City of Santa Fe

AGENDA

REGULAR MEETING OF
THE FINANCE COMMITTEE
FEBRUARY 13, 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 30, 2023 Finance Committee Minutes. (Emily Oster, Finance Director, 505-629-3411).

Committee Review:
Finance Committee: 02/13/2023

b. Request for Approval of Amendment No.11 to the Amended and Restated Railyard Lease and Management Agreement Between the City of Santa Fe and Santa Fe Railyard Community Corporation (Terry Lease, Asset Development Manager: tjlease@santafenm.gov, 505-629-2206)

Committee Review:
Economic Development Advisory Committee: 2/1/2023
Quality of Life Committee: 2/1/2023
Public Works and Utilities Committee: 2/6/2023
Finance Committee: 2/13/2023
Governing Body: 2/22/2023

c. Request for Approval of FY 23 Budget Amendment Resolution (BAR) in the Amount of $214,000 to Budget for Payments on the Existing Service Contract with NM Golf Limited for Management of the Marty Sanchez Links de Santa Fe Golf Course and Related Operations.(Melisa McDonald, Parks and Open Space Director, mamcdonald@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 02/06/2023
Finance Committee: 02/13/2023
Governing Body: 02/22/2023

d. Request for Approval of Amendment No. 1 to the Contract Item #22-0450 with TK Elevator for the Main Library Elevators Rehabilitation Modernization Project in the Total Amount of $243,864.15 Including NMGRT and Extending the Contract Term by One Year. (Caryn Grosse, clgrosse@santafenm.gov, 505-955-5938, Therese Martinez,

tmartinez@santafenm.gov, 505-955-5937).

Committee Review:
Finance Committee: 02/13/2023
Public Works/Utilities Committee: 02/20/2023
Governing Body: 02/22/202

e. Request for Approval of a Severance Tax Bond (STB) Agreement with NMDOT to Reconstruct Governor Miles Road from Richards Avenue to Nizhoni Drive In the amount of $300,000 including New Mexico Gross Receipts Tax. (David A. Chapman, Grant Administrator, dachapman@santafenm.gov 505-660-2619)

1. Request for Approval of Budget Amendment Resolution (BAR) to allocate $300,000 from NMDOT to the Govern Miles Road Project Number #F3057.

Committee Review:
Public Works and Utilities Committee: 02/06/2023
Finance Committee: 02/13/2023
Governing Body: 02/22/2023

f. Request for Approval of a Severance Tax Bond (STB) Agreement with NMDOT to Install New Asphalt and Roadway Markings on Paseo de Las Vistas In the Amount of $275,000 Including New Mexico Gross Receipts Tax. (David A. Chapman, Grant Administrator, dachapman@santafenm.gov 505-660-2619)

1. Request for Approval of Budget Amendment Resolution (BAR) to Allocate $275,000 from NMDOT to the Paseo de Las Vistas Project Number F3058.

Committee Review:
Public Works and Utilities Committee: 02/06/2023
Finance Committee: 02/13/2023
Governing Body: 02/22/2023

g. Request for Approval of a Severance Tax Bond (STB) Agreement with NMDOT to Reconstruct St. Michael's Drive and Siringo Road In the

Amount of $350,000 Including New Mexico Gross Receipts Tax. (David A. Chapman, Grant Administrator, dachapman@santafenm.gov 505-660-2619)

1. Request for Approval of Budget Amendment Resolution (BAR) to allocate $350,000 from NMDOT to the St. Michael's Drive and Siringo Road Project Number F3059

Committee Review:
Public Works and Utilities Committee: 02/06/2023
Finance Committee: 02/13/2023
Governing Body: 02/22/2023

h. Request for Approval of a Contract in the Amount of $197,821.54 by Exerplay, INC. to Upgrade the Trash/Recycle Cans in Franklin Miles, Las Acequias, SWAN, and Ragle Parks from the Current 44-Gallon Split Stream Can to a 64-Gallon, Dual Can Setup. (Skyler Nielsen, Parks Operations Manager, smnielsen@santafenm.gov, 505-469-6688)

Committee Review:
Finance Committee: 02/13/2023
Public Works & Utility Committee: 02/20/2023
Governing Body: 02/22/2023

i. Request for Approval of Contract Amendment No. 2 to Contract Item # 19-0828 with Associated Time Instruments to Install Pedestrian Door Controls at Sandoval, Railyard and Convention Center Parking Garages, Extend the Term and Increase Compensation by $76,118.25, Excluding NMGRT, in a Total Amount of $1,576,118.25, Excluding NMGRT. (Caryn Grosse, Project Administrator, clgrosse@santafenm.gov, 505-955-5938).

Committee Review:
Finance Committee: 02/13/2023
Public Works & Utilities Committee: 02/20/2023
Governing Body: 02/22/2023

j. Request for the Approval of a General Services Contract for Seasonal Delivery and Servicing of Portable Toilets for the Parks Division with AAA Pumping Services Inc in an Amount Not to Exceed $135,400 per Year, for Four Years, for a Total Amount of $541,600 Excluding NMGRT.

(Skyler Nielsen, Parks Operations Manager, smnielsen@santafenm.gov, 505-469-6688).

Committee Review:
Finance Committee: 02/13/2023
Public Works and Utilities Committee: 02/20/2023
Governing Body: 02/22/2023

k. CONSIDERATION OF BILL NO. 2023-6. (Mayor Webber)
An Ordinance Amending Section 2-8.2(A), "Creation of Department" by Removing Language that Prescribes a "Recreation Division" as a Division of the Community Health and Safety Department and "Family and Youth Services" as a Component of the Community Services Department; and by Removing the Term "Safety" from the Name of the "Office of Emergency Management and Safety". (Kyra Ochoa, Community Health and Safety Department Director: krochoa@santafenm.gov)

Committee Review:
Governing Body (Introduced): 01/11/2023
Governing Body (Public Comment): 01/25/2023
Quality of Life Committee: 02/01/2023
Public Works and Utilities Committee: 02/06/2023
Finance Committee: 02/13/2023
Governing Body (Public Hearing): 02/22/2023

7. **MATTERS FROM STAFF**

8. **MATTERS FROM THE COMMITTEE**

9. **MATTERS FROM THE CHAIR**

10. **NEXT MEETING: Monday, February 27, 2023**

11. **ADJOURN**

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

City of Santa Fe

MINUTES

REGULAR MEETING OF
THE FINANCE COMMITTEE
JANUARY 30, 2023
5:00 PM
COUNCIL CHAMBERS
CITY HALL
200 LINCOLN AVENUE

PROCEDURES FOR FINANCE COMMITTEE MEETING

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1. **CALL TO ORDER**

Meeting started at 5:00pm.

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

All Finance Committee members present.

3. **APPROVAL OF AGENDA**

MOTION: Councilor Cassutt moved, seconded by Councilor Rivera, 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

4. **APPROVAL OF CONSENT AGENDA**

MOTION: Councilor Cassutt moved, seconded by Councilor Rivera, to approve the agenda as amended to pull items F and J 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 January 17, 2023 Finance Committee Meeting Minutes. (Emily Oster, Finance Director, 505-629-3411, ekoster@santafenm.gov).

Committee Review:
Finance Committee: 01/30/2023

MOTION: Councilor Cassutt moved, seconded by Councilor Rivera, 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 of Budget Adjustment Resolution (BAR) from the Water Enterprise Fund Cash Balance to Operating Supplies in the Amount of $100,000. (Randy Lopez, Transmission and Distribution Supervisor, rjlopez@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 01/23/2023
Finance Committee: 01/30/2023
Governing Body: 02/08/2023

MOTION: Councilor Cassutt moved, seconded by Councilor Rivera, 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

c. Request for Approval of Contract With GM Emulsion LLC for Removal of Sewage Sludge to be Hauled from The Paseo Real Water Reclamation Facility, in the Total Amount of $300,000. Excluding NMGRT for a One (1) Year Term Expiring June 30, 2024. (P. Fred Heerbrandt, Wastewater Management Engineer Supervisor 505-955-4623)

1. Request for Approval of a Budget Adjustment Resolution (BAR) In The Amount of 300,000.

Committee Review:
Public Works and Utilities Committee: 01/23/2023
Finance Committee: 01/30/2023
Governing Body: 02/08/2023

MOTION: Councilor Cassutt moved, seconded by Councilor Rivera, 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

d. Request for Approval to Purchase and Replace Two (2) Vehicles for the Water Division, Source of Supply Section in the Total Amount of $107,483. (Jonathan Montoya, Jmmontoya@santafenm.gov, 505-955-4373; Joe Olivas jwolivas@santafenm.gov, 505-955-4370)

Committee Review:
Public Works and Utilities Committee: 01/23/2023
Finance Committee: 01/30/2023
Governing Body: 02/08/2023

MOTION: Councilor Cassutt moved, seconded by Councilor Rivera, 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 a Memorandum of Understanding (MOU) between the City of Santa Fe and Santa Fe County to Provide Water and Wastewater Service Outside the City Limits to First Serve of New Mexico, LLC. (Jesse Roach, Water Division Director, jdroach@santafenm.gov, 505-955-4309; Stan Holland, WWMD Engineer, tsholland@santafenm.gov, 505-955-4367)

Committee Review:
Public Works and Utilities Committee: 01/23/2023
Finance Committee: 01/30/2023
Governing Body: 02/08/2023

MOTION: Councilor Cassutt moved, seconded by Councilor Rivera, to approve the memorandum of understanding (MOU) 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

f. Request for Approval of Amendment No.1 to Original Contract #22-0511 with ESA Construction to Expand Concrete Ramp Work and Bathroom Plumbing in the Amount of $13,828.65 for a Total Contract Amount of $297,962.67. (Jesse Roach, Water Division Director, jdroach@santafenm.gov, 505-955-4309)

Committee Review:
Public Works and Utilities Committee: 01/23/2023
Finance Committee: 01/30/2023
Governing Body: 02/08/2023

MOTION: Councilor Cassutt moved, seconded by Councilor Lindell, to approve the contract amendment 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

g. Request for Approval of Amendment No.1 to Original Contract # 22-0410 with Parkson Corporation for the Purchase of an AquaGuard Wastewater Screen and Extending the Contract Through December 31, 2023. (P.F Heerbrandt, Engineer Supervisor, pfheerbrandt@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 01/23/2023
Finance Committee: 01/30/2023
Governing Body: 02/08/2023

MOTION: Councilor Cassutt moved, seconded by Councilor Rivera, 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

h. Request for Approval of Contract with Alpha Southwest. Inc. for On-Call Repair and Maintenance of Water and Wastewater Facilities for the Remainder of FY23 in the Amount of $307,603.35 (Jonathan Montoya, Source of Supply Operations Manager, jmmontoya@santafenm.gov, 505-955-4373; Julian Gonzales, Wastewater Plant Operator, jrgonzales@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 01/23/2023
Finance Committee: 01/30/2023
Governing Body: 02/08/2023

MOTION: Councilor Cassutt moved, seconded by Councilor Rivera, 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

i. Request for Approval of Award and Acceptance of Reoccurring Federal Planning Funding Section 112 Federal Highway Association (FHWA) and Section 5303 Federal Transit Authority (FTA) for Federal Fiscal Year 2023 in the Amount of $388,184 for the Annual Operations of the Santa Fe MPO. (Erick Aune, Santa Fe MPO Officer: ejaune@santafenm.gov, 505-330-8483)

Committee Review:
Finance Committee: 01/30/2023

Public Works/Utilities Committee: 02/06/2023
Governing Body: 02/08/2023

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

VOTE: The motion was 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 Tax Revenue, Above Budgeted Estimates, to Fund a Package of Priorities that Includes Contracted Services to Alleviate Unsheltered Homelessness, Vehicles and Equipment for Park Rangers, Encampment Cleanup, Salary Adjustments to Improve Recruitment and Retention of Parks Department Employees, and Relocation of City Offices from Railyard Market Station, Totaling $2,119,290. (Emily K. Oster, Finance Director, ekoster@santafenm.gov, 505-629-3411).

