENTRALIZED PONDS ARE NOT FEASIBLE, AND (2) WATER HARVESTING ON THE LOTS WILL BE REQUIRED IN ACCORDANCE WITH CURRENT AND FUTURE CITY ORDINANCES RELATIVE TO WATER HARVESTING. WATER HARVESTING ON LOTS WILL BE ENCOURAGED FOR ALL LOTS.

2005 APPROVED USES IN THE VILLAGE CENTER

1. Dwelling, multiple-family;
2. Daycare/nursery (small or medium);
3. Nonprofit religious, educational and institutions, but not panel institutions;
4. Neighborhood community and municipal or other public buildings and uses in keeping with the character and requirements of the district;
5. Public parks, playgrounds, playfields in keeping with the character and requirements of the district;
6. Religious Assembly;
7. Arts and crafts studios, galleries and shops;
8. Dance studios;
9. Nonprofit theaters for production of live shows;
10. Photographers studios;
11. Fraternal services;
12. Dining and drinking establishments;
13. Administrative offices and organizations which in whole or part provide medically related services;
14. Apothecary shops or pharmacies;
15. Medical and dental offices or clinics providing care and treatment for the health and welfare of human patients;
16. Offices for those licensed by the state to practice the healing art or any branch thereof pertaining to human beings, provided that offices and accessory buildings specified shall not be considered as "service establishments";
17. Offices, business & professional (off);
18. Commercial recreational uses and structures, theaters, bowling alleys, pool rooms, driving ranges, etc.;
19. Exercise, gym or gym facilities;
20. Antique shops;
21. Art supply stores, retail;
22. Arts and crafts, studio workshops, with retail goods manufactured onsite;
23. Bookstore;
24. Package wine/liquor sales;
25. Custom tailors and dressmakers;
26. Retail shops;
27. Gift shops;
28. Neighborhood grocery stores and laundromats catering to local pedestrian trade;
29. Retail establishments;
30. Retail and service uses that are intended to serve the primary uses and that do not exceed 2,000 square feet per establishment;
31. Barber shops and beauty salons;
32. Personal care facilities for the elderly;
33. Personal service establishments;
34. Broadcasting studios, but not broadcasting towers;
35. Children's play areas and play equipment;
36. Home occupations;
37. Other uses and structures customarily accessory and clearly incidental and subordinate to permitted or permissible uses and structures;
38. Farmer's Market

2005 APPROVED USE LIST FOR COMMUNITY SERVICES IN VILLAGE CENTER

1. TOWN HALL OR NEIGHBORHOOD ASSOCIATION HEADQUARTERS
2. MEETING ROOMS
3. POST OFFICE (PRIVATE OR GOVERNMENTAL)
4. RELIGIOUS ASSEMBLIES
5. CHILD DAY CARE AND NURSERIES (SMALL OR MEDIUM)
6. PERFORMING ARTS FACILITIES
7. POLICE STATION
8. FIRE STATION
9. LIBRARY (PRIVATE OR GOVERNMENTAL)

2005 APPROVED USE LIST FOR COMMUNITY SERVICES ON TRACT 10

1. POLICE STATION
2. FIRE STATION
3. LIBRARY
4. ADMINISTRATIVE OFFICES
5. RECREATIONAL USES
(OUTDOOR STORAGE OF MATERIALS, VEHICLES, OR EQUIPMENT IS PROHIBITED)

2005 APPROVED RECREATIONAL AREA USE LIST

1. SPORTS FIELDS AND COURTS
2. ASTRONOMICAL OBSERVATORY / EDUCATIONAL CENTER
3. PERFORMING ARTS FACILITIES / AMPHITHEATER
4. TRAILS
5. PICNIC AREAS
6. NATIVE AREAS

SPECIAL NOTE

THE LOCATION AND DESIGN OF THE RELIEF ROUTE, THE RIDGETOP ROAD DIAMOND INTERCHANGE AND THE CITY ROADS ARE A MATERIAL ELEMENT OF THE AGREEMENT DATED NOVEMBER 14, 1997, BY AND BETWEEN SANTA FE ESTATES, INC., THE CITY OF SANTA FE AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION REGARDING THE ACQUISITION FROM SANTA FE ESTATES, INC., OF RIGHT-OF-WAY NEEDED TO CONSTRUCT THE RELIEF THROUGH SANTA FE ESTATES LANDS, TO RESTORE ACCESS TO SANTA FE ESTATES FROM THIS "ACCESS CONTROLLED" HIGHWAY AND TO SATISFY THE TRAFFIC NEEDS OF THE NEW DENSITIES AS APPROVED BY THE 1996 MASTER PLAN.

FINAL PLAN CASE # MCL-44

REVISIONS

DATE	BY
10/27/04	CRW
10/24/05	CRW
12/6/05	CRW

CONDITIONS, NOTES, AND DATA (AMENDMENTS)
AMENDED LAS ESTRELLAS MASTER PLAN
(PREVIOUSLY SANTA FE ESTATES MASTER PLAN)

SCALE: 1"=300' | DATE: OCTOBER 08, 2004 | DRAWN BY: YP

C.R. WALBRIDGE & ASSOCIATES, LLC
1421 LUISA STREET SUITE E
SANTA FE NEW MEXICO
(505) 982-9711

S
H
E
E
T
5
MP SHEET 4-5



12/6/05

06-57

RESIDENTIAL

TRACTS	ORIGINAL ACRES	AMENDED ACRES	ORIGINAL LANDUSE	AMENDED LANDUSE	ORIGINAL UNITS	AMENDED MARKET UNITS	AMENDED AFFORDABLE UNITS
1A	21.70	21.33	R-1	R-1	8	8	1
1B	3.82	4.38	R-1	R-1	2	2	0
1C	10.00	9.59	R-1	R-1	4	5	0
2A	27.99	29.46	R-1	R-1	18	18	3
2B	8.24	8.06	R-1	R-1	6	5	0
2C	8.82	7.02	R-1	R-1	7	7	1
2D	8.18	6.18	R-1	R-1	6	6	1
3A	14.14	14.14	R-2	R-2	20	18	2
3B	10.88	10.87	R-2	R-2	14	12	1
3C	8.24	8.37	R-2	R-2	8	8	3
4A	18.14	18.14	R-3	R-3	43	39	5
4B	18.45	18.45	R-3	R-3	44	40	5
5A	20.70	23.08	R-4	R-4	70	70	9
5B	6.05	5.82	R-2	R-2	12	6	1
5C	12.17	13.68	R-2	R-2	23	15	2
5D	21.98	21.97	R-4	R-4	60	45	6
6A	14.72	14.73	R-5	RMLD	60	103	13
6B	11.19	11.19	R-5	R-5	40	35	4
6C	7.68	7.24	R-5	R-5	20	20	2
6D	5.15	4.81	R-5	R-5	22	21	3
6E	2.88	3.50	R-3	R-3	8	8	1
7A	2.90	11.07	RC-8	RECREATION	19	0	-
7B	1.01	11.07	RC-8	RECREATION	5	0	-
7C	2.35	2.19	RC-8	R-8	13	10	1
7D	2.14	2.07	RC-8	R-8	15	10	1
7E	1.68	1.43	RC-8	R-8	12	6	2
7F	3.38	3.56	RC-8	R-8	11	9	1
7G	2.26	2.78	RC-8	R-8	10	9	1
7H	3.05	3.36	RC-8	R-8	12	6	1
7I	1.12	1.43	RC-8	R-8	4	6	0
8A	12.99	13.01	RM-1	RM-1	157	120	16
11	10.03	8.11	RECREATION	RM-1		88	0
TOTALS	301.83	311.02			753	753	86

COMMERCIAL

TRACTS	ORIGINAL ACRES	AMENDED ACRES	ORIGINAL LANDUSE	AMENDED LANDUSE
9A	11.16	10.94	SC-1 VILLAGE CENTER USES	SC-1 PLUS ADDITIONAL USES LISTED ON SHEET 5
9B	2.84	3.06	SC-1 VILLAGE CENTER USES	SC-1 PLUS ADDITIONAL USES LISTED ON SHEET 5
TOTALS	14.00	14.00		

1. UP TO 5.5 ACRES OF IMPERVIOUS VILLAGE CENTER COMMERCIAL DEVELOPMENT.
 2. UP TO 1.78 ACRES OF APPROPRIATE COMMUNITY USES.
 3. UP TO 48 AFFORDABLE HOUSING UNITS ON UP TO 3 ACRES.

1. UP TO 5.5 ACRES OF IMPERVIOUS VILLAGE CENTER COMMERCIAL DEVELOPMENT.
 2. UP TO 1.78 ACRES OF APPROPRIATE COMMUNITY USES.
 3. UP TO 48 RESIDENTIAL UNITS (MARKET AND AFFORDABLE), ON UP TO 3 ACRES.

COMMUNITY SERVICE

TRACT	ORIGINAL ACRES	AMENDED ACRES	ORIGINAL LANDUSE	AMENDED LANDUSE
10	1.78	1.86	RESERVED FOR A CITY PARK MAINTENANCE FACILITY AND/OR A CITY FIRE DEPARTMENT SUBSTATION.	SEE PERMITTED USES FOR COMMUNITY SERVICES, SHEET 5

OPEN SPACE

TRACT	ORIGINAL ACRES	AMENDED ACRES
ACTIVE	10.03	11.07
PASSIVE	168.80	160.89
RECAPTURED-PASSIVE		24.25*
TOTALS	178.83	196.46

* OPEN SPACE RESERVED FOR FOOTHILL APARTMENTS

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FINAL PAPER CASE # MD4-44

REVISIONS	
DATE	BY
10/27/04	CRW
10/24/04	CRW
11/16/04	CRW

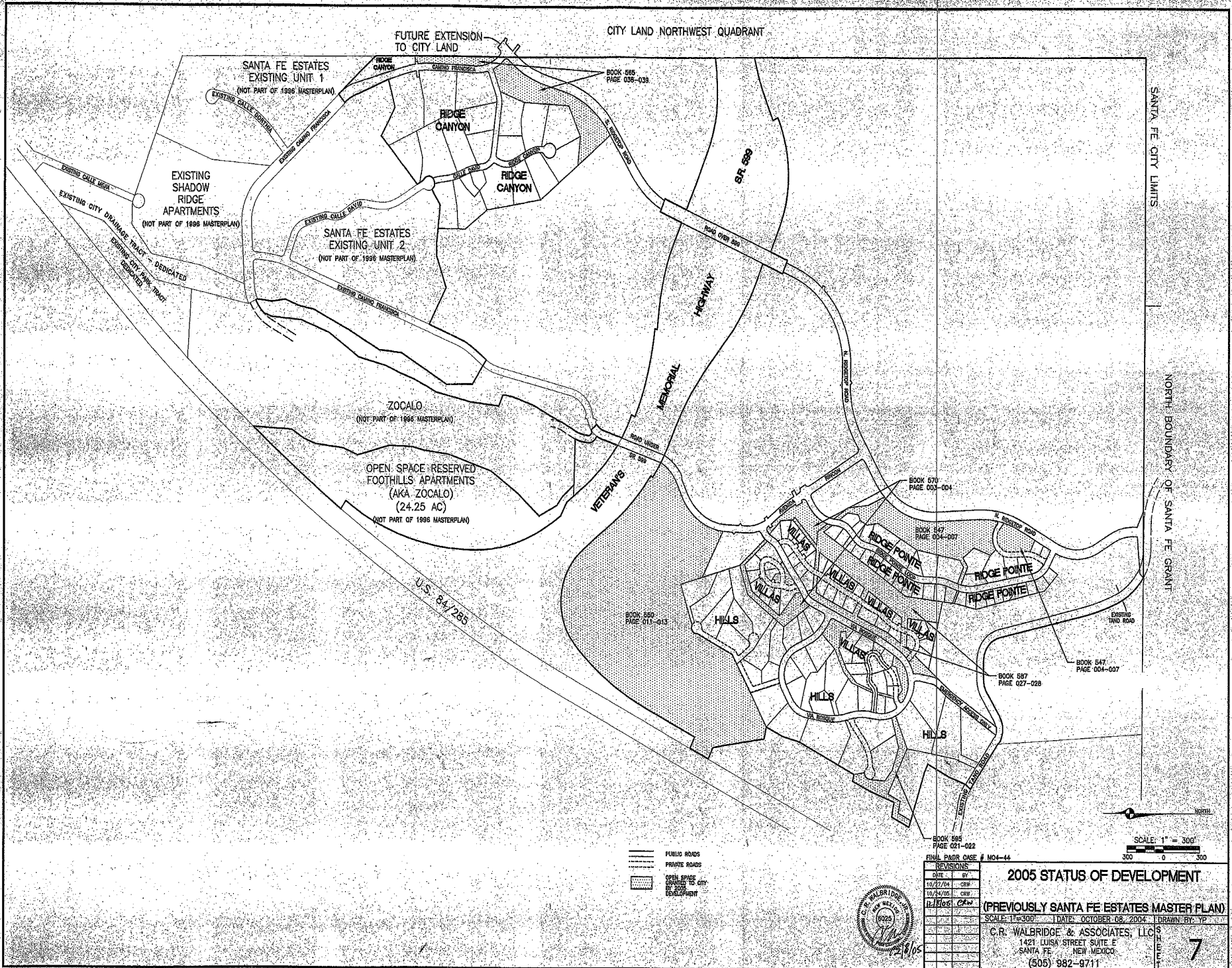
COMPARISON OF ORIGINAL AND AMENDED MASTER PLAN
AMENDED LAS ESTRELLAS MASTER PLAN
(PREVIOUSLY SANTA FE ESTATES MASTER PLAN)

SCALE: -- DATE: OCTOBER 27, 2004 DRAWN BY: YP

C.R. WALBRIDGE & ASSOCIATES, LLC
 1421 LUISA STREET SUITE E
 SANTA FE NEW MEXICO
 (505) 982-8711

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 MP SHEET 5-5

06-57



BOOK 586 PAGE 036-038
 BOOK 587 PAGE 027-028
 BOOK 588 PAGE 021-022
 BOOK 589 PAGE 011-013
 BOOK 590 PAGE 003-004
 BOOK 591 PAGE 004-007
 BOOK 592 PAGE 004-007

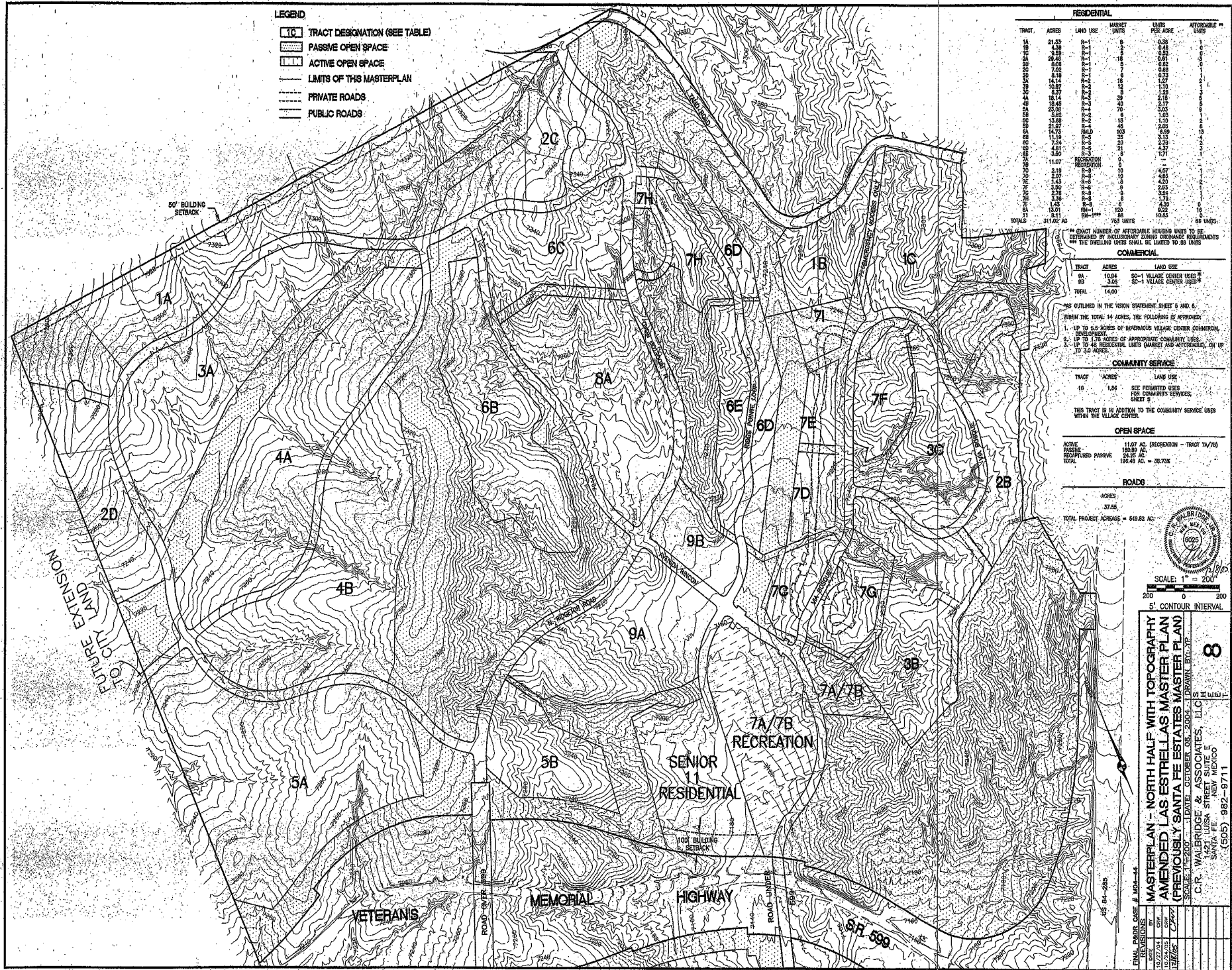
FINAL PLAT CASE # M04-44
 REVISIONS
 DATE BY
 10/27/04 CRW
 10/24/05 CRW

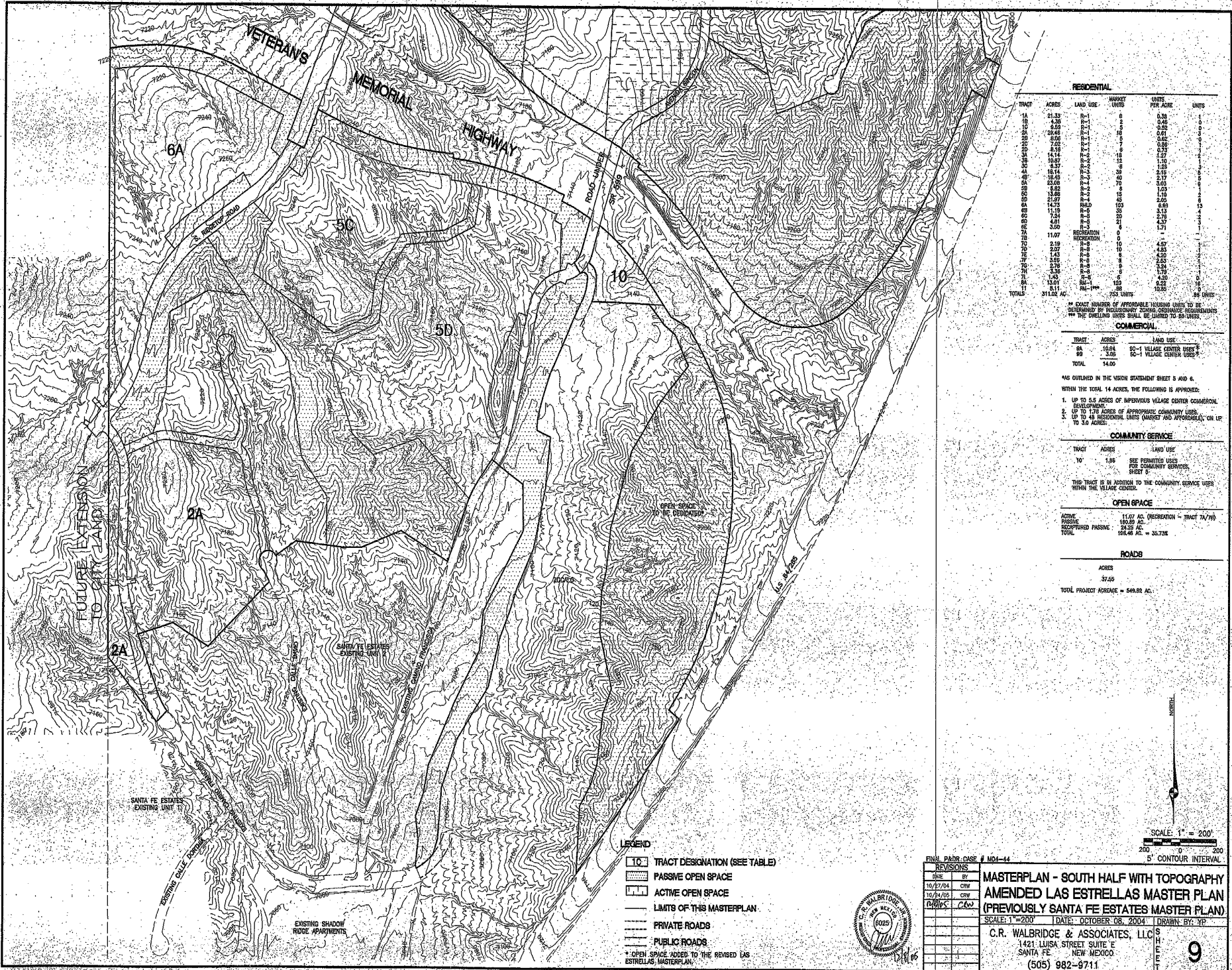
2005 STATUS OF DEVELOPMENT
 (PREVIOUSLY SANTA FE ESTATES MASTER PLAN)
 SCALE: 1" = 300' DATE: OCTOBER 08, 2004 DRAWN BY: YP

C.R. WALBRIDGE & ASSOCIATES, LLC
 1421 LUISA STREET SUITE E
 SANTA FE, NEW MEXICO
 (505) 982-9711



06-57





RESIDENTIAL					
TRACT	ACRES	LAND USE	MARKET UNITS	UNITS PER ACRE	UNITS
1A	21.33	R-1	8	0.38	1
1B	4.28	R-1	2	0.46	0
2A	2.69	R-1	2	0.75	0
2B	28.46	R-1	16	0.61	0
2C	2.68	R-1	2	0.75	0
2D	7.02	R-1	4	0.57	0
2E	4.18	R-1	2	0.48	0
2F	14.14	R-2	16	1.12	2
2G	10.61	R-2	12	0.85	2
2H	8.37	R-2	8	1.28	3
2I	16.16	R-2	16	1.01	3
2J	18.48	R-3	20	2.19	3
2K	20.06	R-3	20	2.57	6
2L	5.82	R-2	8	3.03	9
2M	15.82	R-2	16	2.03	9
2N	21.89	R-2	16	1.10	2
2O	14.75	R-2	16	0.89	2
2P	11.18	R-5	10	2.13	2
2Q	7.24	R-5	20	2.75	2
2R	4.81	R-5	20	4.37	2
2S	3.00	R-5	20	1.71	1
2T	11.97	RECREATION	0	-	-
2U	2.18	R-8	10	4.57	1
2V	2.07	R-8	10	4.83	1
2W	1.43	R-8	8	4.53	1
2X	3.26	R-8	8	2.63	1
2Y	2.78	R-8	8	1.54	1
2Z	3.38	R-8	8	1.79	1
3A	1.83	R-4	8	4.50	1
3B	13.01	R-1	10	0.22	1
3C	0.11	RM-1**	28	10.25	1
TOTAL	311.02 AC.			753 UNITS	88 UNITS

* EXACT NUMBER OF AFFORDABLE HOUSING UNITS TO BE DEVELOPED BY PROVISIONARY ZONING ORDINANCE REQUIREMENTS
 ** THE OPENING UNITS SHALL BE LIMITED TO 60 UNITS

COMMERCIAL		
TRACT	ACRES	LAND USE
6A	14.84	60-1 VILLAGE CENTER USES*
6B	3.08	60-1 VILLAGE CENTER USES*
TOTAL	14.00	

*AS OUTLINED IN THE VISION STATEMENT SHEET 5 AND 6,
 WITHIN THE TOTAL 14 ACRES, THE FOLLOWING IS APPROVED:
 1. UP TO 5.5 ACRES OF IMPROVED VILLAGE CENTER COMMERCIAL DEVELOPMENT.
 2. UP TO 1.75 ACRES OF APPROXIMATE COMMUNITY USES.
 3. UP TO 48 RESIDENTIAL UNITS (MARKET AND AFFORDABLE) ON UP TO 3.0 ACRES.