Committee Review:
Finance Committee: 01/30/2023
Quality of Life: 02/01//2023
Governing Body: 02/08/2023

MOTION: Councilor Lindell moved, seconded by Councilor Villarreal, to move the budget adjustment resolution (BAR) forward with no recommendation.

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

For: Councilor Villarreal, Councilor Lindell, Councilor Cassutt,

Councilor Rivera

Against: Councilor Romero-Wirth

Abstain: None

k. CONSIDERATION OF RESOLUTION NO. 2023-__. (Councilor Lindell and Councilor Romero-Wirth)
A Resolution Accepting Donations from the Santa Fe Pickleball Club and the Mammel Foundation for the Design and Construction of Pickleball Courts at Fort Marcy Park and Directing the Use of Capital Improvement Funds to Construct Six Additional Pickleball Courts. (Melissa McDonald, Parks and Open Space Division Director: mamcdonald@santafenm.gov, 955-6840)

Committee Review:
Governing Body (Introduced): 01/11/2023
Public Works and Utilities Committee: 01/23/2023
Finance Committee: 01/30/2023
Governing Body: 02/08/2023

MOTION: Councilor Cassutt moved, seconded by Councilor Rivera, 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

l. CONSIDERATION OF RESOLUTION NO. 2023-__. (Councilwoman Villarreal and Councilor Lindell)
A Resolution Authorizing the Sale and Consumption of Alcohol During SITE Santa Fe's Annual Benefit and Concert on City Property for the Years 2023-2027, Pursuant to Subsection 23-6.2(C) SFCC 1987. (Kristine Mihelcic, City Clerk: kmmihelcic@santafenm.gov, 955-6521)

Committee Review:
Governing Body (Introduced): 01/11/2023
Quality of Life Committee: 01/18/2023
Finance Committee: 01/30/2023
Governing Body: 02/08/2023

MOTION: Councilor Cassutt moved, seconded by Councilor Rivera, 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. Audit Update for FY21. (Emily Oster, Finance Director: ekoster@santafenm.gov, 505-629-3411)

Finance Director, Emily Oster gave an update on the FY21 Audit . Work is continuing with all the contractors CRI, CLA , REDW and staff on the Audit.

The Audit Committee met last week and elected Randy Grissom as Chair.

7. **MATTERS FROM STAFF**

8. **MATTERS FROM THE COMMITTEE**

9. **MATTERS FROM THE CHAIR**

10. **NEXT MEETING: February 13 2023**

11. **ADJOURN**

Meeting adjourned 6:10pm.

_____ _____

Liaison Chair

City of Santa Fe, New Mexico
Memorandum

DATE: January 5, 2023

TO: Finance Committee
Economic Development Asset Committee
Public Works & Utilities
Quality of Life Committee
Governing Body

VIA: Rich Brown, Director, Community and Economic Development Department

FROM: Terry Lease, Asset Development Manager, Economic Development Department

RE: Amendment 11 to the Amended and Restated Railyard Lease and Management Agreement Between the City of Santa Fe and The Santa Fe Railyard Community Corporation

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EXECUTIVE SUMMARY:
The City and The Santa Fe Railyard Community Corporation ("Non-profit") are parties to the Amended and Restated Railyard Lease and Management Agreement ("Lease and Management Agreement") dated April 30, 2011. This Amendment 11 ("Amendment 11"), if approved, will remove Parcel O ("Depot") and Parcel B-2 ("Warehouse 21" Land) from the Lease and Management Agreement leased premises in exchange for a reduction of the deferrals owed to the City in the amount of $946,881.22. The reductions in deferrals will take place over the 2023 to 2027 fiscal years.

BACKGROUND:
In 1995 the City acquired fee title to the approximate 50-acre Railyard Property. The Lease and Management Agreement is the mechanism by which the Non-profit implements the Railyard Master Plan in order to lessen the burdens on the City in implementing the plan. The termination date of the Lease and Management Agreement is January 15, 2030 (Amendment 3). The City is responsible for maintaining the roads, rail corridor and open spaces and the Non-profit is responsible for the maintenance and oversight of all other areas, and the tenants within the Railyard. Non-profit is also responsible for managing the leasing of Railyard properties, managing the design and development review process, and overseeing and assuring their tenants comply with all rules and regulations within the Railyard.

The City owns both the Santa Fe Depot and Warehouse 21 buildings and the land they sit on. The Non-profit controls the Depot building and land, and the land only under the Warehouse 21 building, as they are included in the Non-profit's leased premises.

Santa Fe Train Depot; The City is currently leasing the Depot from the Non-profit (Item #11-0391 as amended) with annual rent of approximately $36,000.00, and there is a $1.6 million contract in place for a comprehensive rehabilitation project of the Santa Fe Train Depot which is nearing completion. Once complete, the City would like to make further investments into this building to create a police sub-station that would serve the Railyard, Non-profit and downtown communities. If the Depot building and land are not removed from the Non-profit's leased premises the City would have to enter into a sublease with Non-profit and continue to pay rent.

Warehouse 21; The Warehouse 21 property has been vacant for several years and in need of repairs. If the City wishes to lease the Warehouse 21 building, and the land is not removed from the Non-profit leased premises, the City would have to enter into a sublease with the Non-profit for the land and pay rent.

It is a convoluted cumbersome process for the City to lease these City-owned properties to the Non-profit and then lease them back and pay rent for its own buildings and land. This process also requires the Non-profit's approval and oversite of City development.

ATTACHMENTS:
A: Amendment 11
B: Lease and Management Agreement
(Copies of Amendments 1 thru 10 will be provided upon request)

CITY OF SANTA FE AMENDMENT #11 TO
AMENDED AND RESTATED RAILYARD LEASE AND MANAGEMENT AGREEMENT

This Amendment No. 11 (the "Amendment") to the City of Santa Fe Amended and Restated Railyard Lease and Management Agreement dated April 30, 2011, as amended, (the "Agreement") between the CITY OF SANTA FE, New Mexico ("City") and SANTA FE RAILYARD COMMUNITY CORPORATION, a New Mexico non-profit corporation ("Non-profit") shall be effective on the date of the last signature.

WHEREAS, the City and Non-profit are parties to the Agreement under which the Non-profit undertakes management of the "Leasehold Premises" within the "Santa Fe Railyard;" and

WHEREAS, there are ten amendments to the Agreement, as follows: Amendment #1 (dated May 18, 2012) to terminate a portion of a ground sublease with the Railyard Company, LLC and credit the Non-profit for the equivalent amount of rent; Amendment #2 (dated April 30, 2013) to amend Exhibit B to provide for additional deferrals of rent and amend Exhibit C to revise the area of maintenance responsibilities; Amendment #3 (dated May 31, 2013) to provide a mechanism and rate for parking for patrons of the cinema, and to extend the Term of the Agreement to provide adequate time for the Non-profit to repay the payment deferrals granted to the Non-profit; Amendment #4 (dated June 1, 2013) to provide a credit against the rent owed by the Non-profit to the City equal to the rent the City owes the Non-profit pursuant to the sublease for Parcel O (Depot); Amendment #5 (dated September 1, 2015) to clarify that all subleases entered into by the Non-profit shall be assigned to the City when the Agreement terminates; Amendment #6 (dated December 1, 2015) to amend Exhibit B to provide deferrals of Rent due from the Non-profit, to amend Exhibit C to revise the areas of maintenance responsibilities of the City, to remove Parcel W from the Leasehold Premises, and to add Parcels A-3 and A-4 to the Leasehold Premises; Amendment #7 (dated March 31, 2016) to amend Exhibit C to correct a clerical error, to revise the Leasehold Premises to include a portion of Lease Parcel A-2; Amendment #8 (dated April 30, 2020) to remove the building improvements located on Parcel F-1 from the Leasehold Premises, to defer a portion of the Fair Value Compensation due April 30, 2021, and to include the repayment of the deferral in Exhibit B; Amendment #9 (dated May 1, 2020) to defer a portion of the Fair Value Compensation due April 30, 2020, as a result of the COVID-19 pandemic; Amendment #10 (dated April 30, 2021) to defer a portion of the Fair Value Compensation due April 30, 2021, and to include the repayment of the deferral on Exhibit B; and

WHEREAS, the parties wish to amend Section 2.01 (Grant of Leased Premises) to remove Parcel B-2 (Warehouse 21 land) and remove Parcel O (Depot), and amend Section 4.01(Compensation) to reduce deferrals accordingly, and add Section 6.16 Conditions for Development for Parcel B-2 and O.

AMENDMENT:

Pursuant to Article 8.01 of the Agreement, and for the good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Non-profit agree that the Agreement is amended as follows:

1. Delete in its entirety Section 2.01 (Grant of Leased Premises) of the Agreement, which includes **Exhibit A**, and replace them with the following:

   2.01 Grant of Lease Premises. The City hereby enters into this Agreement with the Nonprofit for the Leasehold Premises. The Leasehold Premises shall consist of the entirety of the Railyard, other than the following areas:

a. the connector between the Baca and North Railyard.
b. approximately eleven point four three (11.43) contiguous acres developed as a public park covered by the Amended and Restated Deed of Conservation Easement between the City and the Santa Fe Conservation Trust ("Conservation Easement").
c. Parcel W comprised of 14,129 square feet located at 705 Alarid Street covered by the Conservation Easement.
d. The Rail Line Corridor as defined in the Conservation Easement.
e. The area south of the Alarid Street railroad crossing.
f. The area occupied by the underground parking garage and facilities for ingress to and egress from the garage.
g. All public streets, alleys (except the alley in the Baca portion of the Railyard, which connects Railfan Road to Flagman Way), and public surface parking areas within the Railyard whether existing or subsequently created.
h. A portion of Parcel Q totaling 482 square feet.
i. A portion of Parcel SS in the Baca Street portion of the Railyard totaling 6,066 square feet.
j. A 10,242 square foot building on Parcel F-1 located at 545 Camino de la Familia.
k. Parcel B-2 (Warehouse 21, land); and k) Parcel O (Depot).

The area described, in the aggregate, is depicted in **Exhibit A** attached hereto and shall be hereinafter referred to as the "Leasehold Premises." **Exhibit A** is included for graphical information only. If any conflicts appear between **Exhibit A** and the text in this Agreement, the text shall prevail.

2. Add the following to Section 4.01 (Compensation) of the Agreement:

As compensation to the Non-profit for the removal of Parcel B-2 (Warehouse 21, land) and Parcel O (Depot) from the Leased Premises, the City agrees to reduce the deferrals as shown in the attached **Exhibit B** and dated September 30, 2022.

3. Delete in its entirety **Exhibit B** entitled "**Exhibit B** - Rent Schedule - April 30, 2021" and replace it with the attached **Exhibit B** entitled "**Exhibit B** – Rent Schedule dated September 30, 2022."

In contemplation of the removal of Parcel B-2 and Parcel O, the parties agree to add Section 6.16 to the City's Covenants and Agreements, as follows:

4. **Section 6.16** Conditions for Development for Parcel B-2 and O.

i. The City shall provide the Non-profit with documents related to potential uses and occupancy of Parcel B-2 and Parcel O for the Non-profit's review. The Non-profit shall advise on the review and selection of respondents to any request for proposals issued by the City. The Non-profit shall generate a "recommended course of action document" that shall be provided to the City.
ii. The Parties agree that future uses of Parcel B-2 and Parcel O shall not include the following uses:

a.) a Farmers' Market comprised of vendors that market fresh vegetables, fruits, meats, dairy, nursery products and value-added agricultural products, except for the incidental and de minimus sale of value-added agricultural products; or

b.) a movie cinema displaying movies or projected images, except if projection of said movies or images is incidental, occasional, and subservient to the primary use of either parcel.

Except as specifically provided in this Amendment #11, the Agreement shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment #11 as of the dates set out below,

CITY OF SANTA FE

_____
ALAN WEBBER, MAYOR

ATTEST:

_____
KRISTINE BUSTOS-MIHELCIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jan 24, 2023 07:59 MST)

_____
SENIOR ASSISTANT CITY ATTORNEY

APPROVED AS TO FINANCE:

_____
EMILY K. OSTER, FINANCE DIRECTOR
Business Unit/Line Item 2122800.460350 AH
AH

NON-PROFIT: SANTA FE RAILYARD COMMUNITY CORPORATION

_____
STEVEN ROBINSON
BOARD PRESIDENT

STATE OF NEW MEXICO)
)§
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me on _____, by Alan Webber, Mayor of City of Santa Fe, a New Mexico municipal corporation, on its behalf.

_____
Notary Public

My commission expires:

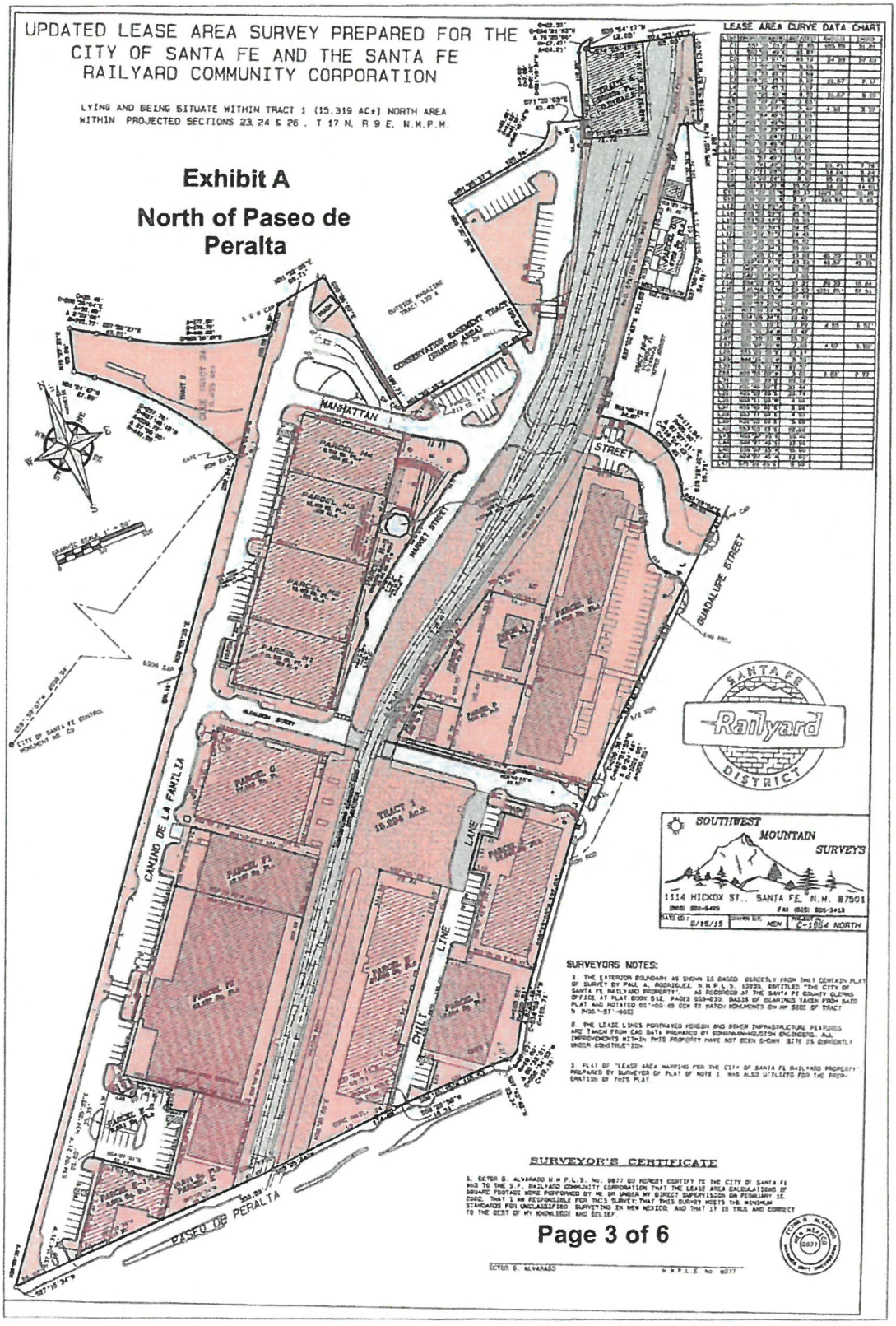
STATE OF NEW MEXICO)
)§
COUNTY OF SANTA FE)

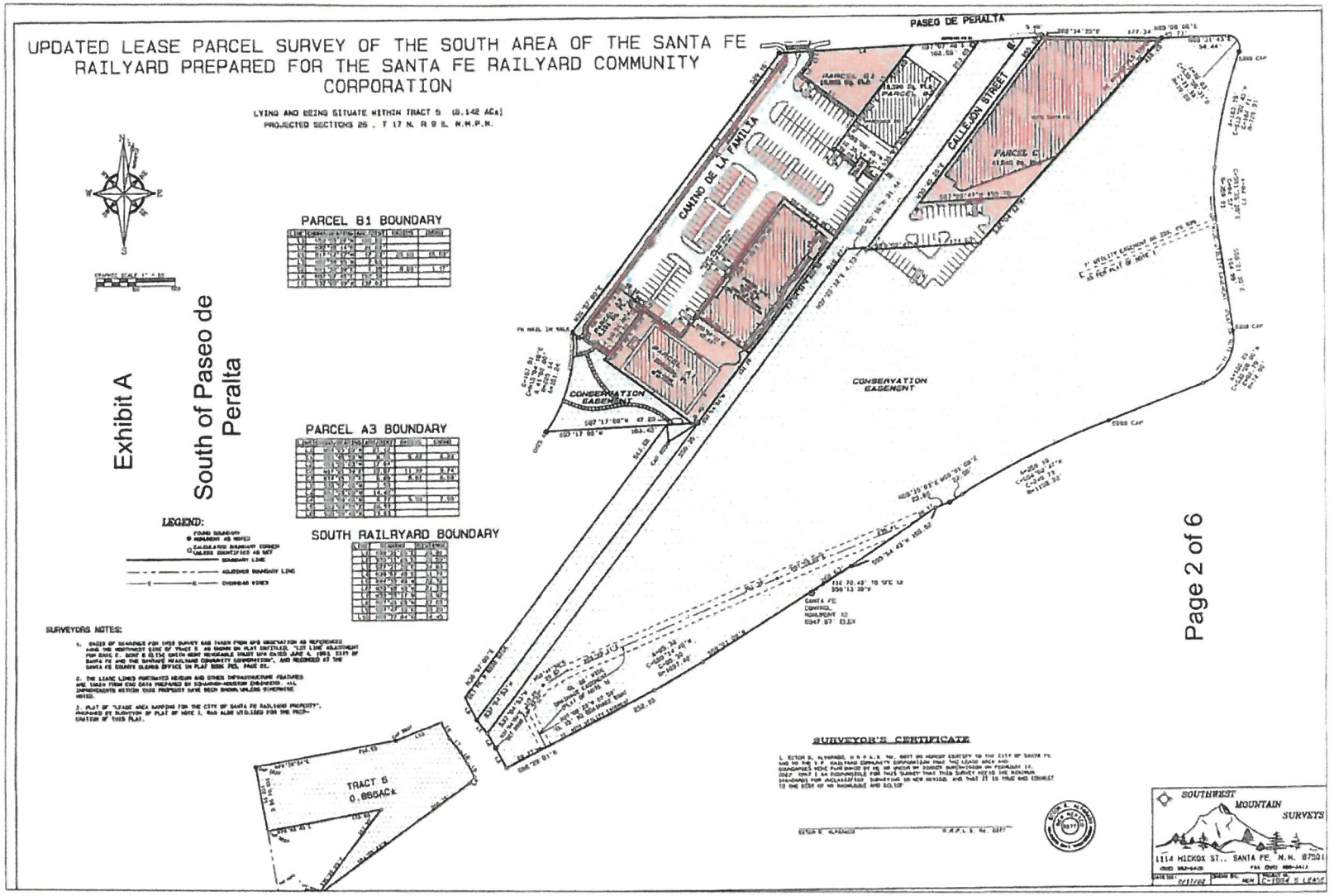
The foregoing instrument was acknowledged before me on 01/20/2023, by Steven Robinson, the Board President of Santa Fe Railyard Community Corporation, a New Mexico non-profit corporation, on its behalf.