COMMUNITY SERVICE		
TRACT	ACRES	LAND USE
10	1.06	SEE PERMITTED USES FOR COMMUNITY SERVICES SHEET 5

THIS TRACT IS IN ADDITION TO THE COMMUNITY SERVICE USES WITHIN THE VILLAGE CENTER.

OPEN SPACE	
ACTIVE PASSIVE	ACRES
11.07	RECREATION - TRACT 2A/7B)
18.00	AC.
24.22	AC.
TOTAL	186.48 AC. = 33.73%

ROADS	
ACRES	ACRES
37.55	
TOTAL PROJECT ACREAGE = 549.82 AC.	

- LEGEND**
- TC TRACT DESIGNATION (SEE TABLE)
 - PASSIVE OPEN SPACE
 - ACTIVE OPEN SPACE
 - LIMITS OF THIS MASTERPLAN
 - PRIVATE ROADS
 - PUBLIC ROADS
 - * OPEN SPACE ADDED TO THE REVISED LAS ESTRELLAS MASTERPLAN.

FINAL P&R CASE # 104-14

REVISIONS	DATE	BY
10/27/04	CRW	
10/24/05	CRW	
04/05	CRW	

MASTERPLAN - SOUTH HALF WITH TOPOGRAPHY AMENDED LAS ESTRELLAS MASTER PLAN (PREVIOUSLY SANTA FE ESTATES MASTER PLAN)

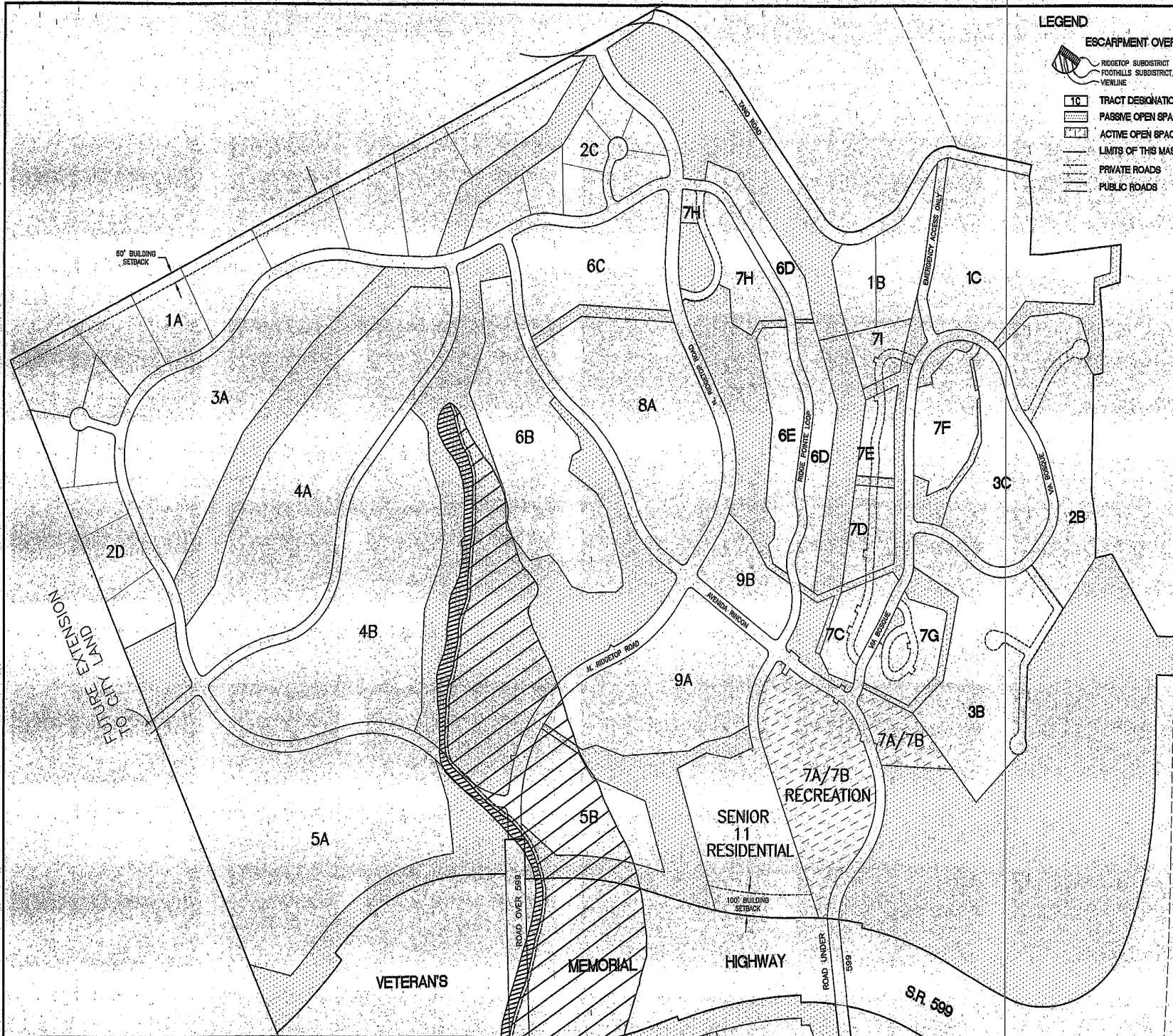
SCALE: 1" = 200' | DATE: OCTOBER 08, 2004 | DRAWN BY: YP

C.R. WALBRIDGE & ASSOCIATES, LLC
 1421 LLUISA STREET SUITE E
 SANTA FE, NEW MEXICO
 (505) 982-9711

SCALE: 1" = 200'
 200' 10' 5' CONTOUR INTERVAL

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06-57



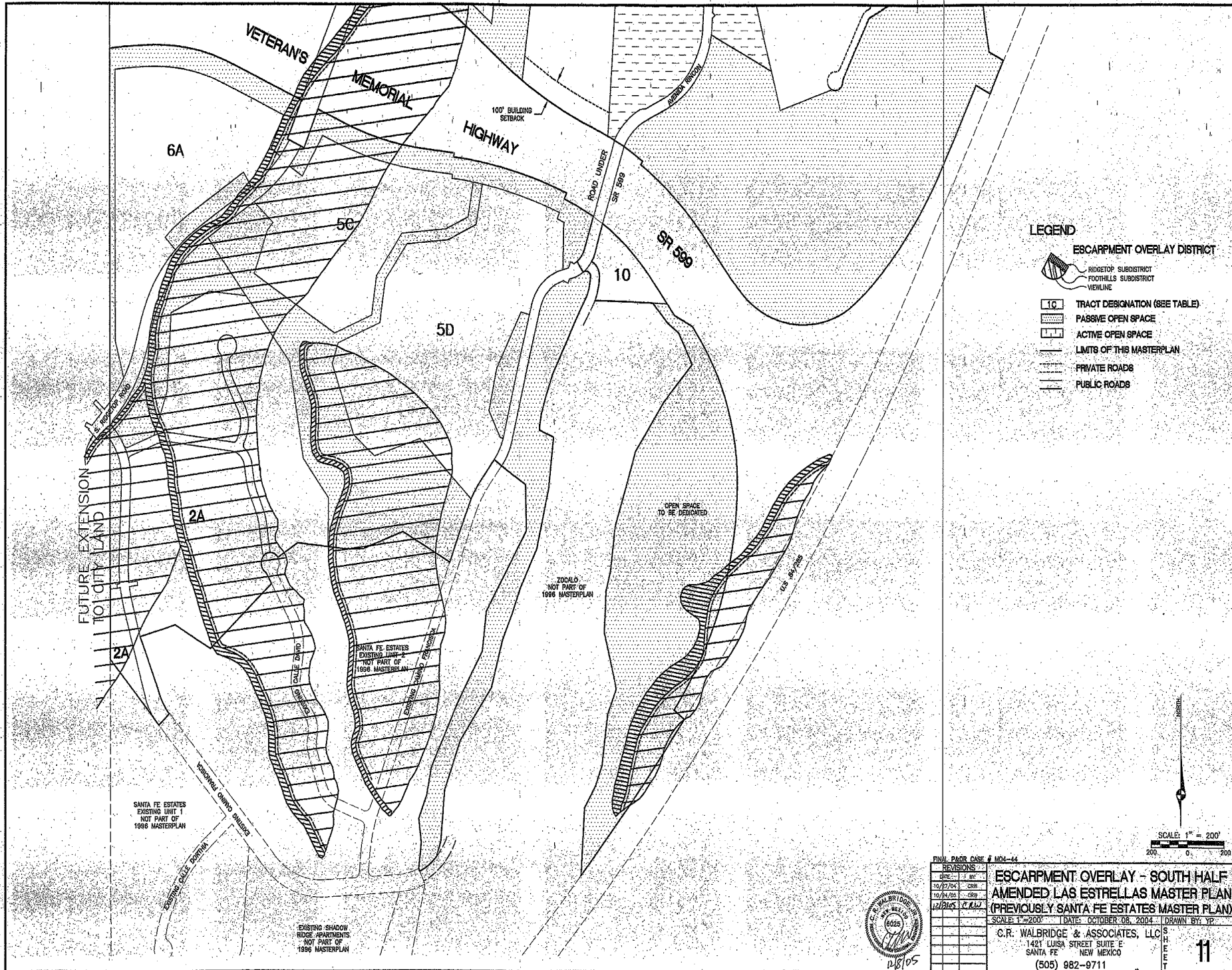
- LEGEND**
- ESCAPMENT OVERLAY DISTRICT**
- ROGETOP SUBDISTRICT
 - FOOTHILLS SUBDISTRICT
 - VERLINE
 - TRACT DESIGNATION (SEE TABLE)
 - PASSIVE OPEN SPACE
 - ACTIVE OPEN SPACE
 - LIMITS OF THIS MASTERPLAN
 - PRIVATE ROADS
 - PUBLIC ROADS



ESCAPMENT OVERLAY - NORTH HALF AMENDED LAS ESTRELLAS MASTER PLAN (PREVIOUSLY SANTA FE ESTATES MASTER PLAN)	
C.R. WALBRIDGE & ASSOCIATES, LLC	DATE: OCTOBER 08, 2003
SANTA FE, NEW MEXICO	PROJECT NO. 10
(505) 982-9711	

US 84-285

06.57



- LEGEND**
- ESCARPMENT OVERLAY DISTRICT**
- RIDGETOP SUBDISTRICT
 - FOOTHILLS SUBDISTRICT
 - VIEWLINE
 - TRACT DESIGNATION (SEE TABLE)
 - PASSIVE OPEN SPACE
 - ACTIVE OPEN SPACE
 - LIMITS OF THIS MASTERPLAN
 - PRIVATE ROADS
 - PUBLIC ROADS

FINAL PLOTTING CASE # M04-14

REVISIONS	DATE	BY
1	08/21/04	CRW
2	10/27/04	CRW
3	10/24/05	CRW
4	12/21/05	CRW

ESCARPMENT OVERLAY - SOUTH HALF AMENDED LAS ESTRELLAS MASTER PLAN (PREVIOUSLY SANTA FE ESTATES MASTER PLAN)







SCALE: 1"=200' DATE: OCTOBER 08, 2004 DRAWN BY: YP

C.R. WALBRIDGE & ASSOCIATES, LLC
 1421 LUISA STREET SUITE E
 SANTA FE NEW MEXICO
 (505) 982-9711

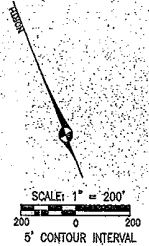
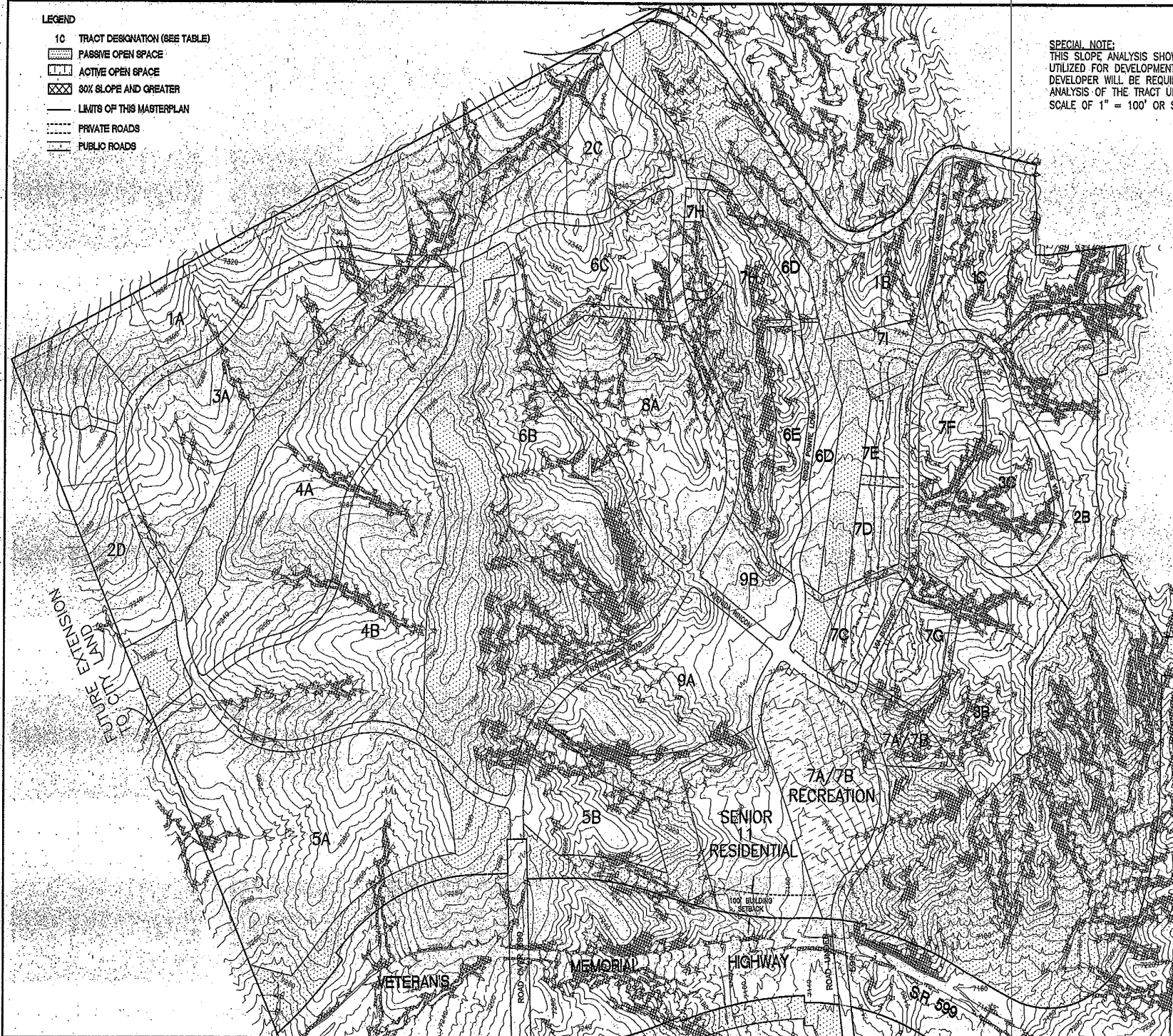
6025
 11
 11

06-57

LEGEND

- 1C TRACT DESIGNATION (SEE TABLE)
-  PASSIVE OPEN SPACE
-  ACTIVE OPEN SPACE
-  30% SLOPE AND GREATER
-  LIMITS OF THIS MASTERPLAN
-  PRIVATE ROADS
-  PUBLIC ROADS

SPECIAL NOTE:
 THIS SLOPE ANALYSIS SHOWN HEREON IS NOT TO BE UTILIZED FOR DEVELOPMENT PROCESSING. EACH TRACT DEVELOPER WILL BE REQUIRED TO PREPARE A SLOPE ANALYSIS OF THE TRACT UNDER DEVELOPMENT AT A SCALE OF 1" = 100' OR SMALLER, I.E. 1"=50'.



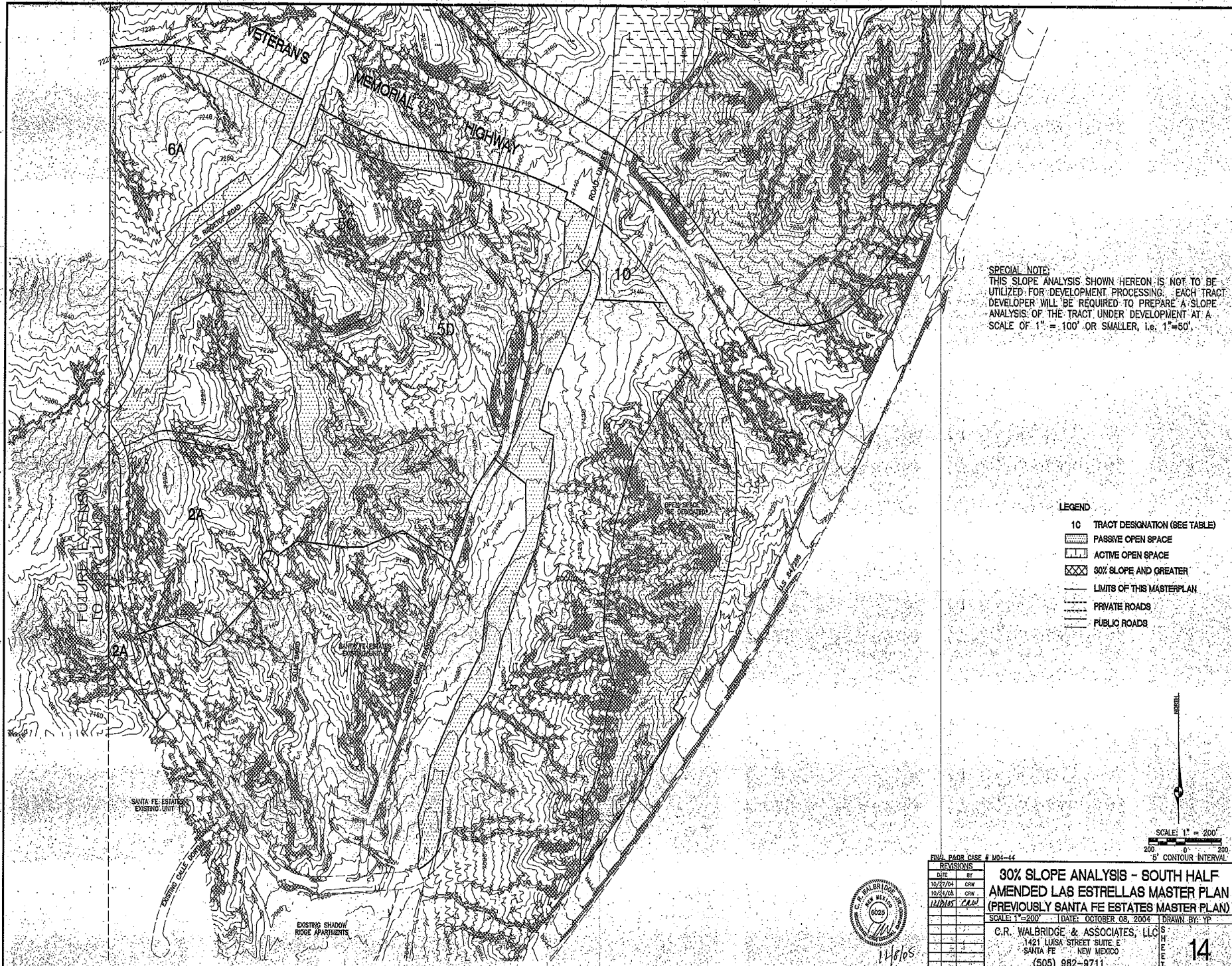
30% SLOPE ANALYSIS - NORTH HALF AMENDED LAS ESTRELLAS MASTER PLAN (PREVIOUSLY SANTA FE ESTATES MASTER PLAN)

SCALE: 1" = 200' DATE: OCTOBER, 2004 DRAWN BY: JF

C.R. WALKER & ASSOCIATES, L.L.C.
 SANTA FE, NEW MEXICO
 (505) 982-8711

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NO.	DATE	BY	DESCRIPTION
1	10/27/04	JF	PREPARED
2	11/10/04	JF	REVISED



SPECIAL NOTE:
 THIS SLOPE ANALYSIS SHOWN HEREON IS NOT TO BE UTILIZED FOR DEVELOPMENT PROCESSING. EACH TRACT DEVELOPER WILL BE REQUIRED TO PREPARE A SLOPE ANALYSIS OF THE TRACT UNDER DEVELOPMENT AT A SCALE OF 1" = 100' OR SMALLER, I.E. 1"=50'.

- LEGEND**
- 1C TRACT DESIGNATION (SEE TABLE)
 - [Symbol] PASSIVE OPEN SPACE
 - [Symbol] ACTIVE OPEN SPACE
 - [Symbol] 30% SLOPE AND GREATER
 - [Symbol] LIMITS OF THIS MASTERPLAN
 - [Symbol] PRIVATE ROADS
 - [Symbol] PUBLIC ROADS



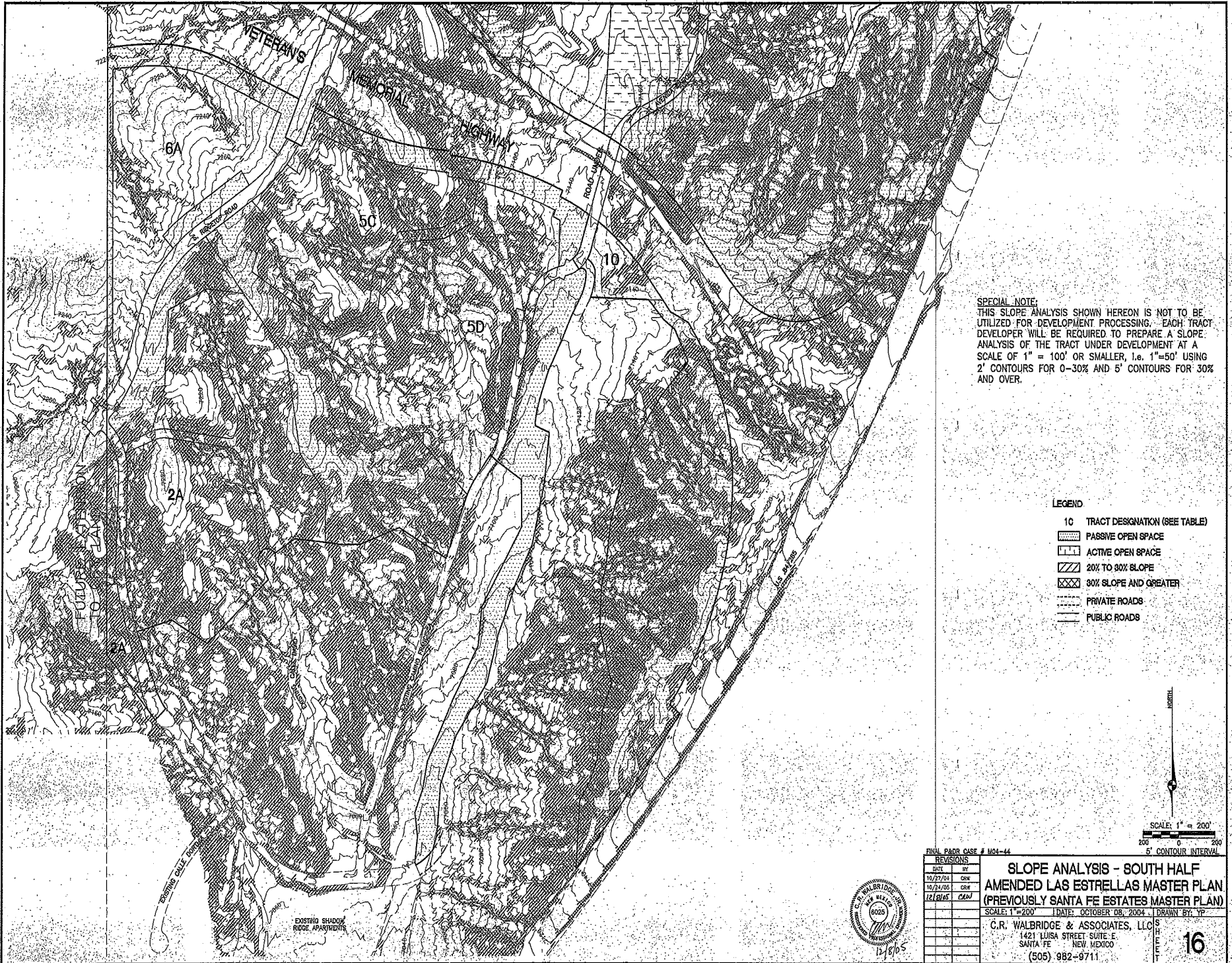
FINAL PAPER CASE # M01-14	
REVISIONS	
DATE	BY
10/27/04	CRW
10/28/04	CRW
11/18/04	CRW
SCALE: 1"=200' DATE: OCTOBER 08, 2004 DRAWN BY: YP	
30% SLOPE ANALYSIS - SOUTH HALF AMENDED LAS ESTRELLAS MASTER PLAN (PREVIOUSLY SANTA FE ESTATES MASTER PLAN)	
C.R. WALBRIDGE & ASSOCIATES, LLC 1421 LUISA STREET SUITE E SANTA FE NEW MEXICO (505) 982-9711	



11/10/05

14

06-57



SPECIAL NOTE:
 THIS SLOPE ANALYSIS SHOWN HEREON IS NOT TO BE UTILIZED FOR DEVELOPMENT PROCESSING. EACH TRACT DEVELOPER WILL BE REQUIRED TO PREPARE A SLOPE ANALYSIS OF THE TRACT UNDER DEVELOPMENT AT A SCALE OF 1" = 100' OR SMALLER, I.E. 1"=50' USING 2' CONTOURS FOR 0-30% AND 5' CONTOURS FOR 30% AND OVER.