_____
Notary Public

My commission expires: 12/06/2026

STATE OF NEW MEXICO
NOTARY PUBLIC
VALARIE LYON-VIGIL
Commission # 1110050
My Comm. Exp. 12/06/2026


UPDATED LEASE AREA SURVEY PREPARED FOR THE CITY OF SANTA FE AND THE SANTA FE RAILYARD COMMUNITY CORPORATION
LYING AND BEING SITUATE WITHIN TRACT 1 (15.319 AC±) NORTH AREA WITHIN PROJECTED SECTIONS 23, 24 & 26 , T 17 N, R 9 E, N.M.P.M.
Exhibit A
North of Paseo de Peralta
LEASE AREA CURVE DATA CHART
MANHATTAN
STREET
MARKET STREET
GUADALUPE STREET
CAMINO DE LA FAMILIA
CHILI LINE
PASEO DE PERALTA
SANTA FE Railyard DISTRICT
SOUTHWEST MOUNTAIN SURVEYS
1314 HICKOX ST., SANTA FE, N.M. 87501
SURVEYORS NOTES:
SURVEYOR'S CERTIFICATE
Page 3 of 6


UPDATED LEASE PARCEL SURVEY OF THE SOUTH AREA OF THE SANTA FE RAILYARD PREPARED FOR THE SANTA FE RAILYARD COMMUNITY CORPORATION
LYING AND BEING SITUATE WITHIN TRACT 5 (8.142 ACs)
PROJECTED SECTIONS 25 , T 17 N, R 9 E, N.M.P.M.
Exhibit A
South of Paseo de Peralta
PARCEL B1 BOUNDARY
PARCEL A3 BOUNDARY
SOUTH RAILYARD BOUNDARY
LEGEND:
SURVEYORS NOTES:
TRACT 5
0.865ACs
PASEO DE PERALTA
CALLEJON STREET
CAMINO DE LA FAMILIA
CONSERVATION EASEMENT
CONSERVATION EASEMENT
SURVEYOR'S CERTIFICATE
SOUTHWEST MOUNTAIN SURVEYS
1114 HICKOX ST., SANTA FE, N.M. 87501

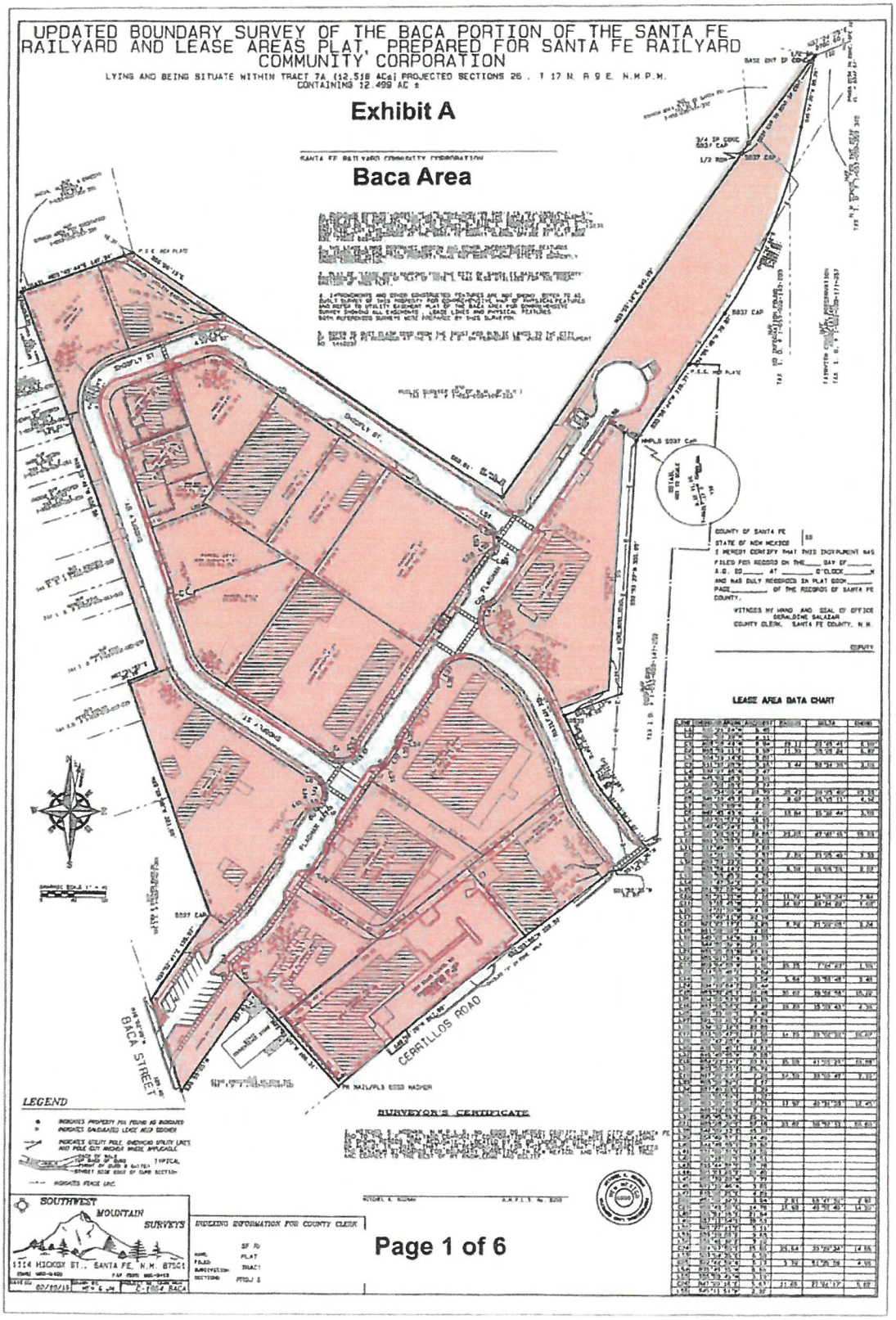

UPDATED BOUNDARY SURVEY OF THE BACA PORTION OF THE SANTA FE RAILYARD AND LEASE AREAS PLAT, PREPARED FOR SANTA FE RAILYARD COMMUNITY CORPORATION
LYING AND BEING SITUATE WITHIN TRACT 7A (12.518 ACs) PROJECTED SECTIONS 25 , T 17 N, R 9 E, N.M.P.M.
CONTAINING 12.499 AC ±
Exhibit A
Baca Area
DUDLEY ST.
CERRILLOS ROAD
BACA STREET
LEASE AREA DATA CHART
LEGEND
SURVEYOR'S CERTIFICATE
SOUTHWEST MOUNTAIN SURVEYS
1314 HICKORY ST., SANTA FE, N.M. 87501
Page 1 of 6

Exhibit B - Rent Schedule - January 20, 2023

		ACTUALS															PROJECTED								GRAND TOTALS
		FY2002-03	FY2003-04	FY2004-05	FY2005-06	FY2006-07	FY2007-08	FY2008-09	FY2009-10	FY2010-11	FY2011-12	FY2012-13	FY2013-14	FY2014-15	FY2015-16	FY2016-17	FY2017-18	FY2018-19	FY2019-20	FY2020-21	FY2021-22	FY2022-23	FY2023-24	FY2024-25	FY2025-26	
1	FAIR VALUE COMPENSATION Non-profit's share of the City of the Santa Fe Land Debt acquisition costs	1,183,724	412,547	463,221	575,105	571,919	555,974																			3,450,000
2	NMFA Loan - Infrast Phase I (B) (SAN 035) per City of SF Sub interest only until 2010-2011	0	0	0	277,107	219,257	212,644	149,350	83,000	83,115	82,817	82,831	82,806	82,809	82,809	82,809	82,843	82,849	82,855	82,859	82,897	0	0	0	0	1,494,107
3	NMFA Loan - Infrast Phase II (10B) $499,727 thru ends May 2026, post payback with City SF Reflection	0	0	0	0	0	0	278,697	85,169	85,165	85,171	85,165	85,172	85,179	85,165	85,165	85,203	85,209	85,216	85,228	85,239	85,250	85,264	0	0	1,617,702
4	Refinance (2010B) $10,490,000 term ends May 2026 and contract with City of SF Reflection	0	0	0	0	0	0	403,698	705,000	705,409	1,071,809	1,070,809	1,069,809	1,071,809	1,069,609	1,070,169	1,071,659	1,071,159	1,065,659	1,069,159	1,067,409	628,209	629,659	0	0	14,919,739
	SUB-TOTAL	1,183,724	412,547	463,221	575,105	571,919	555,974	845,745	843,349	843,679	1,239,977	1,238,805	1,237,887	1,239,637	1,237,584	1,238,181	1,239,804	1,239,208	1,233,729	1,237,246	1,235,545	734,459	734,941	0	0	21,371,729
5	Negotiated City of Santa Fe land debt acquisition deferrals Policies 5Cbills for FY 2002/03 to FY 2007/08	(59,500)	(274,000)	(180,000)	(80,177)	(121,000)	(107,000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	(761,177)
6	Repayment by the Non-profit of the land acquisition debt deferrals policy bullets 5Cbills	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	466,175	302,000	0	0	768,175
7	Debt deferrals provided by the City of Santa Fe for FY 2010/11 to 2020/21, Debt Deferral and repayment per L&M removal of 2011and L&M Amendment 2 - 13,493,441	0	0	0	0	0	0	(199,441)	(300,000)	(329,000)	(669,000)	(669,000)	(670,000)	(669,000)	(669,000)	(350,000)	(350,000)	(670,000)	(670,000)	(670,000)	(669,000)	0	0	0	0	(8,233,441)
	Sale of Santa Fe Clay Bldg	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	176,000	0	0	0	0	0	0	0	176,000
8	Repayment by the Non-profit of of deferrals granted by the City from FY 2002/03 to 2020/21	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	350,000	350,000	350,000	669,000	1,719,000	1,723,441	4,911,441
	Credit for Warehouse 21 & Debt per Amendment 11																					(350,000)	(350,000)	(350,000)	(669,000)			(945,852)
9	Repay deferral of $492,811 resulting from Covid-19 pandemic from FY 2019/20 to 2020/21	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	(492,811)	317,811	0	0	0	0	0	0	(175,000)
	TOTAL RENT PAYMENTS	1,183,724	138,547	283,221	494,911	450,919	464,974	712,304	543,349	514,679	558,977	569,805	567,887	570,637	568,584	1,000,181	889,804	1,231,819	1,293,733	1,307,246	1,305,545	1,192,625	1,086,941	900,118	1,338,000	19,494,839