LEGEND

- 10 TRACT DESIGNATION (SEE TABLE)
- [Hatched pattern] PASSIVE OPEN SPACE
- [Dotted pattern] ACTIVE OPEN SPACE
- [Diagonal hatching] 20% TO 30% SLOPE
- [Cross-hatching] 30% SLOPE AND GREATER
- [Dashed line] PRIVATE ROADS
- [Solid line] PUBLIC ROADS



FINN PARR CASE # M04-44

REVISIONS	
DATE	BY
10/27/04	CRF
10/24/05	CRF
12/01/05	CAJ

**SLOPE ANALYSIS - SOUTH HALF
 AMENDED LAS ESTRELLAS MASTER PLAN
 (PREVIOUSLY SANTA FE ESTATES MASTER PLAN)**

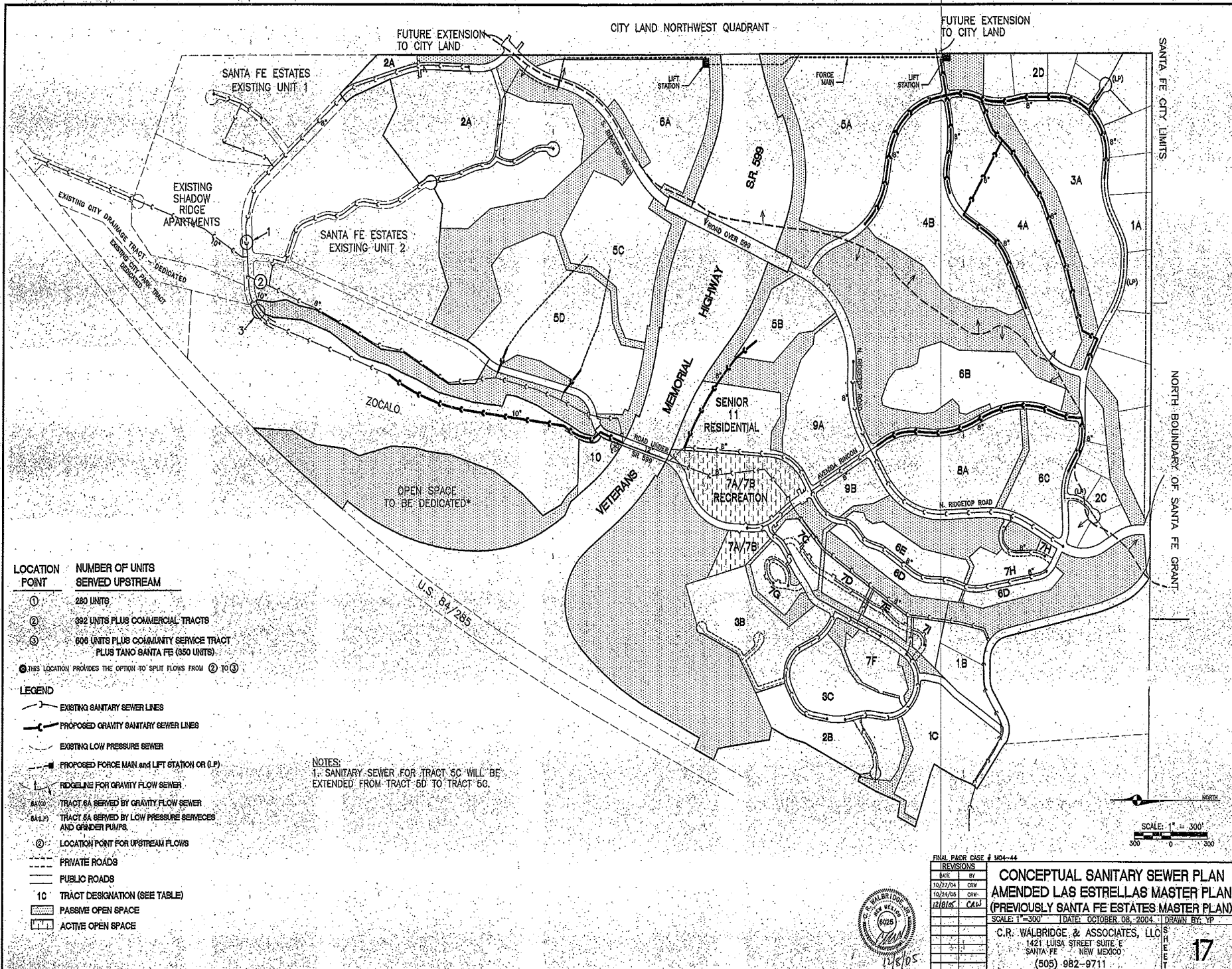
SCALE: 1"=200' | DATE: OCTOBER 08, 2004 | DRAWN BY: YP

C.R. WALBRIDGE & ASSOCIATES, L.L.C.
 1421 LUISA STREET SUITE E
 SANTA FE NEW MEXICO
 (505) 982-9711



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06-57



LOCATION POINT	NUMBER OF UNITS SERVED UPSTREAM
①	280 UNITS
②	392 UNITS PLUS COMMERCIAL TRACTS
③	606 UNITS PLUS COMMUNITY SERVICE TRACT PLUS TAVO SANTA FE (650 UNITS)
④	THIS LOCATION PROVIDES THE OPTION TO SPLIT FLOWS FROM ② TO ③

- LEGEND**
- EXISTING SANITARY SEWER LINES
 - PROPOSED GRAVITY SANITARY SEWER LINES
 - EXISTING LOW PRESSURE SEWER
 - PROPOSED FORCE MAIN and LIFT STATION OR (LP)
 - RIDGELINE FOR GRAVITY FLOW SEWER
 - BA(C) TRACT 6A SERVED BY GRAVITY FLOW SEWER
 - BA(LP) TRACT 6A SERVED BY LOW PRESSURE SERVICES AND GRINDER PUMPS
 - ④ LOCATION POINT FOR UPSTREAM FLOWS
 - PRIVATE ROADS
 - PUBLIC ROADS
 - 1C TRACT DESIGNATION (SEE TABLE)
 - ▨ PASSIVE OPEN SPACE
 - ▩ ACTIVE OPEN SPACE

NOTES:
 1. SANITARY SEWER FOR TRACT 5C WILL BE EXTENDED FROM TRACT 5D TO TRACT 5C.

SCALE: 1" = 300'
 300 0 300

FINAL P&ID CASE # M04-44

REVISIONS	
6/28/04	BY
10/27/04	CRW
10/24/05	CRW
12/16/06	CRW

CONCEPTUAL SANITARY SEWER PLAN
AMENDED LAS ESTRELLAS MASTER PLAN
 (PREVIOUSLY SANTA FE ESTATES MASTER PLAN)

SCALE: 1"=300' DATE: OCTOBER 08, 2004 DRAWN BY: YP

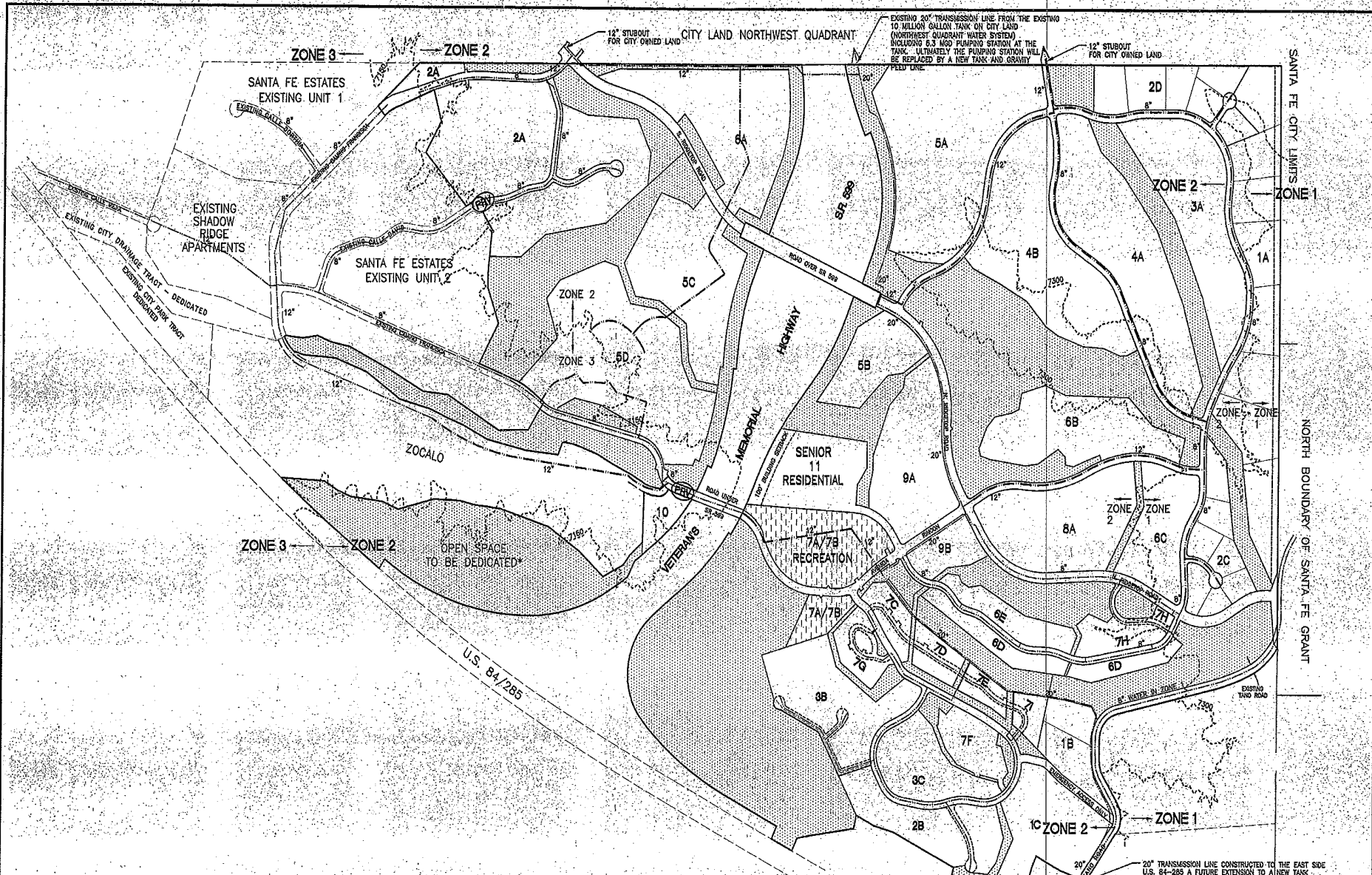
C.R. WALBRIDGE & ASSOCIATES, LLC
 1421 LUISA STREET SUITE E
 SANTA FE NEW MEXICO
 (505) 982-9711

12/8/05



17

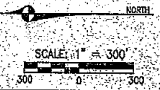
06-57



LEGEND

- EXISTING, UNDER CONSTRUCTION, OR APPROVED WATERLINES
- PROPOSED DISTRIBUTION WATERLINES
- WATER PRESSURE ZONE LINE
- PRESSURE REGULATOR VALVE
- PRIVATE ROADS
- PUBLIC ROADS
- TRACT DESIGNATION (SEE TABLE)
- PASSIVE OPEN SPACE
- ACTIVE OPEN SPACE

20" TRANSMISSION LINE CONSTRUCTED TO THE EAST SIDE OF U.S. 84-285 A FUTURE EXTENSION TO A NEW TANK EAST OF SIGNOR'S LODGE ROAD BY MONTE SPENDO DEVELOPMENT.



FINAL PADR CASE # 4164-14

REVISIONS	
DATE	BY
10/27/04	CPW
10/24/05	CPW
12/12/05	ALW

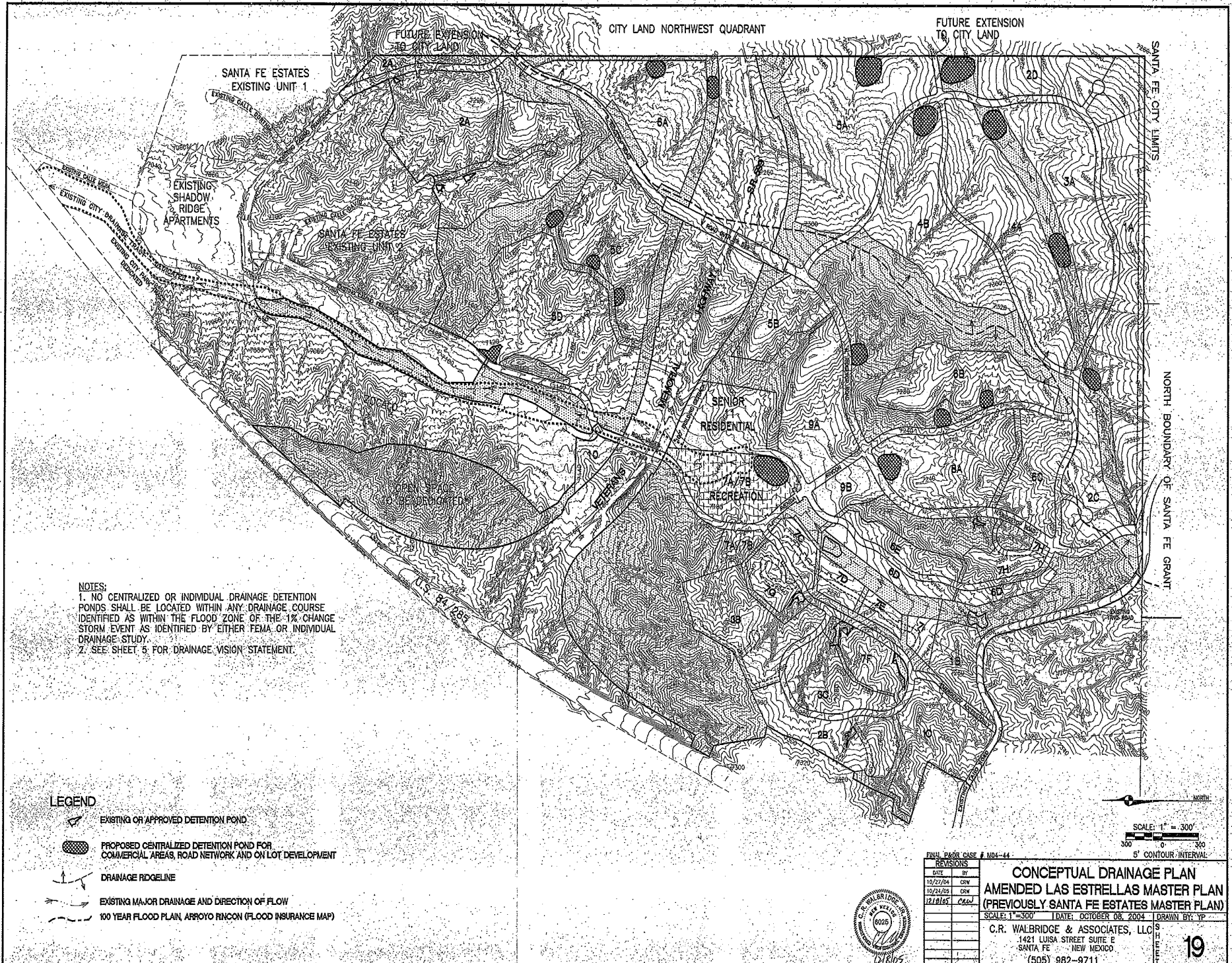
CONCEPTUAL WATER PLAN
AMENDED LAS ESTRELLAS MASTER PLAN
 (PREVIOUSLY SANTA FE ESTATES MASTER PLAN)

SCALE: 1" = 300' | DATE: OCTOBER 08, 2004 | DRAWN BY: YP

C.R. WALBRIDGE & ASSOCIATES, LLC
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 (505) 982-9711








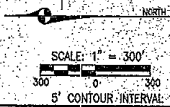
S:\proj\14_5m\1405\14_05\1405_00_000.dwg, 12/20/05 8:02:14 AM, Yip



NOTES:
 1. NO CENTRALIZED OR INDIVIDUAL DRAINAGE DETENTION PONDS SHALL BE LOCATED WITHIN ANY DRAINAGE COURSE IDENTIFIED AS WITHIN THE FLOOD ZONE OF THE -1% CHANGE STORM EVENT AS IDENTIFIED BY EITHER FEMA OR INDIVIDUAL DRAINAGE STUDY.
 2. SEE SHEET 5 FOR DRAINAGE VISION STATEMENT.

LEGEND

-  EXISTING OR APPROVED DETENTION POND
-  PROPOSED CENTRALIZED DETENTION POND FOR COMMERCIAL AREAS, ROAD NETWORK AND ON LOT DEVELOPMENT
-  DRAINAGE RIDGELINE
-  EXISTING MAJOR DRAINAGE AND DIRECTION OF FLOW
-  100 YEAR FLOOD PLAN, ARROYO RINCON (FLOOD INSURANCE MAP)



FINAL P&ID CASE # 104-44

REVISIONS	
DATE	BY
10/27/04	CRW
10/28/05	CRW
12/18/05	CRW

CONCEPTUAL DRAINAGE PLAN
AMENDED LAS ESTRELLAS MASTER PLAN
 (PREVIOUSLY SANTA FE ESTATES MASTER PLAN)

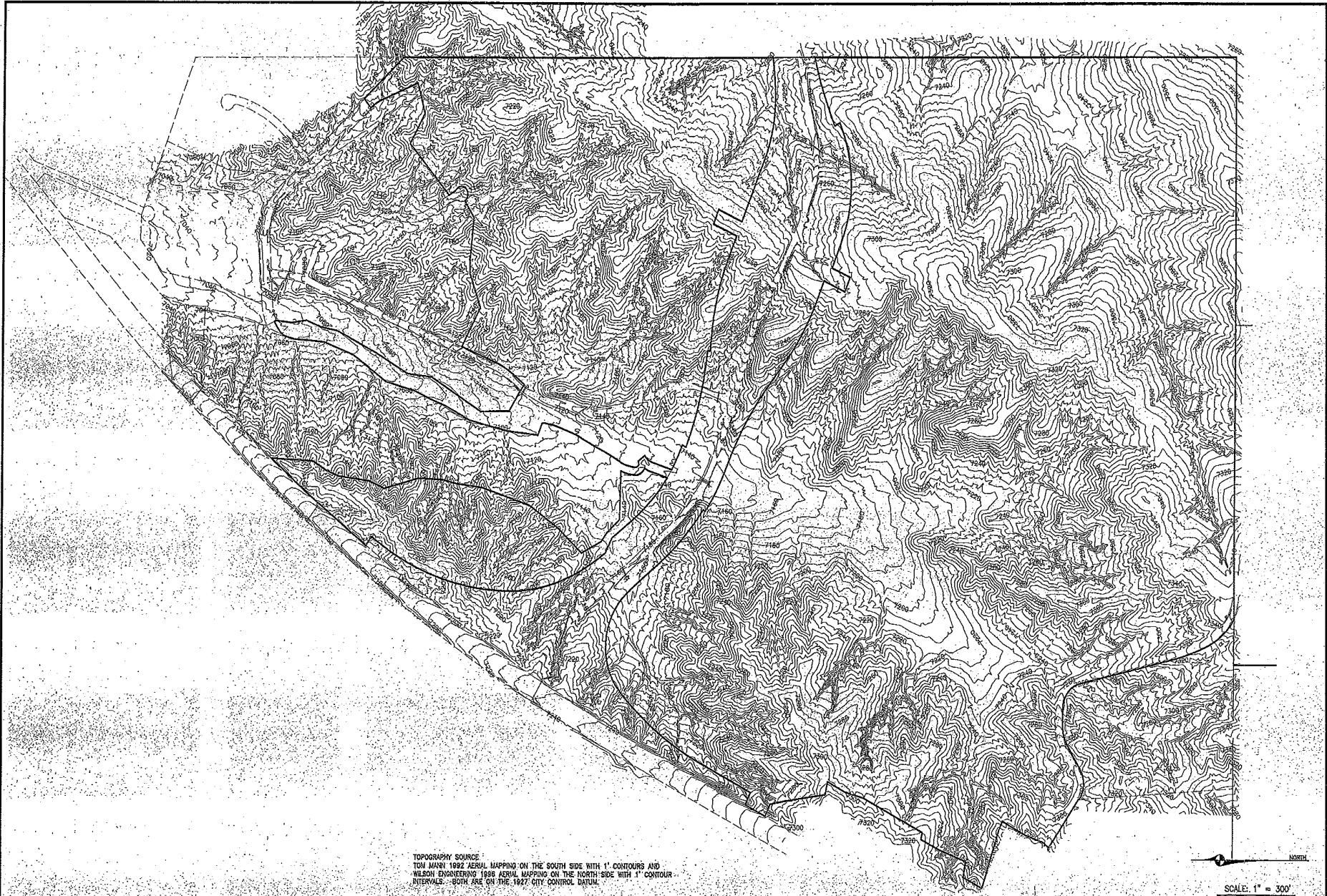
SCALE: 1"=300' | DATE: OCTOBER 08, 2004 | DRAWN BY: YP

C.R. WALBRIDGE & ASSOCIATES, LLC
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06-57



TOPOGRAPHY SOURCE:
 TOM MARI 1992 AERIAL MAPPING ON THE SOUTH SIDE WITH 1' CONTOURS AND
 WILSON ENGINEERING 1998 AERIAL MAPPING ON THE NORTH SIDE WITH 4' CONTOUR
 INTERVALS - SOUTH SIDE ON THE 1927 CITY CONTROL DATUM.