NOTES

1. In addition to the deferrals specified above, the following credits are applied to the Rent payable by the Non-profit to the City:
   A. Ground rent and DAM rent for City's portion of the condominium interest in the Market Station building and the development parcels per Amendment 1 to the Lease & Management Agreement dated May 18, 2012.
   B. Payment of $243,478 made in FY2002-03, $463,424 in FY2003-04 and $463,039 made in FY2004-05. $30,000 deferral for FY2004-05.
   C. A $175,000 credit was applied in December 2003 for a portion of the rent the Non-profit would have received for the improvements located on Parcel F-1 if the improvements were not sold by the City.
   D. Amendment 11 deferral reductions, credits applied FY2023-24 thru FY2026-27, total $945,851.22 - year one for W21 land was set by a "fair market rent appraisal" and Depot was set by current rent, subsequent years are increased by 4.65% (Consumer Price Index, All Urban Consumers, All Products, from January 2020 to MONTH 2022). (Sec 18)

ITEM # 11-0306

CITY OF SANTA FE

AMENDED AND RESTATED RAILYARD LEASE AND MANAGEMENT AGREEMENT

CLERK RECORDED 05/11/2012

THIS AMENDED AND RESTATED RAILYARD LEASE AND MANAGEMENT AGREEMENT, dated and effective as of April 30, 2011 amends, restates, supersedes and replaces in its entirety that certain Railyard Lease and Management Agreement dated February 27, 2002, as amended, and is made and entered into by and between SANTA FE RAILYARD COMMUNITY CORPORATION, a New Mexico non-profit corporation ("Non-profit"), and the City of Santa Fe ("City").

RECITALS

WHEREAS, the City has acquired title to certain real property within the municipal boundaries of the City of Santa Fe and more fully described in that certain plat of survey entitled "Catellus Railyard and Baca Street Property", dated December 20, 1995 and recorded in the Santa Fe County Clerk's records as document number 928 -704 at book 323 pages 017-022, (the "Railyard");

WHEREAS, on January 31, 2001, the City Council approved resolution 2001-13 which directed staff to pursue and implement non-profit management of the Railyard, upon completion of the Amended Metropolitan Redevelopment Plan;

WHEREAS, on February 13, 2002, the City Council approved the Amended Metropolitan Redevelopment Plan, which amends the previously approved Metropolitan Redevelopment Plan (the "Amended Metropolitan Redevelopment Plan");

WHEREAS, on January 31, 2001, January 16, 2002 and February 13, 2002 the City Council approved long term land leases and building leases with existing tenants for existing leasehold areas on the Railyard property;

WHEREAS, the City and the Non-profit now wish to enter into an Amended and Restated Lease and Management Agreement (hereinafter called the "Agreement"), consistent with the intent expressed in the Community Plan, Metropolitan Redevelopment Plan and Amended Metropolitan Redevelopment Plan;

WHEREAS, NMSA 3-60A-12 (1995 Repl. Pamp.) provides for the City's lease of property within a redevelopment area for the fair value of the property as determined by the Governing Body;

WHEREAS, in determining the fair value of the property pursuant to NMSA 3-60A-12 (1995 Repl. Pamp.), the law states that the City shall take into account the uses, restrictions and objectives of the Amended Metropolitan Redevelopment Plan;

WHEREAS, the Amended Metropolitan Redevelopment Plan was subsequently replaced and superseded by the Railyard Master Plan and Design Guidelines ("Railyard Master Plan");

WHEREAS, the City and Non-profit wish to ensure the successful redevelopment of the Railyard through joint public and private efforts by agreeing to such terms as will enable the Non-profit and any sub-tenants of the Non-profit to obtain access to credit on the basis of unsubordinated long term lease lending.

WHEREAS, the City has determined that this Agreement shall terminate on June 30, 2027, unless renewed by mutual consent of the Non-profit and the City.

NOW THEREFORE, in consideration of the mutual promises contained herein, the foregoing considerations and the following terms, and other good and valuable consideration the receipt of which is hereby acknowledged, the City and the Non-profit agree as follows:

SFC CLERK RECORDED 05/11/2012

PURPOSES

1.01 Intent The parties enter into this Agreement in order to create a binding contract for the purpose of establishing an effective implementation mechanism for the Railyard Master Plan in order to lessen the burdens upon the City in implementing the Plan.

1.02 Construction This Agreement is not to be construed in favor of either party but is to be deemed the product of both parties' good faith efforts.

1.03 Non-profits Goals The Non-profit agrees that the implementation of the Railyard Master Plan is its primary motive in entering into this Agreement.

1.04 City's Goals The City agrees that the relationship established by this Agreement is the most effective way to manage the property and achieve its public objectives. The City agrees to give the Non-profit the greatest amount of freedom possible within the restrictions created by this Agreement, any subsequent Leases, the Railyard Master Plan and the leases which have been previously entered into by the City and Railyard tenants and which have been assigned to the Non-profit. The City agrees to refrain from direct involvement in negotiations by and between subtenants seeking an interest in the Leasehold Premises under subleases from the Non-profit.

PROPERTY GRANTED

2.01 Grant of Lease Premises The City hereby enters into this Agreement with the Non-profit for the Leasehold Premises. The Leasehold Premises shall consist of the Railyard exclusive of the following areas: the connector between the Baca and North Railyard; approximately ten (10) contiguous acres developed as a public park covered by the Deed of Conservation Easement between the City and the Trust for Public Land; the Rail Line Corridor as such term is defined in the aforementioned Conservation Easement; the area south of the Alarid Street railroad crossing; the area occupied by the underground parking garage and facilities for ingress to and egress from that garage; all dedicated or reserved public streets, alleys, and public surface parking areas within the Railyard whether existing or subsequently created; a portion of Parcel Q totaling 482 square feet; and a portion of Parcel SS in the Baca Street portion of the Railyard totaling 6,066 square feet. The Leasehold Premises shall include the following areas: a.) approximately 82 square feet adjacent to Lease Parcel E that was previously a portion of the Conservation Easement, and b.) the land in the Baca Street potion of the Railyard that was exchanged with the Santa Fe Lodge No. 2, Independent Order of Oddfellows, Inc. This area in the aggregate is depicted in Exhibit A hereto, and shall be hereinafter referred to as the "Leasehold Premises". Exhibit A is included for graphical information only. If any conflicts appear between Exhibit A and the text in this Agreement, the text shall prevail. Nothing herein shall be deemed to limit the addition of property owned by the City to the area covered as Leasehold Premises should such properties be added to the Railyard through the planning process or by way of acquisition by the City and so long as the Non-profit gives its written consent to the addition of the property to the Leasehold Premises and conveys fair value for any additional property.

2.02 Leasehold Improvements Any and all buildings, structures, paths, plants, or other improvements to the Leasehold Premises whether on, under or above the Leasehold Premises, shall be "Leasehold Improvements". Property attached by the Non-profit or a subtenant as trade fixtures and occupant equipment including all fixtures, furniture, equipment and furnishings installed for use in connection with the conduct of the business of an occupant of the Leasehold Improvements shall not be Leasehold Improvements and shall be occupant's equipment ("Occupants Equipment").

2.03 Rights-of-Way The parties agree to exclude dedicated and reserved rights-of-way from the Leasehold Premises as defined in section 2.01.

2.04 Non-Merger Nothing in this Agreement shall be deemed to terminate or destroy by way of merger any City easements whether presently existing or created in future and whether for the benefit of the City's utilities or any other purpose. This Agreement is also intended to prevent merger of the fee interest in the Railyard and the Leasehold Premises. Regardless of whether an individual should come to acquire a fee interest and a leasehold interest in the property, merger shall not be deemed to have occurred so long as there exists an outstanding mortgage of the leasehold interest.

2.05 Existing Tenants It is expressly understood by the City and the Non-profit that this Agreement is given and accepted subject to the leases, rights and privileges of tenants in possession. The existence of such leases, rights and privileges shall not be deemed a violation of the City's covenant of peaceful possession or any other covenant in this Agreement. The City and Non-profit acknowledge that the Non-profit will be responsible for administering and enforcing all existing and future ground and building leases. The Non-profit hereby assumes all liability by reason of such leases and rights of such tenants and is hereby granted and entitled to all the rents, additional rents and other amounts which may now be or become due and payable by said tenants under such leases, and to enforce all rights, remedies and privileges of the City under the terms of such leases, and except as otherwise provided herein, until the expiration or sooner termination for whatever cause, of this Agreement. Nothing herein shall be deemed to create any new right or interest in third parties including existing tenants.

The City assigned twenty three leases to the Non-profit in 2002. Of the original twenty three leases, only the following leases are currently in effect:

1. Gross Kelly Warehouse LLC dated June 27, 2002
2. Milestone, Inc. dated April 18, 2002
3. Santa Fe Clay dated June 21, 2002
4. Twisted Cow Compound Ltd. dated May 3, 2002.
5. Railyard Enterprises, LLC dated May 7, 2002 which was subsequently amended and restated on April 21, 2008.

TERM

3.01 Term The term of this Agreement shall commence on April 30, 2011 and terminate immediately at 11:59 P.M. Mountain Standard Time on June 30, 2027 unless the term is extended pursuant to this Agreement. Any change in this term other than by default, bankruptcy, or other actions prematurely terminating this Agreement, shall be accomplished only pursuant to section 3.02 below. No holding over, extensions, or renewal shall be permitted nor deemed to have occurred by any action or inaction of the parties other than through the written execution of a renewal or extension by both parties. This term shall be strictly construed as a limitation upon all tenants, sub-tenants, and anyone claiming any interest in the Leasehold Premises.

The expiration of this Agreement shall not affect the validity of any sublease made by the Non-Profit hereunder prior to the expiration or termination of the Agreement.