SCALE: 1" = 300'
 300' 0' 300'
 5' CONTOUR INTERVAL

FINAL P&R CASE # 1004-44

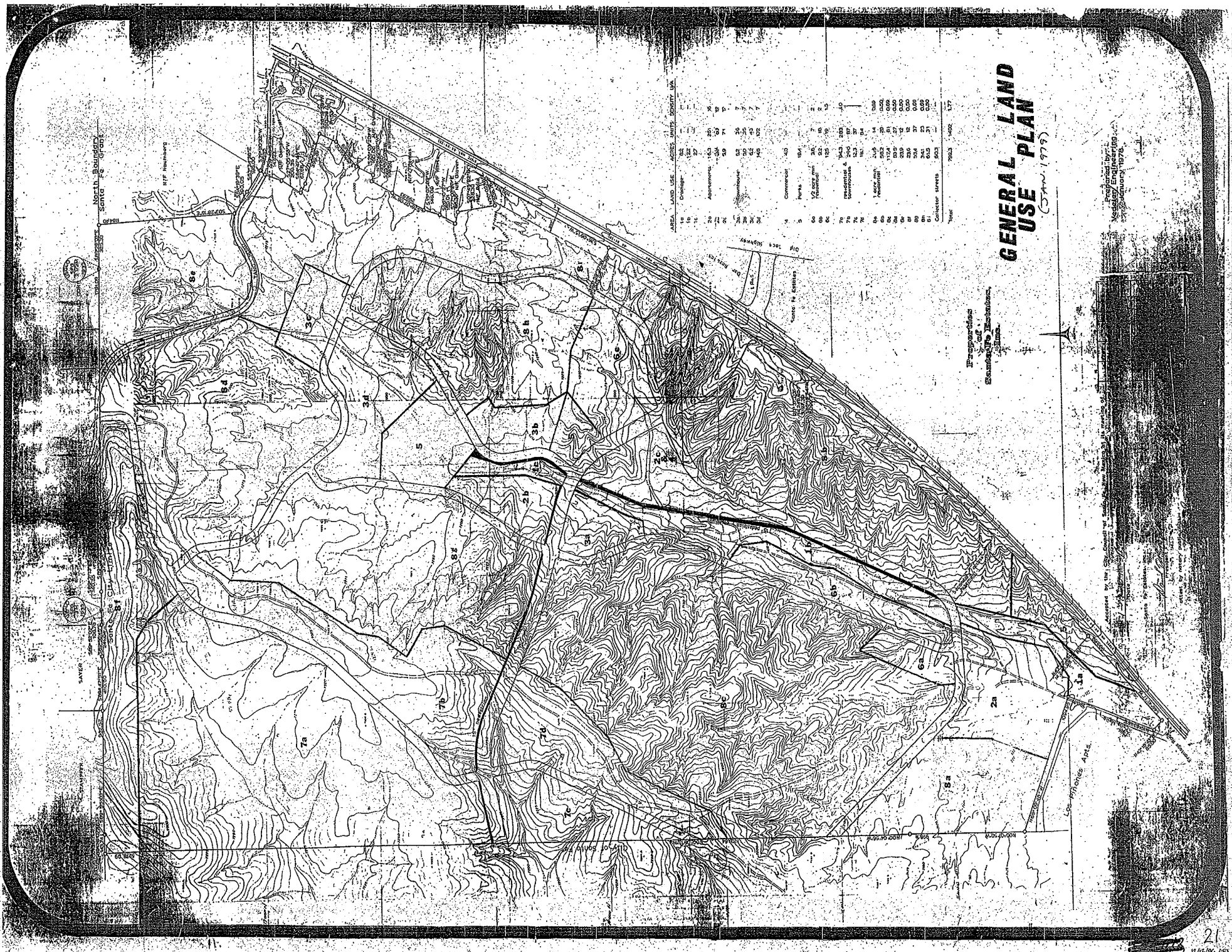
REVISIONS	
DATE	BY
10/27/04	CWB
10/24/02	CSB
12/8/05	YAG



EXISTING TOPOGRAPHY
AMENDED LAS ESTRELLAS MASTER PLAN
 (PREVIOUSLY SANTA FE ESTATES MASTER PLAN)
 SCALE: 1"=300' | DATE: OCTOBER 08, 2004 | DRAWN BY: YP
 C.R. WALBRIDGE & ASSOCIATES, LLC
 1421 LUISA STREET SUITE E
 SANTA FE NEW MEXICO
 (505) 982-9711

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06-57



AREA	LAND USE	ACRES	AVETS	SQ. FT.	AV. DENSITY
10	10	10	10	10	10
11	11	11	11	11	11
12	12	12	12	12	12
13	13	13	13	13	13
14	14	14	14	14	14
15	15	15	15	15	15
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91	91	91	91	91	91
92	92	92	92	92	92
93	93	93	93	93	93
94	94	94	94	94	94
95	95	95	95	95	95
96	96	96	96	96	96
97	97	97	97	97	97
98	98	98	98	98	98
99	99	99	99	99	99
100	100	100	100	100	100
Total		7063	4000	1,37	

GENERAL LAND USE PLAN

(JAN. 1979)

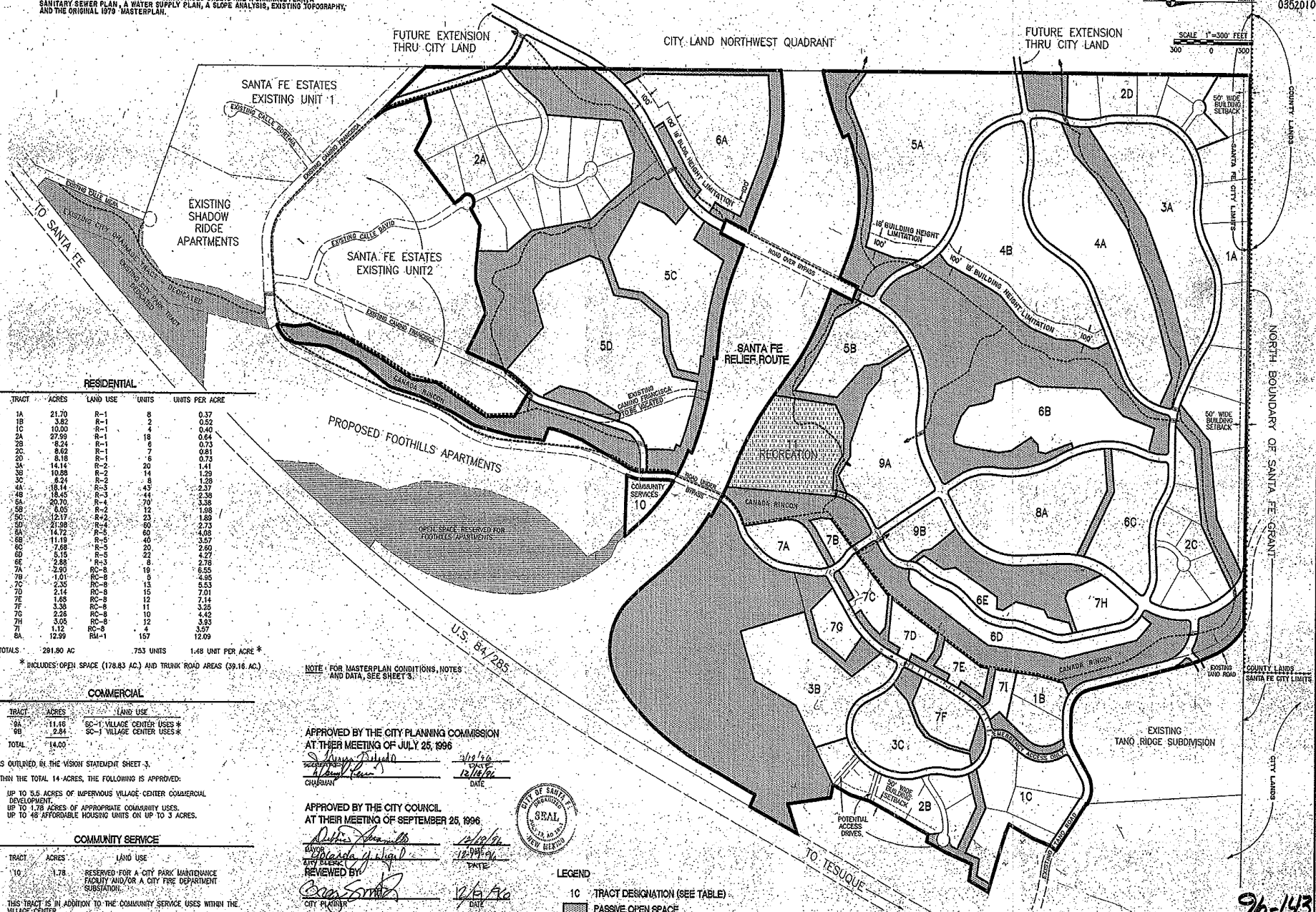
Prepared by
 City of
 Planning Department
 January 1979

Approved by the City Council
 January 1979

NOTE: THIS MASTERPLAN IS COMPRISED OF 19 SHEETS, SHEETS 1 THRU 9 ARE RECORDED AT THE SANTA FE COUNTY COURTHOUSE, SHEETS 10 THRU 19 ARE ON FILE AT THE SANTA FE CITY PLAT ROOM. EXCLUDED ON THESE UNRECORDED SHEETS ARE A DRAINAGE PLAN, A SANITARY SEWER PLAN, A WATER SUPPLY PLAN, A SLOPE ANALYSIS, EXISTING TOPOGRAPHY, AND THE ORIGINAL 1979 MASTERPLAN.

SCALE 1"=300' FEET
300 0 300

0352010



RESIDENTIAL

TRACT	ACRES	LAND USE	UNITS	UNITS PER ACRE
1A	21.70	R-1	8	0.37
1B	3.82	R-1	2	0.52
1C	10.00	R-1	4	0.40
2A	27.99	R-1	18	0.64
2B	8.24	R-1	6	0.73
2C	8.62	R-1	7	0.81
2D	8.18	R-1	6	0.73
3A	14.14	R-2	14	1.41
3B	10.58	R-2	14	1.29
3C	5.24	R-2	8	1.52
4A	18.44	R-3	43	2.37
4B	18.45	R-3	44	2.38
4C	20.70	R-4	70	3.38
5A	6.05	R-2	12	1.98
5B	12.17	R-2	23	1.89
5C	10.28	R-2	60	2.73
5D	14.72	R-5	60	4.08
5E	11.19	R-5	40	3.57
6A	7.08	R-5	20	2.83
6B	5.15	R-5	22	4.27
6C	2.88	R-5	8	2.78
6D	2.90	R-5	8	2.75
6E	1.01	RC-8	5	4.95
6F	2.35	RC-8	13	5.53
6G	2.14	RC-8	15	7.01
6H	1.63	RC-8	12	7.14
6I	1.34	RC-8	10	3.26
6J	2.28	RC-8	11	4.82
6K	3.05	RC-8	12	3.83
6L	1.12	RC-8	4	3.57
6M	12.99	RM-1	157	12.09
TOTALS	291.80 AC		753 UNITS	1.48 UNIT PER ACRE*

* INCLUDES OPEN SPACE (178.83 AC) AND TRUNK ROAD AREAS (59.16 AC.)

COMMERCIAL

TRACT	ACRES	LAND USE
8A	11.46	SC-1 VILLAGE CENTER USES*
9B	2.81	SC-1 VILLAGE CENTER USES*
TOTAL	14.27	

AS OUTLINED IN THE VISION STATEMENT SHEET 3.
WITHIN THE TOTAL 14 ACRES, THE FOLLOWING IS APPROVED:
1. UP TO 3.5 ACRES OF IMPERVIOUS VILLAGE CENTER COMMERCIAL DEVELOPMENT.
2. UP TO 1.75 ACRES OF APPROPRIATE COMMUNITY USES.
3. UP TO 48 AFFORDABLE HOUSING UNITS ON UP TO 3 ACRES.

COMMUNITY SERVICE

TRACT	ACRES	LAND USE
10	1.78	RESERVED FOR A CITY PARK MAINTENANCE FACILITY AND/OR A CITY FIRE DEPARTMENT SUBSTATION.

THIS TRACT IS IN ADDITION TO THE COMMUNITY SERVICE USES WITHIN THE VILLAGE CENTER.

OPEN SPACE

ACTIVE	10.03 AC. (RECREATION - TRACT 11)
PASSIVE	168.80 AC.
TOTAL	178.83 AC. = 34.03%
TOTAL PROJECT ACREAGE	= 525.57 AC.

NOTE: FOR MASTERPLAN CONDITIONS, NOTES AND DATA, SEE SHEETS 1-3.

APPROVED BY THE CITY PLANNING COMMISSION AT THEIR MEETING OF JULY 25, 1996

S. Ann B. Bland 11/19/96
Alfred P. ... 12/18/96
CHAIRMAN DATE

APPROVED BY THE CITY COUNCIL AT THEIR MEETING OF SEPTEMBER 25, 1996

Arthur ... 12/18/96
Marjorie ... 12/18/96
CITY CLERK DATE

REVIEWED BY
Chris ... 12/18/96
CITY PLANNER DATE

Robert C. ... 12/18/96
CITY SUBDIVISION ENGINEER DATE



- LEGEND**
- 1C TRACT DESIGNATION (SEE TABLE)
 - PASSIVE OPEN SPACE
 - ACTIVE OPEN SPACE
 - TRAIL NETWORK
 - LIMITS OF THIS MASTERPLAN



SANTA FE ESTATES MASTERPLAN
DECEMBER 13, 1996

DESIGNED BY: LILLY PLANNING ASSOC.
P.O. BOX 1761
SANTA FE, N.M. 87501
(505) 983-1134

SELECTED BY: C.R. WALBRIDGE & ASSOCIATES
1421 LUNA STREET SUITE
SANTA FE, NEW MEXICO
(505) 982-9711

DATE: OCT 11, 1996
DRAWN BY: [Signature]

96-143

9. ACTION ITEMS: CONSENT AGENDA

n. CONSIDERATION OF RESOLUTION NO. 2023-___. (Mayor Webber, Councilor Chavez, Councilor Romero-Wirth, Councilor Cassutt and Councilor Lindell)
A Resolution Relating to Firearms; Recognizing that Certain City Properties are Used for School-Related Activities, Which Makes the Carrying of a Deadly Weapon on Such Properties a Fourth-Degree Felony Pursuant to NMSA 1978, Section 30-7-2.1; and Directing the City Manager to Work with Staff to Post Notice on Such Facilities. (Kyra Ochoa, Community Health and Safety Department Director: krochoa@santafenm.gov)

Committee Review:

Governing Body (Introduced): 11/30/2022
Quality of Life Committee (Postponed): 12/7/2022
Quality of Life Committee: 01/04/2023
Public Works and Utilities Committee: 01/09/2023
Finance Committee: 01/17/2023
Governing Body: 01/25/2023

Name: Stefanie Beninato

Comment - 01/25/2023 12:22 PM: (No Vote)

I have to wonder about extending a ban to say a city building when there is no school activity going on or even planned for that day.

I would be for banning guns in all public buildings except for law enforcement, military and of course in such places as jails, prisons, courts.




City of Santa Fe, New Mexico

Memorandum



Date: November 23, 2022

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

From: Kyra Ochoa, Community Health and Safety Department Director 

RE: Identifying City properties on which firearms are prohibited because the properties are used for school-sanctioned activities

EXECUTIVE SUMMARY:

The proposed resolution identifies City property that is used for school-sanctioned activities and directs the City Manager to post signs that state that deadly weapons are prohibited.

BACKGROUND:

Between 1970 and June, 2022, there have been 2069 recorded school shootings. The New Mexico Constitution prohibits local governments from “regulat[ing], in any way, an incident of the right to keep or bear arms.”

NMSA 1978, Section 30-7-2.1, however, prohibits deadly weapons in “any...public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which public school-related and sanctioned activities are being performed.” A number of City properties fall into these categories. The proposed resolution directs the City Manager to post appropriate signage at relevant City locations that state deadly weapons are prohibited.

ATTACHMENTS:

Resolution
Fiscal Impact Report

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CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2023-__

INTRODUCED BY:

Mayor Alan Webber

Councilor Amanda Chavez

Councilor Carol Romero-Wirth

Councilor Signe Lindell

Councilor Jamie Cassutt

A RESOLUTION

RELATING TO FIREARMS; RECOGNIZING THAT CERTAIN CITY PROPERTIES ARE USED FOR SCHOOL-RELATED ACTIVITIES, WHICH MAKES THE CARRYING OF A DEADLY WEAPON ON SUCH PROPERTIES A FOURTH-DEGREE FELONY PURSUANT TO NMSA 1978, SECTION 30-7-2.1; AND DIRECTING THE CITY MANAGER TO WORK WITH STAFF TO POST NOTICE ON SUCH FACILITIES.

WHEREAS, NMSA 1978, Section 30-7-2.1 provides that unlawful carrying of a deadly weapon on school premises consists of carrying a deadly weapon on school premises except by a peace officer, school security personnel, authorized personnel in a military training corps program or state-authorized hunter safety training instruction, a person in a school-approved program that actively involves the carrying of a deadly weapon, or a person older than 19 in a private automobile for lawful protection of person or property; and

WHEREAS, included in the definition of school premises is “any...public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which public school-related and sanctioned activities are being performed”; and

WHEREAS, whoever commits unlawful carrying of a deadly weapon on school premises

1 **WHEREAS**, whoever commits unlawful carrying of a deadly weapon on school premises
2 is guilty of a fourth-degree felony; and

3 **WHEREAS**, a number of City-owned spaces, buildings, and other property are both
4 governmental and used for school-related and sanctioned activities and therefore are “sensitive
5 places” as identified by the U.S. Supreme Court; and

6 **WHEREAS**, according to the Naval Postgraduate Schools Center for Homeland Defense
7 and Security, between 1970 and June, 2022, there have been 2069 school shootings; and

8 **WHEREAS**, those 2069 shootings have resulted in 684 fatalities and 1937 injuries; and

9 **WHEREAS**, of the 2069 school shootings, 985 have occurred since the tragic incident at
10 Sandy Hook Elementary School nearly ten years ago in December, 2012; and

11 **WHEREAS**, according to the K-12 School Shooting Database, New Mexico has
12 experienced 22 school shootings between 1971 and June, 2022, resulting in six deaths and 10
13 injuries; and

14 **WHEREAS**, in 2017, a 16-year-old student entered the Clovis-Carver Library in Clovis,
15 NM and killed two people and wounded four others; and

16 **WHEREAS**, according to the Washington Post’s school shootings database, more than
17 311,000 students at 331 schools have experienced gun violence at school since the Columbine High
18 School shooting on April 20, 1999; and

19 **WHEREAS**, children who witness a shooting can be severely traumatized by the incident
20 – trauma that can last a lifetime; and

21 **WHEREAS**, witnessing a shooting may impact the student’s ability to continue studies,
22 may impact a student’s social and emotional growth, and may cause a student to become anxious
23 or depressed; a student may even develop chronic psychiatric disorders as the result of witnessing
24 a shooting; and

25 **WHEREAS**, since the shooting at Robb Elementary School in Uvalde, Texas, in which

1 19 second through fourth grade students and two teachers were killed, there have been 50 school
2 shootings with four deaths and 32 injured.

3 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**
4 **CITY OF SANTA FE** that the Governing Body recognizes that the following City locations are
5 used for school-related or sanctioned events and therefore the carrying of deadly weapons on those
6 properties is a fourth-degree felony under NMSA 1978, Section 30-7-2.1:

- 7 1. Santa Fe Community Convention Center and underground garage;
- 8 2. Municipal Recreation Complex soccer fields;
- 9 3. Genoveva Chavez Community Center;
- 10 4. Main library;
- 11 5. LaFarge library;
- 12 6. Southside library;
- 13 7. Facilities at which the Mayor's Youth Advisory Board holds their regular
14 meetings;
- 15 7. Facilities to which students visit as part of a school-related or school-sanctioned
16 activities including, but not limited to, the Buckman Direct Diversion; and
- 17 8. Facilities in which school interns are working, as placed through the Santa Fe
18 Public Schools, including, but not limited to, City Hall and Municipal Court.

19 **BE IT FURTHER RESOLVED** that the City Manager shall direct staff to post signage
20 at the locations listed above that states that deadly weapons are prohibited pursuant to NMSA 1978,
21 Section 30-7-2.1.

22 **BE IT FURTHER RESOLVED** that, when the City Manager identifies additional City
23 locations that are used for school-related or sanctioned events, the City Manager may direct staff
24 to post signage at those locations and events to state that deadly weapons are prohibited pursuant
25 to NMSA 1978, Section 30-7-2.1.

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BE IT FURTHER RESOLVED the City Manager shall consult with the Community Health and Safety Department, including the Police Department, regarding the best method for enforcing NMSA 1978, Section 30-7-2.1 in relation to applicable City properties.

PASSED, APPROVED, and ADOPTED this _____ day of _____, 2023.

ALAN WEBBER, MAYOR

ATTEST:

KRISTINE MIHELICIC, CITY CLERK

APPROVED AS TO FORM:



ERIN K. McSHERRY, CITY ATTORNEY

FISCAL IMPACT REPORT

General Information:

(Check) Bill: _____ Resolution: X

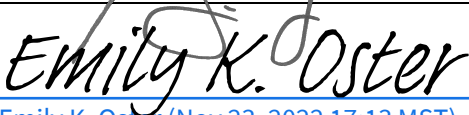
Short Title(s): Firearms on City Property that are School Premises

Sponsor(s): Mayor Webber

Reviewing Department(s): Community Health and Safety

Staff Completing FIR: Kyra Ochoa^{KO} Date: 9/7/22 Phone: 955-6603

Reviewed by City Attorney:  Date: Nov 24, 2022

Reviewed by Finance Director:  Date: Nov 23, 2022
Emily K. Oster (Nov 23, 2022 17:13 MST)

Summary:

The proposed resolution identifies various City facilities that are utilized by the Santa Fe Public Schools for school-sanctioned activities. The resolution also directs the City Manager to post signage at these locations stating deadly weapons are prohibited pursuant to State Statute (NMSA 1978, Section 30-7-2.1). This resolution responds to the continuing number of school shootings that have occurred around the country, with 2069 recorded school shootings between 1970 and June, 2022.

Departments Affected:

Community Health and Safety Department, Public Works Department

Consequences of Not Enacting Legislation:

If this legislation is not adopted, the City will not post signs at City facilities that are used for school-sanctioned activities stating deadly weapons are prohibited.

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

None identified.

Performance and Administrative Implications:

Public Works Department will need to design, purchase, and install the necessary signs at the identified locations, as well as any subsequent City locations that are used for school-sanctioned activities.

Fiscal Implications:

The cost to purchase and install the signs is estimated at ~\$20/per sign. The number of signs needed depends on the final locations and number of signs per location installed.

Fiscal Impact

_____ Check here if no fiscal impact

Expenditures

Expenditure Type	FYE 23	FYE 24	FYE 25	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
<u>Personnel and</u>	\$ _____	\$ _____	\$ _____	_____	_____	_____	
<u>Benefits*</u>							
<u>Capital Outlay</u>	\$ _____	\$ _____	\$ _____	_____	_____	_____	
<u>Contractual/</u>	\$ _____	\$ _____	\$ _____		_____	_____	
<u>Professional Services</u>							
<u>Operating</u>	\$400 _____	\$ _____	\$ _____		NR _____	_____	\$400 _____
<u>Total:</u>	\$400 _____	\$ _____	\$ _____				\$400 _____

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

Expenditure Narrative:

Posting the required signs is estimated at \$20/sign for the locations specified in the Resolution. A minimum of 20 signs are estimated to be need for the identified locations. If additional locations are identified in the future there will be additional costs for those signs.

Revenue

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

Revenue Narrative:

Signature: Kyra Ochoa
Kyra Ochoa (Nov 23, 2022 12:17 MST)

Email: krochoa@santafenm.gov

15. INTRODUCTION OF LEGISLATION

c. CONSIDERATION OF RESOLUTION NO. 2023-___. (Mayor Webber)

A Resolution Relating to Firearms; Recognizing That Certain City Properties are Used for School-Related Activities, Which Makes the Carrying of a Deadly WEapon on Such Properties a Fourth-Degree Felony Pursuant to NMSA 1978, Section 30-7-2.1; and Directing the City Manager to Work with Staff to Post Notice on Such Facilities. (Kyra Ochoa, Community Health and Safety Department Director: krochoa@santafenm.gov)

Committee Review:

Introduced: 11/30/22

Quality of Life Committee: 12/7/22

Public Works and Utilities Committee: 12/12/22

Finance Committee: 01/03/23

Governing Body: 01/11/23

Name: Stefanie Beninato

Comment - 11/30/2022 09:54 AM: (No Vote)

How will this provision be enforced?



City of Santa Fe, New Mexico

Memorandum



Date: January 3, 2023

To: Public Works and Utilities Committee and Governing Body

Via: Regina Wheeler, Public Works Director ^{RW}_{RW}
Thomas Martinez, Transit Division Director tm_{tm}

From: David A. Chapman, Grants Administrator - Writer *DAC*

RE: Santa Fe Trails Agency Plan

EXECUTIVE SUMMARY:

The proposed Resolution authorizes the Transit Division to submit its updated safety plan.

BACKGROUND:

On July 19, 2018, the Federal Transit Administration (“FTA”) published the Public Transportation Agency Safety Plan (“PTASP”) Final Rule, which requires certain operators of public transportation systems that receive federal funds under FTA's Urbanized Area Formula Grants (49 U.S.C. § 5307) to implement Safety Management Systems (“SMS”). The PTASP rule became effective on July 19, 2019. Santa Fe Trails PTASP was approved by the Governing Body on December 9, 2020 and was subsequently submitted to FTA to fulfill this requirement.

Earlier this year, as part of the Bipartisan Infrastructure Law changes to the PTASP requirements, transit agencies that receive Section 5307 funding and serve an urbanized area with a population of fewer than 200,000 must develop their safety plan in cooperation with frontline employee representative. The attached Santa Fe Trails Agency Safety Plan was developed in cooperation with frontline employee representatives and serves to fulfill this recent requirement.

The Director of Operations and Maintenance serves as the director of the City of Santa Fe's Transit Division. The position has responsibility for the Transit Asset Management Plan and serves as the Accountable Executive. Because of the leadership structure, and the fact that Santa Fe Trails does not have a safety manager position, the Grant Administrator - Writer serves as the SMS Executive. The Director of Operations and Maintenance also presently has safety oversight responsibilities.

ATTACHMENTS:

Resolution
Santa Fe Trails Agency Safety Plan
Fiscal Impact Report

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CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2023-__

INTRODUCED BY:

Councilor Jamie Cassutt

A RESOLUTION

**APPROVING THE UPDATED SANTA FE TRAILS AGENCY SAFETY PLAN AND
DIRECTING ITS SUBMISSION TO THE FEDERAL TRANSIT ADMINISTRATION.**

WHEREAS, the United States Department of Transportation (“NMDOT”), Federal Transit Administration (“FTA”) requires certain operators of public transportation systems to develop or updated Agency Safety Plans (“ASP”) that include processes and procedures for the agency’s Safety Management Systems, which consists of 1) Safety Management Policy, 2) Safety Risk Management, 3) Safety Assurance, and 4) Safety Promotion; and

WHEREAS, other requirements under the rule (49 CFR Part 673) require the following:

1. Performance targets based on the safety performance criteria established under the National Public Transportation Safety Plan (“NPTSP”);
2. Adherence to all applicable requirements and standards as set forth in the FTA’s Public Transportation Safety Program (“PTSP”) and NPTSP; and
3. Establishment of a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan (“PTASP”); and

1 **WHEREAS**, the Bipartisan Infrastructure Law adopted in 2022 requires transit agencies
2 that receive federal funds under FTA’s Urbanized Area Formula Grants (49 U.S.C § 5307) to
3 update their ASP; and

4 **WHEREAS**, in particular, grant recipients in communities of 200,000 or fewer must
5 develop their ASP “in cooperation with frontline employee representatives”; and

6 **WHEREAS**, Santa Fe Trails is the City of Santa Fe’s public bus system that provides a
7 city-wide network of public transportation; and

8 **WHEREAS**, Santa Fe Trails is a recipient of Urbanized Area Formula Grant funds and
9 therefore is required to submit an updated safety plan; and

10 **WHEREAS**, the Public Works Department, Transit Division, prepared the Santa Fe Trails
11 Agency Safety Plan, updated on December 1, 2022, in coordination with frontline employee
12 representatives.

13 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**
14 **CITY OF SANTA FE** that the Governing Body authorizes staff to submit its updated Santa Fe
15 Agency Safety Plan, attached hereto as Exhibit A.

16 PASSED, APPROVED, and ADOPTED this _____ day of _____, 2023.

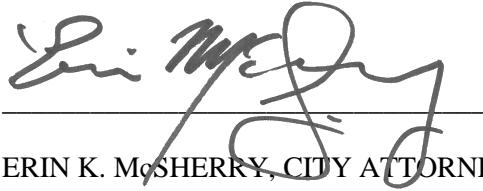
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19 _____
20 ALAN WEBBER, MAYOR

21 ATTEST:

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23 _____
24 KRISTINE MIHELIC, CITY CLERK

1 APPROVED AS TO FORM:

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A handwritten signature in black ink, appearing to read "Erin K. McSherry", is written over a horizontal line. The signature is cursive and extends slightly below the line.

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4 ERIN K. McSHERRY, CITY ATTORNEY

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25 *Legislation/2023/Resolutions/Santa Fe Trails Agency Plan*

Santa Fe Trails

Agency Safety Plan

December 2022



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1. Transit Agency Information

Transit Agency Name	Santa Fe Trails		
Transit Agency Address	Santa Fe Trails, 2931 Rufina St. Santa Fe NM, 87507		
Name and Title of Accountable Executive	<p>Thomas Martinez, Director of Operations and Maintenance</p> <p>The Accountable Executive meets the requirements in 49 CFR § 673.5 and §673.23(d)(1). Please see the Roles and Responsibilities of the Accountable Executive in Section 4-Safety Management Policy.</p>		
Name of SMS Executive/Chief Safety Officer	<p>David A. Chapman, Grants Administrator - Writer, SMS Executive</p> <p>The SMS Executive meets the requirements of § 673.5 and §673.23(d)(2). Please see the Roles and Responsibilities of the SMS Executive in Section 4-Safety Management Policy.</p>		
Mode(s) of Service Covered by This Plan	Fixed-route Bus and Demand Response	List All FTA Funding Types (e.g., 5307, 5310, 5311)	5307, 5310, 5339
Mode(s) of Service Provided by the Transit Agency (Directly operated or contracted service)	<p>Fixed-route Bus – directly operated</p> <p>Demand Response – directly operated</p>		
Does the agency provide transit services on behalf of another transit agency or entity?	NO	Description of Arrangement(s)	N/A
Name and Address of Transit Agency(ies) or Entity(ies) for Which Service Is Provided	N/A		

System Description

History

In 1991, the City of Santa Fe ordinance was passed enabling the formation of Santa Fe Trails. The purpose of this legislation was to:

- provide safe and efficient transit services
- reduce congestion, crashes, and pollution caused by single-occupant vehicles;
- extend the life of the city's roads by reducing traffic;
- provide transportation alternatives to residents, particularly transit-dependent groups such as seniors, youth, low-income, and mobility-impaired residents;
- provide residents with better access to educations and higher-paying jobs, and;
- reduce oil dependence by incorporating the use of alternative fuels; such as CNG.

Governing Body

Santa Fe Trails is governed by the Transit Advisory Board (TAB) along with the Mayor and an eight-member Council that represents the four districts within the City of Santa Fe. The TAB consists of nine representatives who represent Seniors, At-large, ADA, Business, Tourism, Intuitions and Government, and Education.

Description

The Santa Fe Trails fixed route system launched in January of 1993, which is the city of Santa Fe's small urban transit system and provides the greatest level of fixed service to the area. Santa Fe Trails is serviced by a fleet of 32 state-of-the-art buses and hosts ten distinct routes. The Transit Division also operates the Santa Fe Pick-Up, which provides free shuttles around downtown and to Museum Hill, utilizing four cutaway vans. The Transit Division also operates Santa Fe Ride, the Complementary Paratransit Service for ADA and Seniors, using 18 vehicles of varying sizes. Santa Fe Trails was the nation's first transit system to operate its entire fleet with cleaner-burning compressed natural gas (CNG). Its mission is to provide transit service in the City of Santa Fe (and parts of Santa Fe County) to get area residents and visitors where life takes them and boasts an annual ridership close to 1 million.

Santa Fe Trails Executive Leadership

The Director of Operations and Maintenance serves as the director of the City of Santa Fe's Transit Division. Since he has responsibility for the Transit Asset Management (TAM) Plan, this position serves as the Accountable Executive. Because of the leadership structure and the fact that Santa Fe Trails does not have a safety manager position, the Grant Administrator – Writer serves as the SMS Executive. The Director of Operations and Maintenance also presently has safety oversight responsibilities.

Goals

- provide a level of service that meets, if not exceeds, industry standards;
- identify, eliminate, minimize, and control safety hazards and their associated risks, and;
- comply with the applicable requirements of regulatory agencies.

Agency Safety Plan and Safety Management System (SMS)

Santa Fe Trails developed this safety plan to comply with 49 CFR Part 673, the PTASP regulation. This plan also serves as an "SMS user's manual" that guides Santa Fe Trails in the successful implementation and operation of its SMS.

The FTA defines SMS as:

“The formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency’s safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing risks and hazards.”

Furthermore, SMS is a comprehensive, collaborative approach that brings management and labor together to build on the transit industry’s existing safety foundation to control risk better, detect and correct safety problems earlier, share and analyze safety data more effectively, and measure safety performance more carefully.

Santa Fe Trails’ SMS has four distinct components, which are discussed in subsequent sections of this safety plan:

- Safety management policy
- Safety risk management
- Safety assurance
- Safety promotion

2. Plan Development, Approval, and Updates

Name of Entity that Drafted this Plan	Santa Fe Trails	
Signature by the Accountable Executive	Signature of Accountable Executive	Date of Signature
	<i>Thomas Martinez</i> <i>Director of Operations & Maintenance</i>	Dec 1, 2022
Approval by the Board of Directors or an Equivalent Authority	Name of Entity that Approved	Date of Approval
	Santa Fe City Council	
	Relevant Documentation (title and location)	
	City Council Minutes link	
Certification by State Department of Transportation	N/A	

Version Number and Updates			
Version Number	Section/Pages Affected	Reason for Change	Date Issued
1		New Document	12/2021
2		Update	12/2022

Annual Review and Update of the Public Transportation Agency Safety Plan
This Santa Fe Trails Agency Safety Plan and its safety performance targets will be jointly reviewed and updated by the Accountable Executive and the SMS Executive by July 1 st of each year. The Accountable Executive will review and approve any changes, sign the new ASP, and forward to the Santa Fe City Council for final review and approval.

3. Safety Performance Targets

Safety Performance Targets							
The targets listed below are based on reviews of the previous five years of Santa Fe Trails' safety performance data.							
Mode of Transit Service	Fatalities (total)	Fatalities (per 100 thousand VRM)	Injuries (total)	Injuries (per 100 thousand VRM)	Safety Events (total)	Safety Events (per 100 thousand VRM)	System Reliability (VRM / failures)
Fixed Route	0	0	22	4	16	3	1.75
Demand Response	0	0	4	2	4	2	2.1

Safety Performance Target Coordination		
The Santa Fe Trails Accountable Executive shares its safety performance targets with the Santa Fe Metropolitan Planning Organization (MPO) each year after its formal adoption by the Santa Fe City Council. The Accountable Executive also provides a copy of our formally adopted Safety Plan, including safety performance targets, to the New Mexico Department of Transportation (NMDOT). Santa Fe Trails personnel are available to coordinate with NMDOT and the MPO in the selection of NMDOT and MPO safety performance targets upon request.		
Targets Transmitted to the State	State Entity Name	Date Targets Transmitted
	New Mexico Department of Transportation	12/2022
Targets Transmitted to the Metropolitan Planning Organization(s)	Metropolitan Planning Organization Name	Date Targets Transmitted
	Santa Fe Metropolitan Planning Organization	12/2022

4. Safety Management Policy

Santa Fe Trails Safety Management Policy Statement (SMPS)

To all Santa Fe Trails Staff:

Santa Fe Trails developed a Public Transportation Agency Safety Plan (PTASP) in accordance with the Federal Transit Administration (FTA) final rule 49 CFR Part 673. This rule requires the development of a uniform system of public transit safety management, called the Safety Management System (SMS). As the Director of Operations and Maintenance at Santa Fe Trails, I will be our Accountable Executive as specified under the new regulations. Ultimately, I am responsible to ensure the successful implementation of the new safety standards, which will be upheld throughout our organization.

To facilitate this process, I will support the efforts to integrate this Policy Statement. This document will serve as a guiding beacon as we adopt and follow the federal safety guidelines.

Safety has always been a core value of Santa Fe Trails, and managing safety is a core business commitment for our agency. Santa Fe Trails is committed to developing, implementing, maintaining, and continuously improving our daily practices to ensure the safety of our customers, employees, contractors, and the public. Santa Fe Trails will use the safety management processes to guide the prioritization of safety and allocate our organizational resources (such as people, funding, and technology) to integrate into our everyday operations. We aim to develop and support a robust safety culture and achieve the highest levels of safety performance set forth by the FTA.

Santa Fe Trails is committed to the following core capacities:

Executive Commitment to Safety—Executive Management will lead the development of an organizational culture that promotes safe operations. We will provide appropriate resources to support the PTASP development by fostering and ensuring safe practices, improving procedures when needed, and encouraging effective employee safety reporting and communication. Santa Fe Trails will keep every executive, manager, and employee accountable for our priority of safe operations.

Communication & Training—Employee engagement is crucial to a functioning SMS. Communication systems will be developed and fine-tuned to enable greater awareness of Santa Fe Trails safety objectives, performance targets, and ongoing safety communication throughout every level of our organization. All levels of management must proactively engage employees, and continuously work to keep the lines of safety communication simple, honest, and open. All employees will be made aware of the importance of Santa Fe Trails' SMS and trained in any new or improved safety reporting procedures.

Responsibility & Accountability—All employees, managers, and contractors will be responsible for delivering safe and quality transit services that represents Santa Fe Trails' performance standards. Each manager will take an active role in the SMS process and ensure that the Safety Assurance functions are supported and advocated. Managers are also responsible for ensuring that Safety Risk Management is being performed in their operational areas of control to assure that the safety risk associated with identified safety hazards is assessed and mitigated. Safety performance will be an important part of annual performance evaluations for all Santa Fe Trails employees and managers.

Employee Reporting—We will institute a safety reporting program as a viable tool for employees to

clearly voice their safety concerns. All frontline employees will be responsible for utilizing this program as part of the SMS. No action will be taken against any employee who communicates a safety condition through the Santa Fe Trails safety reporting program, unless such disclosure indicates the following: an illegal act, gross misconduct or negligence, or a deliberate or willful disregard of Santa Fe Trails rules, policies, and procedures.

Performance Monitoring & Measurement—Santa Fe Trails will establish realistic measures of safety performance and safety performance targets to ensure our continuous improvement. A team of our employees, representing different crafts within the organization, will work together with management to verify that the resulting safety risk mitigations are appropriate, helpful, and effective.

Review & Evaluation—Santa Fe Trails will measure our SMS performance by analyzing our key safety performance indicators, reviewing inspections, and evaluating our corrective action reports. These activities will become the basis for revising or developing safety objectives, safety performance targets, and the overall Agency Safety Plan with the goal of continuous, effective safety improvements. The Agency Safety Plan is a living document and frequently monitored for applicability and functionality.

Thank you for your full cooperation in building a safer workplace for all of our employees and customers.

Sincerely,

Thomas Martinez

Director of Operations and Maintenance
Santa Fe Trails

Safety Management Policy Communication

In May 2020 the Transit Training Administrator held our monthly staff training for all employees. A paper copy of the policy was distributed to each employee as well as obtaining a signature of receipt to acknowledge receipt of the Safety Management Policy Statement (SMPS). The SMPS was also posted on bulletin boards within the facility along with a link posted on the Santa Fe Trails website.

Authorities, Accountabilities, and Responsibilities

Roles and Responsibilities of the Accountable Executive

The Santa Fe Trails Accountable Executive has ultimate responsibility for carrying out the Agency Safety Plan. The Accountable Executive has control or direction over the human and capital resources needed to develop and maintain this Agency Safety Plan.

The Accountable Executive is accountable for ensuring that Santa Fe Trails effectively implements its SMS throughout the agency and addresses SMS substandard safety performance. The Accountable Executive is responsible for signing SMS implementation planning documents and endorsing SMS implementation team membership.

The Accountable Executive may delegate specific responsibilities, but the ultimate accountability for Santa Fe Trails safety performance cannot be delegated and always rests with the Accountable Executive.

The Santa Fe Trails Accountable Executive's roles include, but are not necessarily limited to:

- Decision-making about human and capital resources needed to support asset management, SMS activities, and capital investments;
- Maintaining the Transit Asset Management (TAM) Plan;
- Signing SMS implementation planning documents, and ensuring that SMS is effectively implemented throughout Santa Fe Trails public transportation system;
- Ensuring action is taken to address substandard performance in Santa Fe Trails SMS;
- Endorsing SMS implementation team membership;
- Developing and maintaining SMS documentation;
- Directing hazard identification and safety risk assessment;
- Monitoring safety risk mitigation activities;
- Planning safety management training; and
- Providing periodic reports on safety performance.

Roles and Responsibilities of the SMS Executive

The SMS Executive supports the Accountable Executive in developing, implementing, and operating Santa Fe Trails' SMS. The SMS Executive reports directly to the Accountable Executive for matters involving SMS.

The SMS Executive's role includes:

- Assisting in developing and maintaining SMS documentation;
- Assisting in hazard identification and safety risk assessment;
- Assisting in safety risk mitigation activities;
- Assisting in planning safety management training, and;
- Other duties as assigned/necessary

Santa Fe Trails identifies and documents all the SMS-related organizational accountabilities and responsibilities of the SMS Executive job function, and this documentation is captured and stored in the Accountable Executive's office.

Agency Leadership and Executive Management Roles

Members of Santa Fe Trails' leadership have authorities and responsibilities for the day-to-day implementation and operation of the agency's SMS.

Santa Fe Trails Agency Leadership and Executive Management include:

- Director of Maintenance and Operations
- Grant Administrator – Writer
- Supervisors
- Training Administrator
- Fleet and Facilities Manager
- City Council
- Transit Advisory Board (TAB)
- Mayor
- City Manager

The Agency Leadership and Executive Management are responsible for the following accountabilities and responsibilities of this plan. Its roles include, but are not necessarily limited to:

- Overseeing the implementation and operation of Santa Fe Trails' SMS;
- Providing input into the allocation of resources to accomplish the goals and objectives of the agency safety plan;
- Providing oversight and maintaining compliance with the agency safety plan;
- Modifying policies consistent with the implementation of the agency safety plan;

Key Staff Roles

Santa Fe Trails' Key Staff has the following accountabilities and responsibilities of this plan. Its roles include, but are not necessarily limited to:

- Assisting the Accountable Executive and the SMS Executive in developing, implementing, and operating the SMS. Based on responsibilities and expertise, the Key Staff assist in hazard identification, safety risk assessment, safety risk mitigation, safety performance monitoring, safety performance measurement, safety training, and safety communication activities.
- Key staff plays a significant role as subject matter experts in hazard identification, safety risk assessment, safety risk mitigation, and safety performance monitoring activities.
- Key staff functions that bring experience and expertise to bear on SMS activities include:
 - Managers;
 - Supervisors
 - Dispatchers;
 - Bus Operators;
 - Vehicle Mechanics, and;
 - Other skilled professionals as needed.
- Safety Meetings: All staff are mandated to attend our Safety Meetings which are held the 3rd Wednesday of each month. With the purpose of presenting and discussing potential hazards

- and strategies to mitigate the consequences of those hazards. Management and Supervisors are required to attend a weekly meeting with the same mission.
- During the safety meetings, the Agency Safety Plan is presented to frontline safety representatives.

Employee Safety Reporting Program

Santa Fe Trails has established and implemented a formal safety reporting program that allows its employees to voluntarily report any safety issues, conditions, or concerns they may see during their day-to-day delivery of transit services. This voluntary safety reporting program is separate from Santa Fe Trails' mandatory reporting requirements for accidents and incidents.

The employee safety reporting program (ESRP) provides protections for employees who report safety issues, concerns, or conditions and ensures that discipline will not be applied, and employees have protection against reprisal or any other adverse action for reporting a safety issue, concern, or condition.

The ESRP also describes employee behaviors that are not protected under the program and may result in disciplinary action, such as an employee engaged in an illegal act, committed gross negligence, or deliberately or willfully disregarded regulations or Santa Fe Trails' procedures.

The ESRP clarifies:

- What to report, what not to report, and how to report;
- What managers should do when employees report safety concerns;
- How reports are documented; and
- How employees will receive feedback about the results of their reports.

The reporting system is simple to use and available to all Santa Fe Trails employees. Santa Fe Trails' ESRP addresses the following:

- Who is responsible for developing and managing the employee safety reporting program;
- Timely response to employee safety reports.
- How the agency provides feedback to employees on the action(s) taken to address the reported safety issue, condition, or concern;
- Investigation of reported safety issues, conditions, or concerns for causal or contributing factors.
- How the transit system documents and reviews safety issues, conditions, or concerns to determine if a hazard exists; and
- If the issue is determined to be a hazard, how the hazard is then entered into the safety risk management process.

Santa Fe Trails is committed to providing feedback to its employees who report a safety issue, condition, or concern. This feedback is provided either directly in a one-on-one conversation or through the safety meeting platform. The feedback addresses what, if any action, will be taken to address the reported safety issue, condition, or concern.

Forms are available in dispatch for employees to fill out and report any safety issues, conditions, or concerns along with a dispatch log for employees who report over the radio. There is also the ability for each employee to e-mail a safety issue, concern, or condition directly to management. If an employee

does not have access to e-mail, they can contact the call center at 505-955-2001 and the safety issue, condition, or concern will be logged and management immediately informed via email. The general public can also utilize e-mail via the City of Santa Fe website and the call center as mentioned above.

A description of the ESRP is kept in the Accountable Executive's office at Santa Fe Trails Headquarters. The ESRP is distributed to all current employees during the training provided on employee safety reporting and new employees during their new-hire orientation.

5. Infectious Diseases

Santa Fe Trails monitors the guidance from CDC as well as state and local health authorities and follows recommended strategies incorporated in our guidelines in order to minimize exposure to employees and passengers.

6. Safety Risk Management (SRM)

Santa Fe Trails uses the SRM process as a primary method to ensure the safety of our operations, passengers, employees, vehicles, and facilities. It is a process wherein hazards and their consequences are identified, assessed for potential safety risk, and resolved in a manner acceptable to Santa Fe Trails' leadership. The Santa Fe Trails SRM process allows us to carefully examine what could cause harm, determine whether we have taken sufficient precautions to minimize the harm, or if further mitigations are necessary.

The Accountable Executives supported by the SMS Executive leads the Santa Fe Trails SRM process to identify hazards and consequences, assess safety risk of potential consequences, and mitigate the safety risk. The results of the SRM process are documented in the Safety Risk Register and referenced materials.

The SRM process applies to all elements of the system, including operations, maintenance, facilities, vehicles, personnel recruitment, employee training, and supervision.

Overall, the Santa Fe Trails SRM process includes the following steps that are carried out under the guidance of the Accountable Executive, supported by the SMS Executive, with input from appropriate subject matter experts:

- Identify hazards
- Identify the potential consequences of each hazard
- Evaluate consequences in terms of probability and severity
- Prioritize risk using our formal risk matrix
- Communicate prioritized risk to the Accountable Executive
- Based on the Accountable Executive's approval, create safety risk mitigations to eliminate or reduce the effects of hazards.
- Implement the mitigation
- Create a strategy for monitoring mitigation effectiveness

In carrying out the SRM process, Santa Fe Trails uses the following terms:

- **Safety event** – Any accident, incident, or occurrence.
- **Hazard** – Any real or potential condition that can cause injury, illness, death, damage to/loss of facilities, equipment, rolling stock, or infrastructure belonging to SANTA FE TRAILS, or damage to the environment.
- **Risk** – Composite of predicted severity and likelihood of the potential effect of a hazard.
- **Risk Mitigation** – Method(s) to eliminate or reduce the effects of hazards.
- **Consequence** – An effect of a hazard involving injury, illness, death, or damage to SANTA FE TRAILS property or the environment.

Safety Hazard Identification

All subsequent safety risk management activities are contingent on effectively identifying sources for hazard identification and the processes to obtain information on hazards.

Santa Fe Trails has developed methods and processes to identify hazards and consequences of the hazards. Santa Fe Trails considers, as a source for hazard identification, data and information provided

by City Management and the City Council, the FTA, and NMDOT. Santa Fe Trails also considers the results of its asset condition assessments when performing safety hazard identification activities through its SMS. The results of the condition assessments and safety risk management activities help inform Santa Fe Trails' determination as to whether an asset meets the state of good repair standards under 49 CFR Part 625.

The Accountable Executive, supported by the SMS Executive, is responsible for overseeing and facilitating Santa Fe Trails' hazard identification process. The Accountable Executive is also responsible for documenting identified hazards and ensuring that subject matter experts identify the potential consequences of those hazards. Information related to hazard identification and consequence determination is stored in the Santa Fe Trails' Safety Risk Assessment register, which is an Excel spreadsheet that allows for the documentation of all identified safety hazards and the subsequent activities related to addressing those hazards. This risk register is maintained by the Accountable Executive.

The safety hazard identification process helps Santa Fe Trails identify hazards and potential consequences in the operation and maintenance of the system. Hazards are identified through a variety of sources, including:

- Employee Safety Reporting
- Review of Vehicle Camera Footage
- Review of Monthly Performance Data Sheets
- Observation from Supervisors
- Maintenance Reports
- Comments from Customers and Passengers
- Employee Safety Meetings
- Manager and Supervisor Safety Meetings
- Results of audits and inspections of vehicles and facilities
- Results of training assessments
- Results of internal safety audits
- Investigations into safety events, incidents, and occurrences, and;
- FTA, the New Mexico Department of Transportation, and other oversight authority agencies.