3.02 Renewal and Extension This Agreement may be renewed or extended by written agreement of the parties upon such terms and conditions as may be mutually agreeable. If the Non-profit or the City desires to renew or extend this Agreement, the parties shall attempt to initiate discussions of

SFC CLERK RECORDED 05/11/2011

the extension or renewal at least two years prior to the expiration of the term.

3.03 No Option to Purchase There shall be no option for the Non-profit to purchase the Leasehold Premises. It is expressly understood by the parties that the Leasehold Premises are to be owned by the City in fee in perpetuity.

3.04 No Preliminary Term The term provided for in this section three shall be the only term of the Agreement. No preliminary term shall be provided or implied in this Agreement.

COMPENSATION

4.01 Fair Value Compensation The City has determined and hereby agrees that total lease payments due the City during the term of this Agreement will consist of the following:

4.01.1 A portion of the City's debt service payment for the acquisition of the Railyard as described below:

Total amount owed by the Non-profit for Railyard acquisition	$2,720,181
Amount paid by Non-profit through May 1, 2010	$1,951,006
Remaining balance owed by Non-profit	$769,175

Non-profit shall pay the remaining balance owed ($769,175) to the City in two payments per annum on May 1 and November 1 over five fiscal years commencing November 1, 2020 and concluding May 1, 2024 in accordance with Exhibit B hereto; and

4.01.2 100% of the City's debt service payment on the City's infrastructure financing, according to a debt service schedule set forth in Exhibit B which shall be subject to adjustment as the result of the City refinancing the infrastructure financing, per Section 6.03 The payments will be due thirty (30) days before each of the City's debt service payments are due.

After the Non-profit has repaid all of its obligations related to the Railyard acquisition debt service and infrastructure financing debt, the Non-profit shall pay to the City 50% of the annual excess revenue collected by the Non-profit. Annual excess revenue is defined as the difference between the annual lease revenue (excluding any donated and grant funds and special assessments earmarked for a particular use) and the annual cost of the Non-profit's performance of its obligations under this Agreement, including but not limited to payments of City debt service on both land and infrastructure, annual administrative and operating cost, any annual contribution to park and public space development management and/or operations, and a reasonable allowance for maintenance and capital improvement reserves.

In order to finance a portion of these costs, the City assigned to the Non-profit all of the existing Railyard ground and building leases which were executed by the City prior to June 28, 2002. The Non-profit has and will continue to retain all revenue from these leases, and will be allowed to retain all revenue from subleases on all lease parcels.

4.02 Manner of Payment of Compensation The Non-profit agrees to pay without demand and in advance of its coming due the fair value as established in Section 4.01 for the Leasehold Premises. The payments shall be made in lawful money of the United States which shall be legal tender for the payment of all public and private debts at the time of payment, by electronic fund transfer to an account designated in writing by the City or in the absence of such designation delivered by hand to the accounts receivable division of the City at its offices located at 200 Lincoln Avenue, Santa Fe, New Mexico or at such successor office as the City Manager may designate in writing. If payment is made by check, said payment shall not be deemed to have occurred until such time as the check has been received by the City and has cleared. Non-profit may prepay lease payments at its discretion with no prepayment penalty or fee assessed by the City. If prepayments

SFC CLERK RECORDED 05/11/2012

SFC CLERK RECORDED 05/11/2012

are made to the City by the Non-profit, Exhibit B will be amended accordingly to reflect those prepayments.

4.03 Net Lease This Agreement is a net lease with the Rent payable to the City free from all charges, assessments, impositions, expenses or deductions of any kind or nature whatsoever.

NON-PROFIT'S COVENANTS AND AGREEMENTS

The Non-profit covenants and agrees to the following:

5.01 Assumption of Responsibility by Non-Profit by entering into this Agreement The Non-profit agrees that, except as expressly otherwise provided herein, the City as lessor is relieved of and the Non-profit shall assume all the obligations, duties, and expenses regarding management and maintenance of the Leasehold Premises. The responsibilities and authorities of the Non-profit shall include entering into long term leases of the Leasehold Premises consistent with the Railyard Master Plan and this Agreement. Not withstanding the foregoing, the Non-profit shall not be responsible for the maintenance and security of the portion of the Leasehold Premises north of Paseo de Peralta comprising the Conservation Easement.

5.02 Conforming to Plan The Non-profit's use of the Leasehold Premises shall be consistent with the Railyard Master Plan and all existing and future amendments thereto. However, the Non-profit retains the autonomy to set lease rates and enter into leases with all tenants. The inclusion of any tenant by name in the Railyard Master Plan shall require the Non-profit to negotiate with said tenants in good faith. However, nothing herein shall be deemed to require the Non-profit to enter into a lease with any tenant whether or not they are named in the Railyard Master Plan.

5.03 Ownership of Alterations and Improvements This Agreement contemplates extensive alterations and improvements of the Leasehold Premises by the Non-profit and its subtenants. All Leasehold Improvements performed by the Non-profit (except those Improvements owned by the Non-profit's sublease tenants) shall be deemed the property of the City immediately upon the earlier of the City's acceptance of the Improvements or the termination of this Agreement by expiration, default, judgment, bankruptcy, mutual consent or otherwise and the City shall be given immediate possession upon said termination. Any Leasehold Improvements performed by any subtenants shall be owned by such subtenants to the extent provided in any sublease from the Non-profit. Upon termination of this Agreement as provided herein, all Leasehold Improvements shall be deemed forfeited to the City at no additional expense to the City; provided, however, that if any sublease from the Non-profit provides that the Leasehold Improvements are to be owned by said subtenant thereunder, then such Leasehold Improvements shall continue to be owned by the subtenant so long as the sublease shall remain in effect. No additional compensation shall be required or paid by the City to the Non-profit for any Leasehold Improvements which revert to the City and the Non-profit expressly agrees that all such Leasehold Improvements shall remain upon the property after termination of this Agreement. All Leasehold Improvements performed by subtenants which had subleases assigned by the City to the Non-Profit shall be handled in the manner specified in the lease agreements between the City and the individual subtenants.

Except as hereinafter provided, nothing herein shall act as or be deemed to be an agreement by the City to pay, act as surety, guarantee or in any way be responsible for the repayment of debts contracted by the Non-profit or any sublessee or party claiming as a third party beneficiary. The sole remedy of any mortgagee lending money in reliance upon this Agreement or any sublease hereunder shall be the right to foreclose on the leasehold interest only or to accept an assignment thereof in lieu of foreclosure.

5.04 Alterations The Non-profit shall not make any alterations to the Leasehold Premises which impair the safety or the structural integrity of Leasehold Improvements or which violate legal

SFC CLERK RECORDED 05/11/2012

requirements. The Non-profit shall not make or permit to be made any alterations to the Leasehold Premises which would have the effect of wasting the property or reducing the fair market leasehold value of the improvements. The Non-profit shall be permitted to make any alterations to the Leasehold Premises not forbidden by this section provided that the alterations shall be made in a good and workmanlike manner, in compliance with applicable legal requirements and in compliance with insurance requirements. All alterations to the Leasehold Premises shall be Leasehold Improvements.

5.05 Insurance The Non-profit shall at all times maintain and provide adequate insurance coverage which may include each of the following:

A. General liability insurance for the entire Leasehold Premises in an amount at least equal to the New Mexico Tort Claims Act maximum.

B. Workmen's compensation insurance in an amount sufficient to meet statutory requirements.

C. Casualty "extended coverage" and "additional extended coverage" as may be available for all improvements to the Leasehold Premises (except City-owned buildings which shall be insured by the City) in an amount sufficient to restore and replace structures and improvements if lost or damaged by any form of casualty. This insurance may be provided by a subtenant if the improvements are to be made and owned during the term of the sublease by the subtenant. However, the policy must name the trustee appointed by the City and the Non-profit as beneficiary. All property and casualty insurance policies held by the Non-profit shall be payable to the trustee mutually agreed upon by the City and the Non-profit. No insurance proceeds shall be payable to the Nonprofit if the Non-profit is in default on this Agreement. All proceeds shall be applied first to the restoration of any insured property or improvements, next any unexpended amounts shall be applied to the payment of amounts due and owing to the City by the Non-profit. Residual amounts shall be paid to the Non-profit.

D. If this Agreement is terminated by expiration, or default by the Non-profit, and there exist insurance funds which have not been applied to the reconstruction of the insured improvements the City may, at its sole option, elect to retain the insurance proceeds as liquidated damages.

E. If the Non-profit fails to maintain insurance in adequate amounts pursuant to this section the City shall have the right, but not the duty, to purchase such insurance and charge the cost of the same to the Non-profit as additional rent.

F. The Non-profit shall cooperate with the City in connection with the collection of any insurance moneys that may be due in the event of loss and shall execute and deliver to the City such proofs of loss and other instruments that may be required for the purpose of facilitating the recovery of any such insurance moneys, and in the event that the Non-profit shall fail or neglect so to cooperate or to execute, acknowledge and deliver any such instrument to the City, in addition to any other remedies, may, as the agent or attorney in fact of the Non-profit, execute and deliver any proofs of loss or any other instruments as may be desirable to the City for the collection of such insurance moneys, and the Non-profit hereby irrevocably nominates and appoints the City as its legal attorney in fact for such purpose.

The City Manager shall be permitted to negotiate and approve alternative insurance coverages where the listed insurance proves duplicative, impractical or excessive. In addition if the City at any time maintains a policy insuring a risk described above and if the Non-profit may be named as an additional named insured on that policy at minimal expense to the City then that coverage shall be satisfactory insurance for purposes of this Agreement.

5.06 Implementation The Non-profit has actively sought, and will continue to seek, to achieve the objectives of the Railyard Master Plan. The Non-profit has completed on-site spine infrastructure

improvements (which were accepted by the City on November 10, 2009) except for the following work which may be completed by the City or the Non-profit at the City's expense:

a) Alcaldesa Street from Market Street to Camino de la Familia. This obligation has been delegated to the sublessee of Parcels M-1to M-4 and G.

b) The street, curb, gutter, sidewalk, trash enclosure adjacent to Parcel G on Camino de la Familia.