The Accountable Executive, with support from the SMS Executive, reviews these sources for hazards and documents them in Santa Fe Trails' safety risk register.

The Accountable Executive also enters hazards into the safety risk register from reviews of the Santa Fe Trails operations and maintenance, results of audits and observations, and information received from FTA, New Mexico Department of Transportation, and other oversight authorities, including the National Transportation Safety Board.

The Accountable Executive or SMS Executive may conduct further analysis of hazards and consequences entered into the Safety Risk Register to collect information, identify additional consequences, and to inform management which hazards should be prioritized for safety risk assessment. In following up on identified hazards, the Accountable Executive or SMS Executive may:

- Reach out to the reporting party, if available, to gather all known information about the reported hazard;
- Conduct a walkthrough of the affected area, assess the possible hazardous condition/s, generate

visual documentation (photographs and/or video), and take any measurements that are deemed necessary;

- Conduct interviews with employees in the area to gather potentially relevant information on the reported hazard;
- Review any documentation associated with the hazard (such as records, reports, procedures, inspections, technical documents, etc.);
- Contact other departments that may have association with or technical knowledge relevant to the reported hazard;
- Review any previously-reported hazards of a similar nature; and
- Evaluate tasks and/or processes associated with the reported hazard.

Any identified hazard that poses a real and immediate threat to life, property, or the environment must immediately be brought to the attention of the Accountable Executive and addressed through the SRM process for safety risk assessment and mitigation. This signifies the belief that immediate intervention is necessary to preserve life, prevent major property destruction, or avoid harm to the environment that would constitute a violation of the Environmental Protection Agency or NMDOT environmental protection standards.

Santa Fe Trails involves subject matter experts in safety hazard identification processes by matching the experience and expertise of the individual(s) with the type of hazard to be analyzed. For example, if the hazard is operations related, then the primary subject matter experts will be from operations; if the hazard is vehicle maintenance related, that type of hazard requires vehicle maintenance expertise and skills.

Determination of the potential consequences of hazards drives our safety risk assessment activities. Hazards in and of themselves do not cause damage. It is the consequences of hazards that cause injuries and death, destroy property, harm the environment, or impair the ability of a transit provider to deliver transit services. Santa Fe Trails subject matter experts identify the potential consequences of hazards, keeping in mind that a single hazard could have many potential consequences. Each potential consequence is identified and recorded.

The Accountable Executive is responsible for ensuring that the documentation of hazards and consequences is taking place.

Safety Risk Assessment

Santa Fe Trails has established processes to assess the safety risk associated with identified safety hazards. These safety risk assessment processes include an assessment of the likelihood and severity of the consequences of the hazards, including existing mitigations and prioritization of the hazards, based on the safety risk.

Assessing the likelihood and severity of hazard consequences is the first step in prioritizing safety risk. Santa Fe Trails established procedures for assessing the safety risk of the consequences of identified safety hazards and prioritizing the hazards based on this safety risk. The agency assesses safety risk in terms of likelihood (the probability of a consequence occurring) and severity (the seriousness of a consequence, if it does occur). A color-coded safety risk index provides a rating system to use with a safety risk assessment matrix to prioritize safety risk. The safety risk assessment matrix helps us determine the probability and severity of consequences and allows for prioritization of safety risk. The

safety risk assessment risk matrix used by Santa Fe Trails is presented in Appendix E: Safety Risk Assessment Matrix.

Santa Fe Trails chooses subject matter experts to involve in safety risk assessment by matching the experience and expertise of subject matter experts with the type of hazard under assessment. This assessment is carried out under the guidance of the Accountable Executive or SMS Executive using Santa Fe Trails' safety risk assessment matrix.

Safety risk prioritization is linked to safety risk mitigation creation. Prioritizing our safety risk provides the Accountable Executive with the information needed to make decisions about resource application. It helps Santa Fe Trails apply its limited time, financial, and human resources to the highest priority transit safety risk. The Accountable Executive is the ultimate decision-maker on applying resources to mitigate high priority transit safety risk.

Safety Risk Mitigation

Developing safety risk mitigations to proactively reduce the agency's safety risk is the culmination of the safety risk management process. Santa Fe Trails has established processes to identify mitigations or strategies necessary, as a result of its safety risk assessment activities, to reduce the likelihood and severity of its consequences. The Accountable Executive with support from the SMS Executive is responsible for guiding and overseeing the subject experts during the risk mitigation process at Santa Fe Trails. Safety risk mitigations requiring additional resources or changes in agency policy are approved by the Accountable Executive.

Santa Fe Trails has established procedural steps for creating safety risk mitigations to address the potential consequences of its prioritized risk. The steps include how Santa Fe Trails determines when safety risk mitigation is necessary, and the job function(s) or position(s) that is responsible for creating mitigations. Within these procedural steps, Santa Fe Trails references any forms used to create mitigations and describes how it will record the results of this activity and where these recorded results are stored or maintained. Santa Fe Trails understands that the goal of a mitigation is to reduce assessed safety risk to an acceptable level. It is unrealistic that a transit operation can assume that it will be able to completely eliminate all safety risk.

Santa Fe Trail's safety risk mitigation steps include:

- Examining the consequences of hazards and their probability and severity
- Develop strategies to reduce the probability and/or severity of those consequences
- Ensure the strategy can be realistically implemented with available resources
- Turn the strategy into a mitigation plan
- Put the mitigation plan into place
- Create a plan for monitoring the effectiveness of the mitigation

After creating a safety risk mitigation that may have involved subject matter expertise, Santa Fe Trails develops and documents a strategy for implementing the mitigation. These implementation strategies include:

- who is responsible for implementing the mitigation;
- where the mitigation will reside within agency activities;
- how the mitigation will be implemented, and;

- how long implementation should take.

Santa Fe Trails needs to know that its mitigations are working. When we develop a mitigation, we also define and document the way the mitigation will positively impact safety performance so that we can then monitor whether that positive impact is taking place and if the mitigation is effective. Under the guidance of the Accountable Executive and/or SMS Executive, the subject matter experts involved in creating a safety risk mitigation also decide on the best ways to monitor the effectiveness of the mitigation being implemented. This includes developing and documenting monitoring strategies. Santa Fe Trails created strategies for monitoring the effectiveness of mitigations. These strategies provide consistency in monitoring activities, regardless of whether the mitigation is implemented in operations, maintenance, or administration.

Santa Fe Trails understands that successful mitigation implementation and monitoring activities depend on having a process for how it will formally communicate mitigation and monitoring strategies to operations, maintenance, or administration staff who will implement and monitor the mitigations. Santa Fe Trails has documented this process. This communication feeds cross-functional ownership in SMS processes since employees who create the mitigations may not be the same employees that implement and monitor the mitigations.

Strong documentation of safety risk mitigations feeds safety performance monitoring. Santa Fe Trails has established and documented how it will record all of its various safety risk mitigation activities and their outcomes. Within this process, Santa Fe Trails references any forms that it uses during safety risk mitigation activities and where the completed records of safety risk mitigation activities are stored.

7. Safety Assurance

Santa Fe Trails has established processes to:

- Monitor its operations for compliance with and sufficiency of its policies and procedures;
- Santa Fe Trails works to ensure that it is performing maintenance which is consistent with Santa Fe Trails' ability to safely meet its operational requirements and in compliance with all safety policies and procedures;
- Monitor its operations to identify any safety risk mitigations that may be ineffective, inappropriate, or that were not implemented as intended;
- Conduct investigations of safety events to identify causal factors, and;
- Monitor the effectiveness of its employee safety reporting program.

Safety Performance Monitoring and Measurement

Santa Fe Trails has many processes in place to monitor its entire transit system for compliance with operations and maintenance procedures, including:

- Safety audits;
- Informal inspections;
- Regular review of on-board camera footage to assess drivers and specific incidents;
- Investigation of safety occurrences;
- Safety review prior to the launch or modification of any facet of service;
- Daily data gathering and monitoring of data relating to the delivery of service using its RouteMatch software, and;
- Regular vehicle inspections and preventative maintenance.

Results from the above processes are compared against recent performance trends both quarterly and annually to determine where corrective actions need to occur. The Accountable Executive enters any identified non-compliant or ineffective activities, including any resulting mitigations, back into the SRM process for reevaluation.

Operations Monitoring

The Accountable Executive and operations supervisors are responsible for ensuring and documenting the system's compliance with and sufficiency of its operations policies and procedures. Santa Fe Trails has checklists and forms that it uses to drive and document its operations monitoring activities. This documentation is stored within Santa Fe Trails' safety performance monitoring files located in the Accountable Executive's office.

The operational areas that are monitored for compliance with policies and procedures include but are not limited to:

- Bus operator pre-trip inspections;
- Bus operator behind the wheel performance;
- Bus operator passenger assistance;
- Bus operator emergency response, and;
- Operation Supervisor and Dispatch activities.

When Santa Fe Trails' monitoring activities determine lack of compliance with operations policies and procedures or inadequacies of those policies and procedures, it then uses this information to feed Santa

Fe Trails' hazard identification and safety risk assessment process.

Within these documented processes, Santa Fe Trails describes:

- the job functions responsible for the different areas of field observations;
- how it will record the results of field observations;
- where these records are stored, and;
- how it will address hazards or safety issues identified during field observations.

Santa Fe Trails has established and documented emergency procedure checklists that supervisors and dispatchers can readily access to help direct their response to bus operators who may experience an emergency during revenue service. These procedures include, but are not limited to:

- responding to accidents and incidents;
- evacuating a vehicle under smoke and fire conditions, and;
- responding to a potentially dangerous passenger and other security threats.

Vehicle Maintenance Monitoring

Santa Fe Trails monitors the following areas of its vehicle maintenance and documents all monitoring activities and their results:

- Mechanic skills and performance;
- Adherence to preventive maintenance schedules;
- Effectiveness of corrective maintenance activities, and;
- Maintenance-related vehicle road calls.

Facility Safety Inspections

Santa Fe Trails maintenance management with support from City personnel conduct periodic facility safety, shop safety, and HAZMAT inspections. These inspections are documented as well as activities to mitigate any problems identified during the inspections. These records are kept in the Accountable Executive's office.

Fire Hazard and Fire Extinguisher Inspections

Santa Fe Fire Department and Risk Management division conduct independent annual fire inspections at our facilities. Santa Fe Trails utilizes independent contractors to inspect and replace facility and vehicle and facility fire extinguishers as well as fire safety systems on an annual and as needed basis.

Field Observations of Service Delivery

Santa Fe Trails has documented processes that it uses to conduct field observations of safety-related aspects of the following elements of service delivery:

- bus stops;
- bus transfer locations;
- fixed-route schedules and service delivery; and
- paratransit/demand response scheduling and service delivery.

The Accountable Executive, supported by the SMS Executive, has overall responsibility to ensure that this monitoring is carried out and documented. Field observations are carried out by operations, maintenance, and administrative staff. If deficiencies are noted during the monitoring process, these deficiencies are documented and addressed as a source of proactive hazard identification through Santa Fe Trails' safety risk management processes. All these service delivery monitoring activities are

documented and stored in the Accountable Executive's office.

Risk Mitigation Monitoring

The Accountable Executive with support from the SMS Executive and operations, maintenance, and administrative staff has responsibility for monitoring operations to identify any safety risk mitigations that may be ineffective, inappropriate, or not implemented as intended. The actual field monitoring of the mitigations is often carried out by subject matter experts, including those that assisted in the creation of the mitigation of the SRM process.

Santa Fe Trails documents how it carries out these monitoring strategies to periodically assess the effectiveness of safety risk mitigations.

Activities to monitor the effectiveness of safety risk mitigations ultimately assist Santa Fe Trails in determining whether:

- the existing mitigation is working as desired;
- the existing mitigation needs some modification to work as desired;
- the existing mitigation is not working and needs to be replaced, or;
- the existing mitigation is no longer needed.

The results of mitigation monitoring activities are made available for further safety risk management activity if needed. Mitigation monitoring documentation is stored in the Accountable Executive's office.

Safety Event Investigation

Responsibility for Santa Fe Trails safety event investigation process is shared by the Accountable Executive and the SMS Executive. Actual performance of safety event investigations, including identifying causal factors, involves not only the Accountable Executive and SMS Executive but also Operations Supervisors, Maintenance Staff, and Training Staff. Local law enforcement responds to accident scenes, as well.

Safety event records provide critical baseline information to support SMS implementation, operation, and safety performance target achievement.

Santa Fe Trails has documented procedures for safety event investigation. Santa Fe Trails has forms, consistent with industry standards, for documenting the results of safety events as well as the subsequent investigation. Safety event documentation is on file in the Accountable Executive's office.

After a safety event investigation is complete, Santa Fe Trails management, with input from subject matter experts, determines whether the safety event was preventable or non-preventable and based on that decision, whether discipline of employees involved is required.

Santa Fe Trails takes the process a step further and performs causal analysis of safety events to help determine if latent organizational factors, beyond individual employee behavior, may have contributed to the event. The results of causal analysis are documented on a causal analysis form. Records of the results of the analysis of the forms are kept in the Accountable Executive's office.

Results of this analysis for causal factors provide potential hazard identification information that may need to be put through Santa Fe Trails' safety risk management process to reduce the potential risk of recurrence of a similar accident or incident.

Employee Safety Reporting Program Monitoring

An effective ESRP supports hazard identification. The Accountable Executive with support from the SMS Executive is responsible for monitoring the transit agency's ESRP.

Santa Fe Trails has established and documented the activities it will use on an ongoing basis to monitor whether its ESRP is effective and achieving desired outcomes. Within this process, Santa Fe Trails has established criteria that will determine if the program is performing as desired. Some of the criteria include: volume of reports received, value of reports received, response to reports received in terms of hazard identification risk assessment and risk mitigation, how information gathered from the ESRP is shared and communicated, and the timeliness and accuracy of feedback provided to employees who have reported a safety issue, concern, or condition.

Documentation on all aspects of monitoring the safety reporting program is stored in the Accountable Executive's office.

Safety Performance Measurement

Santa Fe Trails is committed to periodically measuring its safety performance. This measurement includes using not only using safety performance indicators to measure the achievement of our safety performance targets but also how well we do in addressing safety risk within every aspect of our service delivery. Documentation of periodic performance measurement results is on file in the SMS Executive's office.

8. Safety Promotion

Competencies and Training

Under the guidance of the SMS Executive, the Santa Fe Trails Training Administrator has the day-to-day responsibility for the development, delivery, and documentation of all SMS-related safety skill competencies and SMS training.

Santa Fe Trails has established competencies and training for all personnel directly responsible for safety. Training is provided to employees at-hire and on an ongoing refresher basis.

Training Needs Analyses

Santa Fe Trails periodically conducts training needs analyses to ensure that its training is up to date, and addresses critical, safety-related concerns. It carries out these training needs analyses by doing the following:

- Reviewing existing job descriptions;
- Identifying which positions, including contractors, have direct responsibility for determining when safety training is needed;
- Determining what SMS roles, responsibilities, and processes are missing from job descriptions, and;
- Updating job descriptions to reflect SMS practices.

New-Hire Bus Operator Training Program

Santa Fe Trails has comprehensive lesson plans for new-hire, classroom, and hands-on bus operator training. Continuation of skill training helps it identify hazards, such as training gaps or outdated lesson plans. Lesson plans and schedules not only assist the instructor in delivering the training but also provide a record of the content of the training should it be needed for any other purpose. All Santa Fe Trails new-hire bus operator lesson plans and schedules are kept on file in the Training Administrator's office.

Bus Operator Refresher Training

Santa Fe Trails presently provides monthly bus operator refresher training on a variety of topics, including defensive driving, bloodborne pathogens, wheelchair securement, emergency procedures, active shooter, de-escalation, and ergonomics.

Santa Fe Trails maintains lesson plans, agendas, and sign-in sheets to document the content of refresher training and individual attendance at that training. These documents are on file in the Training Administrator's office.

Santa Fe Trails also provides retraining for Bus Operators for performance deficits.

Supervisors, Dispatchers, and Mechanic Training

Supervisors, dispatchers, and mechanics play a critical role in identifying and responding to hazards, and helping to both proactively and reactively mitigate risk. Training for supervisors, dispatchers, and mechanics primarily consists of mentoring, coaching, and on-the-job training.

Mentoring, coaching, and on-the-job training are very appropriate training approaches, but ones that need to be guided by a structured agenda of topics. Santa Fe Trails has developed checklists with topics for experienced supervisors, dispatchers, and maintenance staff to use during on-the-job training, coaching, and mentoring of trainees.

These checklists are also used to document an employee's satisfactory completion of the training and include instructor and trainee signatures and the dates the training took place. These documents are kept on file in the Training Administrator's office.

SMS Orientation

A cross-functional and multi-level understanding of SMS supports all SMS-related activities. Successful SMS implementation and operation require employee involvement and ownership at every level of the agency and within every service-delivery related function. Employees need to understand SMS; what their role is within SMS; and how they, the organization, and customers benefit from SMS success. This knowledge will nurture employee "buy-in."

Santa Fe Trails presented SMS orientation sessions for all employee functions and addressed the implications of SMS for all agency functions. This initiative addressed SMS with experienced employees. Santa Fe Trails has also plugged information on SMS into all new-hire employee orientations. Documentation of these orientations, including agenda of topics covered, signatures of trainer/trainee, are kept on file in the Training Administrator's office.

Safety Risk Management Orientation for Subject Matter Experts

Successful proactive safety risk mitigation begins with subject matter experts who have a clear understanding of their responsibilities and the skills required to carry them out.

Employees who participate in safety risk management activities as subject matter experts need to understand how to carry out their responsibilities. The SMS Executive makes sure that subject matter experts are orientated on their safety risk management responsibilities, the desired outcomes of safety risk management activities, and the importance of the effort to Santa Fe Trails' safety performance.

Documentation of the orientation process, as well as the orientations themselves, includes how the agency:

- assesses hazards for consequences;
- conducts safety risk assessments, and;
- creates safety risk mitigations.

Documentation of this ongoing activity is on file in the Training Administrator's office.

Safety Performance Monitoring Orientation

The quality of safety performance monitoring is reflected in an agency's overall positive safety performance. Employees who participate in safety performance monitoring activities need to know how to carry out their responsibilities. The Accountable Executive and SMS Executive make sure that these employees receive orientations on what their responsibilities are, the desired outcomes of safety performance monitoring, and the importance of the effort to overall agency safety performance.

Orientations include how to perform monitoring activities of both internal and contracted operations as well as external maintenance activities. Performance monitoring includes such activities as:

- field observations to ensure operations and maintenance policies and procedures are being followed correctly;
- assessing and documenting employee safety performance; monitoring the effectiveness of safety risk mitigations, and;
- evaluating the effectiveness of the employee safety program.

Documentation of these activities is kept on file in the Training Administrator's office.

Orientation on Employee Safety Reporting Program

An effective ESRP is one of the most important tools for hazard identification.

Santa Fe Trails' ESRP, at a minimum, provides the following information:

- the purpose and benefits of the program;
- guidelines on the types of safety concerns and issues employees should report;
- the reporting methods available to employees (how to report);
- an explanation of how the information will be managed and shared;
- the protections for employees who report safety concerns;
- a description of the operational behaviors that are not protected and may result in discipline, and;
- the agency's commitment to providing feedback on reported safety concerns.

Agendas of the ESRP orientation and attendance records are on file in the Training Administrator's office.

Training Documentation

Training documentation is a source of hazard identification.

Training documentation provides formal proof that employees were trained and shows that employees received timely certification and recertification in critical skill areas. Up-to-date training documentation also assists Santa Fe Trails in forecasting future training schedules.

Santa Fe Trails training documentation includes:

- records of training needs analysis for lesson plan development;
- curricula for initial and refresher training;
- training schedules and records of all completed training;
- procedures for revising training materials;
- course assessment materials, and;
- copies of individual employee training records.

Santa Fe Trails records of course completion include:

- date the training was held;
- content covered during the training session;
- length of the session;
- training format, and;
- signatures of instructor and trainee.

Records of training documentation and course completion are kept on file in the Training

Administrator's office.

Conflict Training and De-escalation Skills

Santa Fe Trails provides conflict management and de-escalation training to all staff, via on line training module and in person training.

Training Monitoring

Santa Fe Trails regularly monitors its training to ensure effectiveness. Specifically, the training monitoring process addresses the following:

- monitor training to make sure it delivers the necessary SMS skills and information;
- establish a process for reviewing and revising training courses and consider review frequency, reviewers, and decision-making process for revisions.

Safety Communication

The Accountable Executive and SMS Executive are responsible for ensuring the distribution and communication of safety and safety performance information throughout Santa Fe Trails. They are assisted in this responsibility by appropriate managers and supervisors.

Safety communication provides a foundation to build SMS processes and activities. Santa Fe Trails has ensured that all of its employees are aware of information relevant to their safety-related roles and responsibilities. This information includes explanations of changes to policies, activities, or procedures. Santa Fe Trails has documented its overall approach to safety communication and supporting safety communication activities. This overall approach to safety communication is on file in the Accountable Executive's office.

In general, Santa Fe Trails' documentation of safety communication includes details about:

- objectives of the communication;
- content;
- target audience;
- format;
- frequency of the communication, and;
- ways to ensure communication was understood.

Safety Meetings

An effective employee safety meeting process provides a strong platform for safety-related communication and dialogue, identification of safety hazards, concerns, and issues, and the delivery of refresher training.

Safety meetings give employees the opportunity to provide their input and insight for potential safety hazards.

Santa Fe Trails holds monthly employee safety meetings, which can include safety-related refresher training. Agendas for these meetings are comprehensively documented.

Santa Fe Trails' documentation of its safety meeting process includes:

- how often it schedules employee safety meetings;
- the job functions that are required to attend meetings;
- how it chooses topics to discuss during the meetings, and;
- how it addresses those topics within the employee safety meeting.
- The safety meeting provides employees with the ability to provide input for the safety plan.

Organization-Wide Communication of Safety Hazard and Safety Risk Information

A goal of safety risk management processes is to reduce safety risk for employees and customers. Safety-sensitive employees are always vulnerable to the consequences of safety hazards within the transit environment. Timely reporting to employees of newly identified safety hazards and the safety risks those hazards present can help reduce that vulnerability.

Santa Fe Trails has documented procedures for communicating hazards. The Accountable Executive and SMS Executive are responsible for making sure this communication takes place. The documentation of these procedures is on file in the SMS Executive's office.

Communication about Safety Risk Mitigations

Santa Fe Trails is committed to informing employees at every level of operations about the safety risk mitigations it is putting into effect. The reasons it provides this information are:

- it tells employees that the transit agency is doing all it can to reduce risk;
- it brings attention to employee roles and responsibilities that may be affected by new mitigations, and;
- informed employees are better situated to be a source of information on determining how well mitigations are working.

Santa Fe Trails has documented its procedures for communicating safety risk mitigations to employees along with who is responsible for making sure this communication takes place. The Accountable Executive and SMS Executive share responsibility for making sure that this communication takes place. This documentation is on file in the SMS Executive's office.

Organization-Wide Communication of Agency Safety Performance

Transit agencies implement SMS to help them continuously improve their safety performance. Communicating agency safety performance information promotes employee "buy-in" to SMS processes, thus further improving the agency's overall safety performance.

Santa Fe Trails employees should have ownership of safety. To reinforce this ownership, Santa Fe Trails periodically communicates statistics on the agency's overall safety performance to all employees regardless of job function. This includes providing information on Santa Fe Trails' status related to achieving its safety performance targets.

Santa Fe Trails has documented how it communicates safety performance information throughout its organization. The Accountable Executive is responsible for taking the lead on this communication and

making sure that it takes place. The documented procedures are on file in the SMS Executive's office.

Additional Information

Santa Fe Trails will maintain documents that describe the programs, policies, and procedures it uses to carry out its agency safety plan. It will also maintain documents not included or referenced elsewhere in this safety plan, related to the implementation of the transit agency's SMS, as well as results from SMS processes and activities.

These documents will be maintained for at least three years after their creation and made available upon request by the FTA, other federal entities, or the NMDOT. The Accountable Executive and SMS Executive will be points of contact for providing Agency Safety Plan-related information to external agencies to ensure access to these documents.

Appendix A: Definitions

Accident means an Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision of public transportation vehicles; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.

Accountable Executive means a single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

Equivalent Authority means an entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. Chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.

Event means any Accident, Incident, or Occurrence.

Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

Incident means an event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.

Investigation means the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.

National Public Transportation Safety Plan means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.

Occurrence means an Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a transit agency.

Operator of a public transportation system means a provider of public transportation as defined under 49 U.S.C. 5302(14).