5.07 Annual Report and Record Keeping The Non-profit shall report annually to the City on its compliance with the terms and conditions of this Agreement and its progress in achieving the Railyard Master Plan objectives. The annual report to the City shall contain copies of the Non-profit's annual audits including a concise summary of the financial condition of the Non-profit's income and expenditures. The Non-profit shall follow the Statement of Financial Accounting Standards (SFAS) no. 117, Financial Statements of non-profit organizations, in the preparation of its report. The Non-profit is responsible for paying for all such audits. It shall also contain a specific itemized list of all improvements made to the Leasehold Premises and all depreciation of assets and improvements upon the Leasehold Premises. In addition to the annual report the Non-profit shall keep its business records in a financially prudent and orderly manner. Said records (except as set forth in Section 9.06 of this Agreement) shall be available for inspection by the City at all reasonable times upon reasonable notice to respond to questions posed by the City regarding the annual audits.

5.08 Permits Licenses and Approvals Non-profit and any subtenant may seek any governmental approvals for the use of the Leasehold Premises pursuant to this Agreement.

5.09 Administration of Subleases The Non-profit shall administer and enforce the existing ground and building lease agreements which have been assigned by the City to the Non-profit. The Non-profit shall also enter into new subleases, and administer same, on areas within the Leasehold Premises which are leasable, under the Railyard Master Plan. Upon termination of any existing agreements, the Non-profit shall solicit, negotiate, draft and enter into new subleases which are consistent with the Railyard Master Plan. The subleases may have a primary term of no more than fifty (50) years from the date of execution of the sublease, and may, but need not, provide for one or more options to renew or extend for a total of no more than an additional forty (40) years. All subleases containing exculpation clauses (limiting the sublessees' liability to the subleasehold estate) shall provide for adequate performance, completion and surety instruments in the form of a bond, letter of credit or guarantee with the Non-profit as beneficiary in order to ensure that the sublessee (not merely the general contractor working for the sublessee) completes any proposed improvements to the Leasehold Premises. In any event the security provided shall expressly supersede any exculpation clause and shall be imposed such that substantial completion is achieved prior to the termination of said security. No sublease shall be assignable without the Non-profit's prior written consent, which shall not be unreasonably withheld. The Non-profit shall include a provision in all subleases that the subtenant shall attorn to the City as landlord upon termination or expiration of this agreement.

5.10 Projects The Non-profit prepared preliminary and final engineering plans and development plan for site development. The City shall be responsible for construction of off-site infrastructure, wherever located, if identified in the Railyard Master Plan. The Non-profit or the City shall complete those projects referenced in Section 5.06.

5.11 Maintenance The Non-profit shall continuously maintain or cause to be maintained, the Leasehold Premises, except the area north of Paseo de Peralta comprising the Conservation Easement. Maintenance of and repairs to premises under lease shall be conducted in the manner and under the provisions set forth in the lease agreements. In its annual budgeting, the Non-

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profit shall designate a reasonable allowance for maintenance of the Leasehold Premises. Fiscal responsibility for maintenance and security of the Conservation Easement is the responsibility of the City. An exhibit depicting the areas of maintenance responsibilities for the Non-Profit and the City is included herein as Exhibit C hereto.

5.12 Improvements The Non-profit performed required environmental remediation of matters identified on the existing Phase II environmental assessment on the Leasehold Premises and built the on-site spine infrastructure with infrastructure connections to all tenant premises and the park area, and the public surface parking. The Nonprofit shall not be responsible for any cost related to the improvement or replacement of railroad equipment and facilities, including but not limited to tracks, roadbeds, and crossings or any other cost related to the present or future operations of Santa Fe Southern, Rail Runner, or any successor railroad in the Railyard.

5.13 Special Entertainment The Non-profit shall promote, permit, and program special events and special entertainment in the public space on the Conservation Easement, except the Rail Line Corridor and the portion of the Conservation Easement south of the Alarid Street railroad crossing ("Event/Vendor Space"). The Non-profit shall manage public and private events on the Event/Vendor Space pursuant to all the applicable terms and conditions of this Agreement, Conservation Easement, and Santa Fe Railyard Park, Plaza and Alameda Public Policies and Procedures approved by the City of Santa Fe City Council on May 13, 2009, all as amended from time to time. Whenever the Non-profit believes it is in the best interests of the City to negotiate amendments to the Deed of Conservation Easement, the Non-profit may attempt to negotiate such amendments with the grantee of the Deed of Conservation Easement and may propose such amendments as are acceptable to the grantee to the Governing Body of the City for approval. The Non-profit will also consult with the City Manager or his or her designee from time to time, as may be necessary or appropriate, with respect to the vending and public and private event management of the Event/Vendor Space. Such activities shall be performed in coordination with subtenants, outside vendors and the holder of the Railyard Conservation Easement. The Non-profit shall manage vending and public and private events on the Event/Vendor Space, including granting licenses for the potential users, in a manner that facilitates and encourages development of the Santa Fe Railyard in accordance with the Santa Fe Railyard Master Plan, as it may be amended from time to time.

The Non-profit or the City may terminate the Non-profit's responsibilities and obligations described in this Section 5.13 upon sixty (60) days written notice to the other party.

5.14 Replacement of City Owned Leasehold Improvements The Non-profit or its sublessees shall replace any and all Leasehold Improvements damaged or destroyed by fire or other casualty or where replacement is required by law or to ensure continued insurance of the Leasehold Improvements, except for the Leasehold Improvements owned by the City or comprising the infrastructure and those areas excluded from the Leased Premises under Section 2.01 of this Agreement. The replacement shall be made within a reasonable time after the damage occurs and shall be prosecuted diligently. Non-profit or its sublessee's duty to repair, replace and comply with all legal requirements pursuant to this Agreement extends to extraordinary, unforeseen and structural repairs and replacements as well as ordinary, foreseen and nonstructural repairs and replacements. Nothing herein shall be deemed to prevent the City and Non-profit from terminating this Agreement or agreeing to alternative measures, or division of insurance proceeds in lieu of replacement when the replacement of a Leasehold Improvement is not in the best interest of either or both parties.

5.15 Indemnification The Non-profit shall defend, indemnify and hold harmless the City, its agents, officers, and employees against all claims, actions, and damages whatsoever relating

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to this Lease or any subsequent lease, and from any and all incidents, transactions and occurrences upon the Leasehold Premises or in any way pertaining to the Leasehold Improvements, except for the Leasehold Improvements comprising the infrastructure and those areas excluded from the Leased Premises under Section 2.01 of this Agreement. Said indemnity shall include payment for attorneys' fees and costs and shall expressly require the Non-profit to pay any resulting judgments. This indemnity is given as a surety and protection to the taxpayers who through the City own the land in fee and is not intended to extend to the negligent conduct of the City or to be in violation of NMSA 57-7-1. Therefore, the limitations upon this indemnity shall be the limitations imposed by NMSA 57-7-1 and any successor statute limiting indemnities as a matter of public policy. Nothing herein shall be construed to impose individual or personal liability of any kind on any director, officer, agent or employee of the Non-profit, nor shall anything herein be construed to make any person, not a party to this Agreement, a beneficiary hereof.

5.16 Public and City Access The Non-profit shall allow the City and/or its agents or assigns access to the Railyard for periodic inspections, maintenance of public rights-of-way, maintenance and operation of parking facilities or other City facilities and/or public spaces, accepted by the City for maintenance, and for such other purposes as the City may have, provided that nothing herein shall be deemed a requirement to allow the City to occupy any part of the Railyard leased to the Non-profit, nor to interfere with the Non-profit's quiet enjoyment of the Railyard. Notwithstanding the foregoing it is understood that much of the Leasehold Premises are to be open to the public and nothing herein is deemed to limit public access to the Leasehold Premises.

5.17 Intentionally Deleted

5.18 Taxes This Agreement is not intended to create a taxable interest in real property but rather to provide a mechanism for independent management of the Leasehold Premises.

5.19 Discharge of Liens The Non-profit shall discharge all liens that arise as a result of making repairs, replacements, improvements, alterations, demolition, or as a consequence of any and all legal or insurance requirements. Said liens shall be discharged upon the later of the City's giving notice to discharge lien and the elapsing of sixty days or the termination of this Agreement.

5.20 City to Continue Regulatory Role It is acknowledged by the Non-profit that the City shall continue to oversee the review of projects within the Railyard in its capacity as a land use regulatory body (currently through the Business Capital District Design Review Committee). Therefore, nothing herein shall be deemed a waiver or abrogation of the City and its subsidiary bodies and agencies right to approve or deny any sublessee's proposal based upon regulatory authority as opposed to the authority of a landlord pursuant to this Agreement.

5.21 Demolition Except as expressly provided for in the Railyard Master Plan, the Non-profit agrees not to demolish any structure or improvement upon the Leasehold Premises without first obtaining express written permission from the City Council in its proprietary capacity as landlord and owner of the Leasehold Premises, for the removal or demolition of said improvement.

5.22 Audits The City shall be entitled to cause independent certified public accountants to conduct an audit of the books and records maintained pursuant to this Agreement. The right to conduct an audit includes the right to make tests of the Non-profit's accounting records and such other auditing procedures that are appropriate under the circumstances. The audit may be conducted after reasonable notice and during regular business hours.

5.23 Compliance with Open Meetings Law The Non-profit agrees to be bound by all provisions of the State Open Meetings Law.

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5.24 Plan Amendments The Non-profit shall update and make such minor modifications to the Railyard Master Plan as are necessary to address changing conditions or changing public needs. The City Council must approve all amendments to the Railyard Master Plan that are listed in Part III of the Railyard Master Plan as requiring City Council approval.

5.25 Studies The Non-profit shall prepare all studies, inspections and surveys necessary to carry out its responsibilities.

5.26 Prohibition on Ownership The Non-profit agrees that it will refrain from taking any ownership interest in individual projects on the Railyard or immediately adjacent to the Railyard. This prohibition also applies individually to all members of the Board of Directors and staff.

5.27 Affordable Housing Accommodation Upon no less than 14 days written notice from the City to the Non-profit, the Non-profit agrees to delete from the Leased Premises the proportionate share of the residential units, subject to the City's Affordable Housing Ordinance, 2005-30, constructed by the Non-profit's subtenants under the applicable ground leases. The City shall enter into a new and separate ground lease between the City and the subtenants for those units. The Non-profit agrees to this reduction in the Leased Premises under the following conditions:

a) This reduction shall only be applicable to residential or live/work units that comply with the City's Affordable Housing Ordinance 2005-30.
b) City agrees to compensate the Non-profit for the rental income which would have been received by the Non-profit if this portion of the Leased Premises would have remained in the Leasehold Premises.
c) The City shall provide a credit against the amounts owed by the Nonprofit pursuant to Sections 4.01 and 6.03 until the Non-profit has fully repaid all amounts owing to the City.
d) The Non-profit shall provide a written notice to the City prior to the effective date of the reduction in the Leased Premises. The written notice shall set forth the:
    1) Proportionate share and;
    2) Term of the underlying sublease; and
    3) Initial Rental Income which Non-profit would receive.
e) No later than June 30th of each year, the Non-profit shall calculate the annual amount to the City. The City shall credit that amount to the amount owed by the Non-profit to the City.