Performance measure means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.

Performance target means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the Federal Transit Administration (FTA).

Public Transportation Agency Safety Plan means the documented comprehensive agency safety plan

for a transit agency that is required by 49 U.S.C. 5329 and this part.

Risk means the composite of predicted severity and likelihood of the potential effect of a hazard.

Risk mitigation means a method or methods to eliminate or reduce the effects of hazards.

Safety Event means any Accident, Incident, or Occurrence.

Safety Assurance means processes within a transit agency's Safety Management System that functions to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

Safety Management Policy means a transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.

Safety Management System (SMS) means the formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing risks and hazards.

Safety Management System (SMS) Executive means a Chief Safety Officer or an equivalent.

Safety performance target means a Performance Target related to safety management activities.

Safety Promotion means a combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.

Safety risk assessment (SRA) means the formal activity whereby a transit agency determines Safety Risk Management priorities by establishing the significance or value of its safety risks.

Safety Risk Management means a process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.

Serious injury means any injury which: (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; (2) Results in a fracture of any bone (except simple fractures of fingers, toes, or noses); (3) Causes severe hemorrhages, nerve, muscle, or tendon damage; (4) Involves any internal organ; or (5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

Small public transportation provider means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service and does not operate a rail fixed guideway public transportation system.

State means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

State of good repair means the condition in which a capital asset is able to operate at a full level of

performance.

Transit agency means an operator of a public transportation system.

Transit Asset Management Plan means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR part 625.

Appendix B: Acronyms and Abbreviations

Acronym or Abbreviation	Meaning
ADA	Americans with Disabilities Act
ASP	Agency Safety Plan
CFR	Code of Federal Regulations
CNG	Compressed Natural Gas
ESRP	Employee Safety Reporting Program
FTA	Federal Transit Administration
NMDOT	New Mexico Department of Transportation
MPO	Metropolitan Planning Organization
PTASP	Public Transportation Agency Safety Plan
SMPS	Safety Management Policy Statement
SMS	Safety Management System
SRM	Safety Risk Management
TAB	Transit Advisory Board
TAM	Transit Asset Management

Appendix C: City of Santa Fe ASP Approval Documentation

City Council Minutes link for the approval Santa Fe Trails Safety Plan

Appendix D: Certification Documentation

On December 2022, Santa Fe Trails provided an updated safety plan to ensure full compliance with Federal requirements. This update was sent to New Mexico Department of Transportation and Transit and Rail Division.

Appendix E: Santa Fe Trails Safety Risk Assessment Matrix

Risk Assessment Matrix				
SEVERITY	Catastrophic (1)	Critical (2)	Marginal (3)	Negligible (4)
LIKELIHOOD				
Frequent (A)	High	High	High	Medium
Probable (B)	High	High	Medium	Medium
Occasional (C)	High	Medium	Medium	Low
Remote (D)	Medium	Medium	Low	Low
Improbable (E)	Medium	Low	Low	Low

Severity of the Consequence		
<i>Definition Category</i>	<i>Meaning</i>	<i>Value</i>
Catastrophic	Could result in one or more of the following: death, permanent total disability, irreversible significant environmental impact that violates law or regulation, or monetary loss equal to or exceeding \$250,000.	1
Critical	Could result in one or more of the following: permanent partial disability, injuries or occupational illness that may result in hospitalization of at least one person, property damage exceeding \$25,000 but less than \$250,000, system shut down lasting between 10 minutes and 4 hours, or reversible significant environmental impact causing a violation of law or regulation.	2
Marginal	Could result in one or more of the following: injury or occupational illness resulting in one or more lost work day(s), reversible moderate environmental impact without violation of law or regulation, or monetary loss up to \$25,000, or system shutdown of less than 10 minutes	3
Negligible	Could result in one or more of the following: injury or occupational illness not resulting in a lost work day, minimal environmental impact, or monetary loss less than \$25,000.	4

<i>Qualitative Definition</i>	<i>Meaning</i>	<i>Value</i>
Frequent	Likely to Occur Frequently - more than once per month	A
Probable	Likely to Occur less than once per month but more than once per year	B
Occasional	Likely to Occur less than once per year but more than once per decade	C
Remote	Very Unlikely to Occur - once in the life of the system	D
Improbable	Almost inconceivable that the event will occur in the life of the system	E

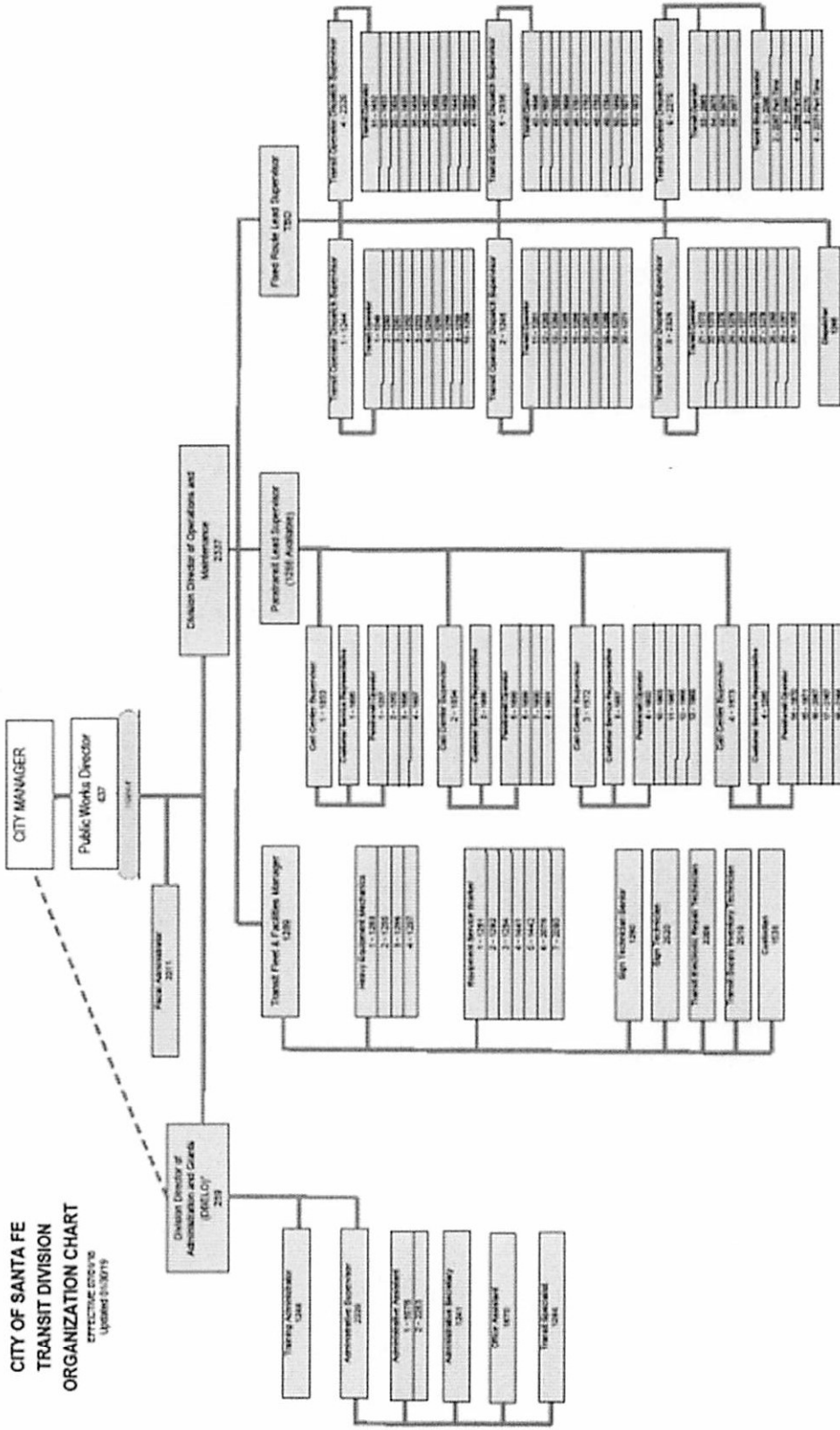
Safety Risk Levels

Risk Assessment Matrix Color Code

<i>"Tolerability" based on identified severity and likelihood.</i>	
	Unacceptable under the existing circumstances.
	Acceptable based upon mitigations; monitoring is necessary.
	Acceptable under existing circumstances; with senior management approval.

Appendix F: Santa Fe Trails Organizational Chart

**CITY OF SANTA FE
TRANSIT DIVISION
ORGANIZATION CHART**
EFFECTIVE 05/01/16
Updated 5/30/19



Notes:
 * - DBELO - Disadvantage Business Enterprise Liaison Officer for FTA Grants
 124 Total Positions (123 Position ID's) [121 Full Time and 3 Part Time]

Signature: *David A. Chapman*
David A. Chapman (Dec 1, 2022 15:10 MST)

Email: dachapman@santafenm.gov

Signature: *Thomas A. Martinez*
Thomas A. Martinez (Dec 1, 2022 15:11 MST)

Email: tamartinez@santafenm.gov

FISCAL IMPACT REPORT

General Information:

(Check) **Bill:** _____ **Resolution:** X

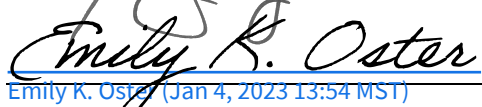
Short Title(s): Santa Fe Trails Agency Safety Plan

Sponsor(s): Councilor Cassutt

Reviewing Department(s): Public Works Department

Staff Completing FIR: David A. Chapman ^{DAC} **Date:** 1/3/2023 **Phone:** 505-660-2619

Reviewed by City Attorney:  **Date:** Jan 3, 2023

Reviewed by Finance Director:  **Date:** Jan 4, 2023
Emily K. Oster (Jan 4, 2023 13:54 MST)

Summary:

Current Bipartisan Infrastructure Law changes to the Public Transportation Agency Safety Plan (“PTASP”) require certain updates to the Santa Fe Trails Safety Agency Plan. The updated Safety Plan was completed December 31, 2022 and meets the new requirements.

Departments Affected:

Public Works Department.

Consequences of Not Enacting Legislation:

If this legislation is not adopted, the City of Santa Fe, Santa Fe Trails, will violate new requirements adopted in 49 U.S.C § 5329(d), the “Bipartisan Infrastructure Law”, which now requires communities with fewer than 200,000 people to develop their PTASP “in cooperation with frontline employee representatives.”

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

None identified.

Performance and Administrative Implications:

Once approved by the Governing Body, staff will submit the Agency Safety Plan to the Federal Transit Authority for approval and acceptance.

Fiscal Implications:

None identified.

Fiscal Impact

 X Check here if no fiscal impact

Expenditures

Expenditure Type	FYE __	FYE __	FYE __	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
<u>Personnel and</u>	\$ _____	\$ _____	\$ _____	_____	_____	_____	
<u>Benefits*</u>							
<u>Capital Outlay</u>	\$ _____	\$ _____	\$ _____	_____	_____	_____	
<u>Contractual/</u>	\$ _____	\$ _____	\$ _____		_____	_____	
<u>Professional Services</u>							
<u>Operating</u>	\$ _____	\$ _____	\$ _____		_____	_____	\$ _____
<u>Total:</u>	\$ _____	\$ _____	\$ _____				\$ _____

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

Expenditure Narrative:

The approval of Santa Fe Trails Agency Safety Plan Updated 12/1/22 will have no expenditure or revenue impact. It merely puts Santa Fe Trails in compliance with federal law.

Revenue

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

Revenue Narrative:

Signature: David A. Chapman
David A. Chapman (Jan 3, 2023 16:32 MST)

Email: dachapman@santafenm.gov

Signature: Regina Wheeler
Regina Wheeler (Jan 3, 2023 16:41 MST)

Email: rawheeler@santafenm.gov

Signature: Thomas A Martinez
Thomas A Martinez (Jan 3, 2023 16:22 MST)

Email: tamartinez@santafenm.gov






City of Santa Fe, New Mexico


Memorandum



Date: September 14, 2022

To: Governing Body

Via: Kyra Ochoa, Community Health and Safety Department Director 
Regina Wheeler, Public Works Department Director 
Rich Brown, Community Development Director 

From: Romella Glorioso-Moss, AICP, Public Works Capital Projects Manager 

RE: Ordinance Amending Sections of the City of Santa Fe's UTO and Code

ACTION:

Request for approval of a bill amending various sections of the Uniform Traffic Ordinance and the Santa Fe City Code related to bicycles to define and regulate electric bicycles or “e-bikes” on City roads and sidewalks.

BACKGROUND:

Electric bicycles, or “e-bikes,” are becoming increasingly popular statewide, including in Santa Fe. The Santa Fe Metropolitan Planning Organization (SFMPO) estimated that between 30 to 40% of bicycles in our network are now electrified, compared to 10% or less prior to 2019. However, both the City and the State have no specific laws concerning e-bikes. The Bicycling and Pedestrian Advisory Committee (BPAC) recommends that the City leads the way in regulating e-bikes by providing a model for legislation by amending sections of the Uniform Traffic Ordinance and the Santa Fe City Code.

The proposed amendments include:

- 1) establishing a definition of an e-bike
- 2) specifying that e-bikes are not motor vehicles;
- 3) prohibiting anyone under the age of 16 riding a Class 3 e-bike
- 4) limiting speed limit of bicycles and e-bikes to 10 mph on City sidewalks
- 5) removing the prohibition for bicycles to ride on a street adjacent to a sidewalk or path when bicycles are required to use the sidewalk or street
- 6) making it an offense to modify an e-bike to enhance speed capabilities without proper labeling
- 7) raising the maximum fine from \$25 to \$100 for violating this ordinance.

This legislation is in line with the City's goal to have safe pedestrian and bicycle transportation networks. The ordinance currently states that “[n]o person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing.” This legislation would retain that provision and would also limit speeds on sidewalks to 10 miles per hour. Enforcement at speeds above 10 miles per hour and below 13 miles per hour will be difficult since the City's speed detection radars' lower limit is 10-13 mph. and since the radar that most officers have will detect speed of largest objects, like vehicles, in the area. Some officers have Lidar which could point directly at a bicycle and detect speeds In addition, wattage of an e-bike, which, in combination

with other features will cause a bike to be classified as a motor vehicle, cannot be detected prior to a stop and may not be discernable after a stop. Increased calls to dispatch may be difficult to respond to timely.

ATTACHMENTS:

Bill

Fiscal Impact Report

Signature:

Email:

Signature:

Email:

Signature:

Email:

Signature: 
Romella Glorioso-Moss (Sep 14, 2022 13:09 MDT)

Email: rsglorioso-moss@santafenm.gov

underscored material = new
[bracketed material] = delete

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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2022-__

INTRODUCED BY:

Councilor Michael J. Garcia

Councilor Jamie Cassutt

AN ORDINANCE

RELATING TO ELECTRIC BICYCLES; AMENDING SECTION 12-1-6 OF THE UNIFORM TRAFFIC ORDINANCE (“UTO”) TO INCLUDE ELECTRIC BICYCLES IN THE DEFINITION OF BICYCLE; AMENDING SECTION 12-1-40 OF THE UTO TO DELINEATE ELECTRIC BICYCLES FROM MOTOR VEHICLES; AMENDING SECTION 12-1-88 OF THE UTO TO SPECIFY THAT AN ELECTRIC BICYCLE IS NOT A VEHICLE; AMENDING SECTION 12-8-1 OF THE UTO TO PROHIBIT ANYONE UNDER THE AGE OF SIXTEEN FROM RIDING A CLASS 3 ELECTRIC BICYCLE; AMENDING SECTION 12-8-10 OF THE UTO TO REGULATE AND ESTABLISH A SPEED LIMIT FOR ELECTRIC AND MANUALLY-PROPELLED BICYCLES ON CITY SIDEWALKS; AMENDING SECTION 12-8-15 OF THE UTO TO REMOVE THE PROHIBITION FOR BICYCLES TO RIDE ON A STREET ADJACENT TO A SIDEWALK OR PATH WHEN BICYCLES ARE REQUIRED TO USE THE SIDEWALK OR STREET; CREATING A NEW SECTION 12-8-18 OF THE UTO TO MAKE IT AN OFFENSE TO ENHANCE THE SPEED CAPABILITIES OF AN ELECTRIC BICYCLE; AMENDING SECTION 12-8-23 OF THE UTO TO RAISE THE MAXIMUM FINE FOR

1 VIOLATION OF CERTAIN PROVISIONS FROM TWENTY-FIVE DOLLARS TO ONE
2 HUNDRED DOLLARS; AND AMENDING SFCC 1987 SECTION 23-5.1 TO AMEND THE
3 DEFINITION OF BICYCLE TO INCLUDE ELECTRIC BICYCLES, AND TO
4 REGULATE THE USE OF ELECTRIC BICYCLES ON CITY ROADS.

5
6 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

7 Section 1. Section 12-1-6 of the Uniform Traffic Ordinance (being Ord. No.
8 2011-23, § 1) is amended to read:

9 12-1-6 BICYCLE. "Bicycle" means:

10 A. Every device propelled by human power, upon which any person may ride,
11 having two or more wheels, except scooters and similar devices[-];

12 B. Every device upon which a person may ride that is equipped with two or
13 three wheels, pedals for human propulsion, and a motor of no more than seven hundred fifty
14 (750) watts and meets the requirements of one of three classes:

15 (1) Class 1 electric bicycle means an electric bicycle equipped with a motor
16 that provides assistance only when the rider is pedaling, and that ceases to provide
17 assistance when the bicycle reaches the speed of twenty miles per hour (20 mph).

18 (2) Class 2 electric bicycle means a bicycle equipped with a motor that
19 provides assistance to propel the bicycle even when the rider is not pedaling, and that is
20 not capable of providing assistance when the bicycle reaches the speed of twenty miles per
21 hour (20 mph).

22 (3) Class 3 electric bicycle means an electric bicycle equipped with a motor
23 that provides assistance only when the rider is pedaling, and that ceases to provide
24 assistance when the bicycle reaches the speed of twenty-eight miles per hour (28 mph).

25 C. Devices with motors outputting more than 750 watts or that can achieve a

1 maximum speed more than 28 mph on a paved level surface when powered solely by such a motor
2 while ridden by an operator who weighs 170 pounds are motor vehicles.

3 D. Bicycles defined in paragraph B may also be referred to as “electric bicycles”

4 **Section 2. Section 12-1-40 of the Uniform Traffic Ordinance (being Ord. No.**
5 **2011-23, § 1) is amended to read:**

6 **12-1-40 MOTOR VEHICLE.** "Motor Vehicle" means every vehicle which is self-
7 propelled and every vehicle which is propelled by electric power obtained from batteries, except
8 electric bicycles, or from overhead trolley wires, but not operated upon rails; but for the purposes
9 of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978], "motor
10 vehicle" does not include "special mobile equipment." (66-1-4.11 NMSA 1978).

11 **Section 3. Section 12-1-88 of the Uniform Traffic Ordinance (being Ord. No.**
12 **2011-23, § 1) is amended to read:**

13 **12-1-88 VEHICLE.** "Vehicle" means every device in, upon, or by which, any person or
14 property is or may be transported or drawn upon a street, including any frame, chassis, body or
15 unitized frame and body of any vehicle or motor vehicle, except electric bicycles and devices
16 moved by human power or used exclusively upon stationary rails or tracks. (66-1-4.19 NMSA
17 1978)

18 **Section 4. Section 12-8-1 of the Uniform Traffic Ordinance (being Ord. No.**
19 **2011-23, § 1) is amended to read:**

20 **12-8-1 EFFECT OF REGULATIONS**

21 A. It is a penalty assessment misdemeanor for a person to be any act forbidden
22 or fail to perform any act required by Sections 12-8-1 through 23 of the Uniform Traffic
23 Ordinance. (Ord. No. 2021-2, § 15)

24 B. [~~The parent of any child and the guardian of any ward~~]No person shall [~~not~~]
25 authorize or permit any [~~such~~] child [~~or ward~~] to violate any of the provisions of this ordinance nor

1 shall any person permit any child under the age of sixteen (16) to operate a Class 3 electric bicycle.

2 A person under the age of sixteen (16) may ride as a passenger on a Class 3 electric bicycle that is
3 designed to accommodate passengers.

4 C. These regulations applicable to bicycles shall apply whenever a bicycle is operated
5 upon any street, bicycle lane, or ~~[upon any]~~ path ~~[set aside for the exclusive use of bicycles]~~ subject
6 to existing laws and those exceptions stated herein.

7 D. These provisions apply to the operation of bicycles and electric bicycles in the city
8 of Santa Fe.

9 **Section 5. Section 12-8-10 of the Uniform Traffic Ordinance (being Ord. No.**
10 **2011-23, § 1) is amended to read:**

11 **12-8-10 SPEED.**

12 A. No person shall operate a bicycle at a speed greater than is reasonable and prudent
13 under the conditions then existing.(*)

14 B. Where riding on sidewalks is allowed, bicycles shall be limited to ten (10) miles
15 per hour.

16 **Section 6. Section 12-8-7 of the Uniform Traffic Ordinance (being Ord. No.**
17 **2011-23, § 1) is amended to read:**

18 **12-8-15 RIDING ON SIDEWALKS**

19 A. No person shall ride a bicycle on any sidewalk when signs are posted prohibiting
20 the riding of bicycles on the sidewalk.

21 ~~[B. —When signs are posted requiring bicycles to use sidewalks or paths adjacent to a~~
22 ~~street, no person shall ride a bicycle on the street adjacent to the sidewalks or paths.]~~

23 ~~[C]~~B. If the bicyclist dismounts, the bicyclist is subject to the laws that apply to
24 pedestrians.

25 ~~[D]~~C. Whenever any person is riding a bicycle upon a sidewalk the person shall yield the

1 right of way to any pedestrian. (Ord. #2011-23, §§ 22, 23)

2 **Section 7. A new Section 12-8-18 of the Uniform Traffic Ordinance is hereby**
3 **ordained to read:**

4 **12-8-18 ELECTRIC BICYCLE MODIFICATION.** It is an offense for a person to
5 knowingly modify an electric bicycle so as to change the speed capability of the electric bicycle
6 and not appropriately replace, or cause to be replaced, the label indicating the class of the electric
7 bicycle.

8 **Section 8. Section 12-8-7 of the Uniform Traffic Ordinance (being Ord. No.**
9 **2011-23, § 1) is amended to read:**

10 **12-8-23 PENALTIES**

11 A. Every person convicted of a violation of any provision of Section 12-8-1 through
12 12-8-23 shall be punished by a fine of not more than [~~twenty five dollars (\$25.00)~~] one hundred
13 dollars (\$100.00).

14 **Section 9. Section 23-5.1 of SFCC 1987 (being Ord. No. 1981-10, § 3, as**
15 **amended) is amended to read:**

16 **23-5.1 Definitions.**

17 As used in this chapter:

18 A. *Artist/artisan* means a person who designs and creates arts or crafts.

19 B. *Artwork* means an object for sale by an artist/artisan.

20 C. *Bicycle* means: [~~a vehicle with two (2) wheels tandem, a steering handle, a saddle~~
21 ~~seat, and pedals by which it is propelled]~~

22 (1) every device propelled by human power, upon which any person may
23 ride, having two or more wheels, except scooters, skateboards, and similar devices; and

24 (2) every device propelled upon which a person may ride that is equipped
25 with two or three wheels, pedals for human propulsion, and a motor of no more than

1 seven hundred fifty (750) watts whose maximum speed is no more than 28 mph on a
2 paved level surface, when powered solely by such a motor.

3 D. *Canyon Road periphery area* means an area bounded by Paseo de Peralta on the
4 west, the southern right-of-way line of East Alameda Street on the north, East Palace Avenue
5 and Camino del Monte Sol on the east, and Canyon Road and Acequia Madre Street on the south.
6 This area includes both sides of the boundary streets, except along the southern right-of-way line
7 of East Alameda Street. (Editor's Note: A copy of the Canyon Road periphery area can be found
8 at the end of this chapter.)

9 E. *Collective* means a nonprofit organization that shares the use of the license
10 among three (3) to seven (7) nonrelated artists/artisans.

11 F. *Collective license* means a Plaza Park artist/artisan license issued to a collective.

12 G. *Commercial use* means any function or event at which goods, artwork,
13 foodstuffs, merchandise of any kind are offered for sale.

14 H. *Community Days Festival* means a city sponsored event promoting the programs
15 and services offered by local nonprofit organizations, performances by multicultural, youth, and
16 school groups and celebrating the diversity of Santa Fe.

17 I. *Findings* mean mechanical fittings in a great variety, either commercially
18 available or handmade, used to hold jewelry to the clothing or the person, i.e., ear wires, screw
19 backs, broach pins, chains, gallery bezel wire or hollow beads.

20 J. *Handmade* means the design and creation of the artwork from raw materials and
21 its finishing and decoration were accomplished by hand labor and by manually controlled
22 methods that permit the maker to control and vary the construction shape, design and/or finish of
23 each individual piece, but does not exclude the use of findings, hand tools and equipment nor
24 does it exclude the hand assembly of premanufactured components in a creative manner.

25 K. *Immediate family* means the spouse, children and stepchildren of a Plaza Park

1 artist/artisan. The city may require proof of relationship for family members.

2 L. *Individual license* means a Plaza Park artist/artisan license issued to an
3 individual artist/artisan licensee pursuant to the provisions of subsection 23-5.3 SFCC 1987.

4 M. *Machine made* means the producing or reproducing of artwork in mass
5 production by mechanical processes such as stamping, blanking, weaving, molds or offset
6 printing and other printing methods that allow mass production except as allowed by these
7 regulations.

8 N. *Major commercial event* means any commercial use for which the entire Plaza is
9 used.

10 O. *Minor rework* means taking a machine made or mass-produced item and making
11 only minor additions or changes to the item.

12 P. *Noncommercial use* means any function or event at which nothing is offered for
13 sale and at which no money or other valuable consideration is exchanged for goods or services.
14 This use includes, but is not limited to, patriotic observances, political rallies, televised news
15 media events and motion picture filming activities.

16 Q. *Nonprofit organization* means an organization that is registered as a New Mexico
17 nonprofit organization with the New Mexico Public Regulatory Commission.

18 R. *Original* means the single, one (1) of a kind, master that can be used as the model
19 for a reproduction.

20 S. *Plaza* means that inclusive area bounded on the north by the north curblin of
21 Palace Avenue running in front of the Palace of the Governors, and on all other sides by the
22 facades of the buildings, excluding portals, or property lines lying to the east, south and west of
23 the Plaza Park as outlined in the map prepared by the city, labeled "Plaza Park Map." (Editor's
24 Note: The Plaza Park Map may be found at the end of this chapter.)

25 T. *Plaza Park* means that inclusive area bounded by the inside back of the curb

1 surrounding the Plaza as outlined in the map prepared by the city, labeled "Plaza Park Map."
2 (Editor's Note: The Plaza Park Map may be found at the end of this chapter.)

3 U. *Plaza Park artist/artisan* means an artist/artisan, or an artist/artisan represented
4 by a collective issued a Plaza Park artist/artisan license.

5 V. *Plaza Park artist/artisan license* means a license issued to an artist/artisan by the
6 city for the purpose of commercial sales on the Plaza Park.

7 W. *Plaza periphery area* means an area outside the Plaza Park, not including the
8 Plaza Park, bounded by Sandoval and Grant Streets on the west, Alameda Street on the south,
9 Paseo de Peralta on the east and Marcy Street on the north. This area includes both sides of the
10 boundary streets.

11 X. *Plaza pushcart vendor* means a vendor who uses a non-permanent, non-
12 motorized cart, barrow or unit that can be pushed by hand for the purpose of selling food products
13 and is authorized by the city to be located in the Plaza Park, the Plaza, excluding the Plaza Park,
14 or at any location in the Plaza periphery area.

15 Y. *Portrait artist* means a person who creates portraits, cartoons, caricatures, or
16 silhouettes.

17 Z. *Portrait artist license* means a Plaza Park artist/artisan license issued to a portrait
18 artist.

19 AA. *Pushcart* means a non-permanent, non-motorized cart, barrow or unit that can be
20 pushed by hand.

21 BB. *Raw materials* mean any material that can be converted by manufacture or
22 processing or a combination of manufacture and processing into a new and useful product.

23 CC. *Recreational object* means any object that can be thrown, kicked or struck,
24 including, but not limited to, balls, frisbees or any object used in game or sport.

25 DD. *Reproduction* means the production of multiples of a single piece, the original or

1 master, applicable to each medium.

2 EE. *Resident of Santa Fe County* means a person whose primary residence is in Santa
3 Fe County. Residency shall be established by any standard identification that proves residency
4 such as a driver's license, passport or voter registration, utility bills or other documentation.

5 FF. *Roller skates or in-line skates* means a shoe with a set of wheels attached for
6 skating over a flat surface.

7 GG. *Rotating license* means a Plaza Park artist/artisan license issued to seven (7)
8 artists/artisans to be used on a rotating basis.

9 HH. *Service animal* means any animal trained to assist mobility of impaired, blind, or
10 deaf people or trained for and actively employed by a police department.

11 II. *Skateboard* means a narrow board about two feet (2') long mounted on roller
12 skate wheels.

13 JJ. *Special event* means an event that is permitted by the city pursuant to
14 subsection 18-8.9 SFCC 1987, Section 23-4 SFCC 1987, subsection 23-5.2 SFCC 1987 or
15 resolution of the governing body.

16 PASSED, APPROVED, and ADOPTED this _____ day of _____, 2022.

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ALAN WEBBER, MAYOR

21 ATTEST:

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KRISTINE MIHELIC, CITY CLERK

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APPROVED AS TO FORM:



ERIN K. McSHERRY, CITY ATTORNEY

Legislation/2022/Bills/Establishing Electric Bicycle Definition

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2022-__
Establishing Electric Bicycle Definition

Mayor and Members of the City Council:

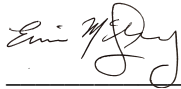
I propose the following amendment(s) to Bill No. 2022-__:

1. On page 3, lines 1-2, *strike* the following language “on a paved level surface when powered solely by such a motor 2 while ridden by an operator who weighs 170 pounds”, which appears which appears between “mph” and “are motor vehicles”.
2. On page 3, line 15, strike the insertion "electric bicycles and"
3. On page 3, line 16, after the period *insert* the following new sentence: “Electric bicycles are vehicles.” and *strike* “(66-1-4.19 NMSA 1978)”.
4. On page 6, lines 1-2, after “mph” *strike* the remainder of the sentence.

Respectfully submitted,

Michael J. Garcia, Councilor

Approved as to form:



Erin K. McSherry, City Attorney

ADOPTED: _____

NOT ADOPTED: _____

DATE: _____

Kristine Mihelcic, City Clerk






Establishing Electric Bicycle Definition (MGarcia Amend)

Final Audit Report

2022-12-08

Created:	2022-12-08
By:	Jeff Norris (jtnorris@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAkyXsUJCMlgxVWEC9j7HJTA9rGGOCsblU

"Establishing Electric Bicycle Definition (MGarcia Amend)" History

-  Document created by Jeff Norris (jtnorris@ci.santa-fe.nm.us)
2022-12-08 - 8:37:51 PM GMT- IP address: 63.232.20.2
-  Document emailed to Erin Mcsherry (ekmcsberry@ci.santa-fe.nm.us) for signature
2022-12-08 - 8:38:29 PM GMT
-  Email viewed by Erin Mcsherry (ekmcsberry@ci.santa-fe.nm.us)
2022-12-08 - 8:43:14 PM GMT- IP address: 104.47.65.254
-  Document e-signed by Erin Mcsherry (ekmcsberry@ci.santa-fe.nm.us)
Signature Date: 2022-12-08 - 8:43:37 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.
2022-12-08 - 8:43:37 PM GMT

**CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2022-23**

Electric Bicycle Definition

Mayor and Members of the City Council:

I propose the following amendment(s) to Bill No. 2022-23:

This amendment does X Does not change the caption.

1. On page 1, line 15 *strike* "not".

Respectfully submitted,

Michael Garcia, Councilor

Jamie Cassutt, Councilor

Approved as to Form:



Erin K. McSherry, City Attorney

ADOPTED: _____

NOT ADOPTED: _____

DATE: _____

Kristine Mihelcic, City Clerk

underscored material = new
[bracketed material] = delete

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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2022-__

INTRODUCED BY:

Councilor Michael J. Garcia

AN ORDINANCE

RELATING TO ELECTRIC BICYCLES; AMENDING SECTION 12-1-6 OF THE UNIFORM TRAFFIC ORDINANCE (“UTO”) TO INCLUDE ELECTRIC BICYCLES IN THE DEFINITION OF BICYCLE; AMENDING SECTION 12-1-40 OF THE UTO TO DELINEATE ELECTRIC BICYCLES FROM MOTOR VEHICLES; AMENDING SECTION 12-1-88 OF THE UTO TO SPECIFY THAT AN ELECTRIC BICYCLE IS NOT A VEHICLE; AMENDING SECTION 12-8-1 OF THE UTO TO PROHIBIT ANYONE UNDER THE AGE OF SIXTEEN FROM RIDING A CLASS 3 ELECTRIC BICYCLE; AMENDING SECTION 12-8-10 OF THE UTO TO REGULATE AND ESTABLISH A SPEED LIMIT FOR ELECTRIC AND MANUALLY-PROPELLED BICYCLES ON CITY SIDEWALKS; AMENDING SECTION 12-8-15 OF THE UTO TO REMOVE THE PROHIBITION FOR BICYCLES TO RIDE ON A STREET ADJACENT TO A SIDEWALK OR PATH WHEN BICYCLES ARE REQUIRED TO USE THE SIDEWALK OR STREET; CREATING A NEW SECTION 12-8-18 OF THE UTO TO MAKE IT AN OFFENSE TO ENHANCE THE SPEED CAPABILITIES OF AN ELECTRIC BICYCLE; AMENDING SECTION 12-8-23 OF THE UTO TO RAISE THE MAXIMUM FINE FOR

1 VIOLATION OF CERTAIN PROVISIONS FROM TWENTY-FIVE DOLLARS TO ONE
2 HUNDRED DOLLARS; AND AMENDING SFCC 1987 SECTION 23-5.1 TO AMEND THE
3 DEFINITION OF BICYCLE TO INCLUDE ELECTRIC BICYCLES, AND TO
4 REGULATE THE USE OF ELECTRIC BICYCLES ON CITY ROADS.

5
6 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

7 Section 1. Section 12-1-6 of the Uniform Traffic Ordinance (being Ord. No.
8 2011-23, § 1) is amended to read:

9 12-1-6 BICYCLE. "Bicycle" means:

10 A. Every device propelled by human power, upon which any person may ride,
11 having two or more wheels, except scooters and similar devices[-];

12 B. Every device upon which a person may ride that is equipped with two or
13 three wheels, pedals for human propulsion, and a motor of no more than seven hundred fifty
14 (750) watts and meets the requirements of one of three classes:

15 (1) Class 1 electric bicycle means an electric bicycle equipped with a motor
16 that provides assistance only when the rider is pedaling, and that ceases to provide
17 assistance when the bicycle reaches the speed of twenty miles per hour (20 mph).

18 (2) Class 2 electric bicycle means a bicycle equipped with a motor that
19 provides assistance to propel the bicycle even when the rider is not pedaling, and that is
20 not capable of providing assistance when the bicycle reaches the speed of twenty miles per
21 hour (20 mph).

22 (3) Class 3 electric bicycle means an electric bicycle equipped with a motor
23 that provides assistance only when the rider is pedaling, and that ceases to provide
24 assistance when the bicycle reaches the speed of twenty-eight miles per hour (28 mph).

25 C. Devices with motors outputting more than 750 watts or that can achieve a

1 ~~maximum speed more than 28 mph on a paved level surface when powered solely by such a motor~~
2 ~~while ridden by an operator who weighs 170 pounds~~ are motor vehicles.

3 D. Bicycles defined in paragraph B may also be referred to as “electric bicycles”

4 **Section 2. Section 12-1-40 of the Uniform Traffic Ordinance (being Ord. No.**
5 **2011-23, § 1) is amended to read:**

6 **12-1-40 MOTOR VEHICLE.** "Motor Vehicle" means every vehicle which is self-
7 propelled and every vehicle which is propelled by electric power obtained from batteries, except
8 electric bicycles, or from overhead trolley wires, but not operated upon rails; but for the purposes
9 of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978], "motor
10 vehicle" does not include "special mobile equipment." (66-1-4.11 NMSA 1978).

11 **Section 3. Section 12-1-88 of the Uniform Traffic Ordinance (being Ord. No.**
12 **2011-23, § 1) is amended to read:**

13 **12-1-88 VEHICLE.** "Vehicle" means every device in, upon, or by which, any person or
14 property is or may be transported or drawn upon a street, including any frame, chassis, body or
15 unitized frame and body of any vehicle or motor vehicle, except ~~electric bicycles and~~ devices
16 moved by human power or used exclusively upon stationary rails or tracks. Electric bicycles are
17 vehicles. ~~(66-1-4.19 NMSA 1978)~~

18 **Section 4. Section 12-8-1 of the Uniform Traffic Ordinance (being Ord. No.**
19 **2011-23, § 1) is amended to read:**

20 **12-8-1 EFFECT OF REGULATIONS**

21 A. It is a penalty assessment misdemeanor for a person to be any act forbidden
22 or fail to perform any act required by Sections 12-8-1 through 23 of the Uniform Traffic
23 Ordinance. (Ord. No. 2021-2, § 15)

24 B. ~~[The parent of any child and the guardian of any ward]~~ No person shall ~~[not]~~
25 authorize or permit any ~~[such]~~ child ~~[or ward]~~ to violate any of the provisions of this ordinance nor

1 shall any person permit any child under the age of sixteen (16) to operate a Class 3 electric bicycle.

2 A person under the age of sixteen (16) may ride as a passenger on a Class 3 electric bicycle that is
3 designed to accommodate passengers.

4 C. These regulations applicable to bicycles shall apply whenever a bicycle is operated
5 upon any street, bicycle lane, or ~~[upon any]~~ path ~~[set aside for the exclusive use of bicycles]~~ subject
6 to existing laws and those exceptions stated herein.

7 D. These provisions apply to the operation of bicycles and electric bicycles in the city
8 of Santa Fe.

9 **Section 5. Section 12-8-10 of the Uniform Traffic Ordinance (being Ord. No.**
10 **2011-23, § 1) is amended to read:**

11 **12-8-10 SPEED.**

12 A. No person shall operate a bicycle at a speed greater than is reasonable and prudent
13 under the conditions then existing.(*)

14 B. Where riding on sidewalks is allowed, bicycles shall be limited to ten (10) miles
15 per hour.

16 **Section 6. Section 12-8-7 of the Uniform Traffic Ordinance (being Ord. No.**
17 **2011-23, § 1) is amended to read:**

18 **12-8-15 RIDING ON SIDEWALKS**

19 A. No person shall ride a bicycle on any sidewalk when signs are posted prohibiting
20 the riding of bicycles on the sidewalk.

21 ~~[B. —When signs are posted requiring bicycles to use sidewalks or paths adjacent to a~~
22 ~~street, no person shall ride a bicycle on the street adjacent to the sidewalks or paths.]~~

23 ~~[C]~~B. If the bicyclist dismounts, the bicyclist is subject to the laws that apply to
24 pedestrians.

25 ~~[D]~~C. Whenever any person is riding a bicycle upon a sidewalk the person shall yield the

1 right of way to any pedestrian. (Ord. #2011-23, §§ 22, 23)

2 **Section 7. A new Section 12-8-18 of the Uniform Traffic Ordinance is hereby**
3 **ordained to read:**

4 **12-8-18 ELECTRIC BICYCLE MODIFICATION.** It is an offense for a person to
5 knowingly modify an electric bicycle so as to change the speed capability of the electric bicycle
6 and not appropriately replace, or cause to be replaced, the label indicating the class of the electric
7 bicycle.

8 **Section 8. Section 12-8-7 of the Uniform Traffic Ordinance (being Ord. No.**
9 **2011-23, § 1) is amended to read:**

10 **12-8-23 PENALTIES**

11 A. Every person convicted of a violation of any provision of Section 12-8-1 through
12 12-8-23 shall be punished by a fine of not more than [~~twenty five dollars (\$25.00)~~] one hundred
13 dollars (\$100.00).

14 **Section 9. Section 23-5.1 of SFCC 1987 (being Ord. No. 1981-10, § 3, as**
15 **amended) is amended to read:**

16 **23-5.1 Definitions.**

17 As used in this chapter:

- 18 A. *Artist/artisan* means a person who designs and creates arts or crafts.
19 B. *Artwork* means an object for sale by an artist/artisan.
20 C. *Bicycle* means: [~~a vehicle with two (2) wheels tandem, a steering handle, a saddle~~
21 ~~seat, and pedals by which it is propelled]~~

22 (1) every device propelled by human power, upon which any person may
23 ride, having two or more wheels, except scooters, skateboards, and similar devices; and

24 (2) every device propelled upon which a person may ride that is equipped
25 with two or three wheels, pedals for human propulsion, and a motor of no more than

1 seven hundred fifty (750) watts whose maximum speed is no more than 28 mph ~~on a~~
2 ~~paved level surface, when powered solely by such a motor.~~

3 D. *Canyon Road periphery area* means an area bounded by Paseo de Peralta on the
4 west, the southern right-of-way line of East Alameda Street on the north, East Palace Avenue
5 and Camino del Monte Sol on the east, and Canyon Road and Acequia Madre Street on the south.
6 This area includes both sides of the boundary streets, except along the southern right-of-way line
7 of East Alameda Street. (Editor's Note: A copy of the Canyon Road periphery area can be found
8 at the end of this chapter.)

9 E. *Collective* means a nonprofit organization that shares the use of the license
10 among three (3) to seven (7) nonrelated artists/artisans.

11 F. *Collective license* means a Plaza Park artist/artisan license issued to a collective.

12 G. *Commercial use* means any function or event at which goods, artwork,
13 foodstuffs, merchandise of any kind are offered for sale.

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15 and services offered by local nonprofit organizations, performances by multicultural, youth, and
16 school groups and celebrating the diversity of Santa Fe.

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18 available or handmade, used to hold jewelry to the clothing or the person, i.e., ear wires, screw
19 backs, broach pins, chains, gallery bezel wire or hollow beads.

20 J. *Handmade* means the design and creation of the artwork from raw materials and
21 its finishing and decoration were accomplished by hand labor and by manually controlled
22 methods that permit the maker to control and vary the construction shape, design and/or finish of
23 each individual piece, but does not exclude the use of findings, hand tools and equipment nor
24 does it exclude the hand assembly of premanufactured components in a creative manner.

25 K. *Immediate family* means the spouse, children and stepchildren of a Plaza Park

1 artist/artisan. The city may require proof of relationship for family members.

2 L. *Individual license* means a Plaza Park artist/artisan license issued to an
3 individual artist/artisan licensee pursuant to the provisions of subsection 23-5.3 SFCC 1987.

4 M. *Machine made* means the producing or reproducing of artwork in mass
5 production by mechanical processes such as stamping, blanking, weaving, molds or offset
6 printing and other printing methods that allow mass production except as allowed by these
7 regulations.

8 N. *Major commercial event* means any commercial use for which the entire Plaza is
9 used.

10 O. *Minor rework* means taking a machine made or mass-produced item and making
11 only minor additions or changes to the item.

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13 sale and at which no money or other valuable consideration is exchanged for goods or services.
14 This use includes, but is not limited to, patriotic observances, political rallies, televised news
15 media events and motion picture filming activities.

16 Q. *Nonprofit organization* means an organization that is registered as a New Mexico
17 nonprofit organization with the New Mexico Public Regulatory Commission.

18 R. *Original* means the single, one (1) of a kind, master that can be used as the model
19 for a reproduction.

20 S. *Plaza* means that inclusive area bounded on the north by the north curblin of
21 Palace Avenue running in front of the Palace of the Governors, and on all other sides by the
22 facades of the buildings, excluding portals, or property lines lying to the east, south and west of
23 the Plaza Park as outlined in the map prepared by the city, labeled "Plaza Park Map." (Editor's
24 Note: The Plaza Park Map may be found at the end of this chapter.)

25 T. *Plaza Park* means that inclusive area bounded by the inside back of the curb

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2 (Editor's Note: The Plaza Park Map may be found at the end of this chapter.)

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4 by a collective issued a Plaza Park artist/artisan license.

5 V. *Plaza Park artist/artisan license* means a license issued to an artist/artisan by the
6 city for the purpose of commercial sales on the Plaza Park.

7 W. *Plaza periphery area* means an area outside the Plaza Park, not including the
8 Plaza Park, bounded by Sandoval and Grant Streets on the west, Alameda Street on the south,
9 Paseo de Peralta on the east and Marcy Street on the north. This area includes both sides of the
10 boundary streets.

11 X. *Plaza pushcart vendor* means a vendor who uses a non-permanent, non-
12 motorized cart, barrow or unit that can be pushed by hand for the purpose of selling food products
13 and is authorized by the city to be located in the Plaza Park, the Plaza, excluding the Plaza Park,
14 or at any location in the Plaza periphery area.

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16 silhouettes.

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3 Fe County. Residency shall be established by any standard identification that proves residency
4 such as a driver's license, passport or voter registration, utility bills or other documentation.

5 FF. *Roller skates or in-line skates* means a shoe with a set of wheels attached for
6 skating over a flat surface.

7 GG. *Rotating license* means a Plaza Park artist/artisan license issued to seven (7)
8 artists/artisans to be used on a rotating basis.

9 HH. *Service animal* means any animal trained to assist mobility of impaired, blind, or
10 deaf people or trained for and actively employed by a police department.

11 II. *Skateboard* means a narrow board about two feet (2') long mounted on roller
12 skate wheels.

13 JJ. *Special event* means an event that is permitted by the city pursuant to
14 subsection 18-8.9 SFCC 1987, Section 23-4 SFCC 1987, subsection 23-5.2 SFCC 1987 or
15 resolution of the governing body.

16 PASSED, APPROVED, and ADOPTED this _____ day of _____, 2022.

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19 _____
20 ALAN WEBBER, MAYOR

21 ATTEST:

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23 _____
24 KRISTINE MIHELIC, CITY CLERK
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APPROVED AS TO FORM:

ERIN K. McSHERRY, CITY ATTORNEY

Legislation/2022/Bills/Establishing Electric Bicycle Definition

FISCAL IMPACT REPORT

General Information:

(Check) Bill: Resolution: _____

Short Title(s): Establishing Electric Bicycle Definition

Sponsor(s): Councilor Michael Garcia

Reviewing Department(s): Public Works and Utilities

Staff Completing FIR: Romella Glorioso-Moss ^{RGM} Date: 08/23/2022 Phone: 955-6623

Reviewed by City Attorney: _____ Date: _____

Reviewed by Finance Director: Emily K. Oster Date: Sep 15, 2022
Emily K. Oster (Sep 15, 2022 15:34 MDT)

Summary:

Electric bicycles or "e-bikes" are becoming increasingly popular statewide including in the City of Santa Fe ("City"). However, both the City and State do not regulate e-bike use. The Bicycling and Pedestrian Advisory Committee ("BPAC") recommends that the City leads the way in regulating e-bikes by providing a model for legislation by amending sections of the Uniform Traffic Ordinance and the Santa Fe City Code.

Departments Affected:

Public Works Department, Community Health and Safety Department.

Consequences of Not Enacting Legislation:

If the legislation is not adopted, safety of all road users, especially the vulnerable ones such as bicyclists and pedestrians, may be at higher risk of an accident and injury.

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

None identified.

Performance and Administrative Implications:

If adopted, the bill will provide increased clarity for the police on how to regulate e-bikes. Enforcement is challenging.

Fiscal Implications:

The bill increases the maximum amount that a violator of Section 12-8 of the UTO could be fined from \$25 to \$100. Because the fine levied by the Municipal Judge can vary, it is not possible to determine the fiscal impact of the change. Police Department and Public Works Departments do not foresee additional expenditures associated with this ordinance at this time.

Fiscal Impact

Check here if no fiscal impact

Expenditures

Expenditure Type	FYE __	FYE __	FYE __	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
<u>Personnel and</u>	\$ _____	\$ _____	\$ _____	_____	_____	_____	
<u>Benefits*</u>							
<u>Capital Outlay</u>	\$ _____	\$ _____	\$ _____	_____	_____	_____	
<u>Contractual/</u>	\$ _____	\$ _____	\$ _____		_____	_____	
<u>Professional Services</u>							
<u>Operating</u>	\$ _____	\$ _____	\$ _____		_____	_____	\$ _____
<u>Total:</u>	\$ _____	\$ _____	\$ _____				\$ _____

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

Expenditure Narrative:

None identified.

Revenue

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

Revenue Narrative:

None identified.

Signature: *Regina Wheeler*
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Signature: *Romella Glorioso-Moss*
Romella Glorioso-Moss (Sep 15, 2022 07:31 MDT)
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