CITY'S COVENANTS AND AGREEMENTS

The City hereby covenants and agrees to the following:

6.01 No Mortgages, Liens or Encumbrances The City conveys the Leasehold Premises as defined in section 2.01 free from all other mortgages, liens and encumbrances excepting only such encumbrances as are described in the City's owner's title insurance policy and the indebtedness and use restrictions contained in the bond covenants for its series 2010B Subordinate Lien Gross Receipts Tax Revenue Bonds, and such indebtedness restrictions as may be imposed by law. The City further agrees not to subject its fee title to the Leasehold Premises to any fee mortgages during the term of this lease or any extension thereto.

6.02 Reconfiguration of Railyard Property The City agrees to resolve any property disputes which may arise as to the City's ownership of the fee title to the Railyard. The City agrees to perform promptly lot line adjustments and lot consolidations to bring the existing survey into conformity with the Railyard Master Plan. The parties shall cooperate on any subsequent re-surveys needed to accomplish the objectives of the Railyard Master Plan. The Non-profit shall not be responsible for granting, aligning or realigning any public railroad rights-of-way or utility easements within the Plaza and Alameda, which responsibility shall remain that of the

City. The City shall consult with the Non-profit concerning rights-of-way and easements within the Plaza and Alameda.

6.03 Financing The City secured conduit financing in an amount necessary to pay for all on-site infrastructure development, including environmental remediation and including engineering and other agreed upon soft costs. The City secured all funds required for the design and construction of a parking structure, surface parking, and will secure funding for the design and construction of off-site infrastructure improvements, as identified in the Railyard Master Plan.

If the City refinances the aforementioned conduit financing and achieves a lower repayment schedule (debt service) City will reduce the amount owed by the Non-Profit to the City pursuant to Section 4.01 on a dollar-for-dollar basis.

6.04 Prior Obligations Intentionally Deleted.

6.05 Assignment and Delegation between Parties Intentionally Deleted.

6.06 Title Insurance The City agrees to bear all costs regarding title and title insurance for the Railyard.

6.07 Non-profit's Permission to Mortgage the Improvements and Leasehold Non-profit shall at all times during the term of this Agreement have the right to mortgage or convey by trust deed or any other instrument adequate for the purpose of securing any actual bona fide debt, this Agreement or the leasehold interest of the Non-profit created by it, together with all its right and interest in the buildings and improvements now on or hereafter to be placed upon the Leasehold Premises and the rents, profits and issue thereof, provided always that any such mortgage, conveyance or encumbrance will at all times be subject to and inferior to the prior right, title and interest of the City in and to the said Leasehold Premises as and for security for the full and faithful performance of the covenants, terms and conditions of this Agreement.

In the event of any breach or default of any of the covenants, terms or conditions of this Agreement by the Non-profit, any holder of a mortgage, deed of trust or such other instrument provided for above ("Subrogees") may, before forfeiture or default, make any and all payments, and do and perform any and all acts which may be necessary to prevent a forfeiture or default under this Agreement and thereby shall become subrogated to so much of Non-profit's rights under this Agreement as may pertain to the affected property. In furtherance of this right the City agrees that any Subrogee who gives notice to the City of its interest in a portion or the whole of the Leasehold Premises pursuant to the notice provisions of Section 9.05 shall be provided with copies of any written notices or demands which the City may serve upon the Non-profit pursuant to this Agreement.

However, the Subrogees shall in no way be liable to the City for the payment of the Rent or for the performance of any other covenants, terms or conditions of or under this Agreement until such time as it shall acquire, by conveyance from the Non-profit, foreclosure or other proceedings provided by law or contract, so much of the right, title and interest of the Non-profit in the Leasehold Premises as is necessary for the Subrogee to take possession of the portion of property securing the Non-profit's obligation. Any Subrogee obtaining possession shall thereafter become liable to the City for the full performance and payment provided for and required under the covenants, terms and conditions of this Agreement, as fully and completely and to the same extent as the Non-profit would have been had the Non-profit retained its rights and interests.

Under no circumstances shall the Subrogee be allowed to assign or transfer its interest in this Agreement.

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6.08 Non-Profit's Right to Sublease and Assign Proceeds Upon termination of any existing subleases, the Non-profit shall have and is hereby granted by the City the right to sublease any and all of the Leasehold Premises, so long as the sublease would not violate federal, state or local laws, the other provisions of this Agreement, as well as any contract or agreement assumed by the Non-profit from the City.

The Non-profit shall at times during the terms of this Agreement have the right to enter into leases and subleases as a means of or to facilitate the financing of construction of improvements on the Leasehold Premises by third parties, provided always that any such mortgage, conveyance, encumbrance, or lease will at all times be subject to and inferior to the prior right, title, and interest of the City in and to the said Leasehold Premises as and for security for the full and faithful performance of the covenants, term, and conditions of this Agreement.

6.09 Agreement to Execute Estoppel Certificates The City agrees to execute true and correct estoppel certificates as may be necessary to confirm the correctness, currentness, validity, force, or effect of this Agreement.

6.10 Agreement to Name Non-profit as Additional Insured. The City agrees to name the Non-profit as an additional named insured to the degree it is achievable pursuant to Section 5.05 of this Agreement.

6.11 Management of Parking and Parking Improvements. The City, at its expense, has caused to be constructed all improvements for public parking within the Leasehold Premises, including but not limited to any surfacing, barriers, striping, lighting and meters. The City shall be solely responsible for management of parking and enforcement of public parking rules within the Railyard.

6.12 City Maintenance Obligations. The City agrees to maintain all portions of the Railyard lying outside of the Leasehold Premises and also to maintain all public parking areas and dedicated or reserved streets and alleys lying within the Leasehold Premises, including all street lights. An exhibit depicting the areas of maintenance responsibilities for the Non-Profit and the City is included herein as Exhibit C hereto.

6.13 City to Allow Inspection and Copying of Records in Possession. The City agrees to allow the Non-profit to inspect and copy any and all records, at Nonprofit's expense, pertaining to the Railyard.

6.14 City to Transfer Certain Cash Proceeds. The City transferred the cash proceeds from the sale of the Site-Santa Fe building to the Non-profit. Said proceeds were net of all transactional costs incurred upon sale of the property.

6.15 City to Construct Parking Garage. The City completed construction of the 400 space underground parking structure in August, 2008. The City acknowledges that the Non-Profit did not design or construct the underground parking structure and has no liability associated with its construction The City acknowledges that the continued operation of the parking structure by the City is essential to the economic viability of the Railyard Project.

DEFAULTS AND RECONVEYANCE

7.01 Events of Default. The occurrence of any of the following events shall, at City's option, constitute an "Event of Default":

7.01.1 Failure to pay rent on date when due and the failure continuing for a period of fifteen (15) days after such payment is due;

7.01.2 Failure to perform Non-profit's covenants and obligations hereunder (except default in the payment of rent) where such failure continues for a period of thirty (30) days after written notice

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from the City; provided, however, if the nature of default is such that more than thirty (30) days are reasonably required for its cure, Non-profit shall not be deemed to be in default if Non-profit commences the cure within the thirty (30) day period and diligently prosecutes such cure to completion;

7.01.3 The making of any material misrepresentation or omission by Non-profit in any materials delivered by or on behalf of Non-profit to City pursuant to this Agreement;

7.01.4 The transfer or assignment of this Agreement by the Non-profit to a for-profit corporation, venture, enterprise or individual (other than as the result of a bona fide foreclosure of a leasehold mortgage permitted under Section 6.07 or an assignment in lieu of foreclosure);

7.01.5 The performance by the Non-profit of functions other than the administration, development, promotion and maintenance of Leasehold Premises, except when such functions are performed for the City pursuant to an agreement with the City;

7.01.6 The Non-profit is found to have been guilty of fraud, misuse or misappropriation of funds in its possession or has breached its trust or fiduciary duties in any manner.

7.02 Non-profit's Right to Assign The Non-profit shall have the right to assign all of its rights and obligations under this Agreement to the City at its sole election upon the occurrence of any of the following events: failure of the parties to agree on terms for repayment of the conduit financing under section 6.03; a change in conditions which adversely and substantially affects the ability of the Non-profit to perform its obligations.

7.03 Assignment to City In the event of the occurrence of any Event of Default, or prior to any election by the Non-profit to opt out of this Agreement pursuant to section 7.02 each party shall have the right to give a written notice to the other party and any person known to a party to have a mortgage or similar interest in the Non-profit's leasehold, subject to the limitations set forth in this Agreement that, on the date specified in such notice which shall be at least 60 days following the date of the notice, all of the Non-profit's interest under this Agreement shall be assigned to the City unless on or before such date all arrears of rent and all other sums payable by Non-profit under this Agreement and all costs and expenses incurred by or on behalf of City hereunder shall have been paid by Non-profit and all other Events of Default at the time existing shall have been remedied to the satisfaction of City. If the Non-profit's interest hereunder is transferred and assigned to the City, that interest shall not merge with the City's fee ownership of the land to the extent that and for so long as the Non-profit's interest, and that of any sublessee from the Non-profit, at the time of transfer, was subject to any leasehold mortgage, pledge, assignment of rents and profits, or other security interest, and the City shall assume the Non-profit's position and obligations hereunder. To the extent the Non-profit's interest merges with the City's fee ownership, the City shall recognize all tenants under subleases with the Non-profit as its tenants and those tenants shall attorn to the City as landlord. The remedy provided in this section 7.03 is in lieu of termination but is not intended to preclude any other remedies, including termination of this Agreement and retaking of the Leasehold Premises, available to the City.

7.03(A) City's Alternate Remedy. If an Event of Default under this Agreement occurs with respect to one or more of the lease parcels in the Railyard, but not with respect to all of the lease parcels, the City, in lieu of requiring assignment of the Non-profit's interest under Section 7.03, above, or terminating this Agreement with respect to all of the Leasehold Premises, may terminate this Agreement solely with respect to the lease parcel(s) involved. On such termination, the Non-profit shall have no further right, title or interest in the parcels with respect to which termination occurs, the City shall assume all of the Non-profit's rights and obligations under any sublease of

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the parcel(s) involved and shall recognize the tenant(s) under such subleases as its tenants and those tenants shall attorn to the City as landlord. No such termination shall deprive the Non-profit or its subtenants of the right to use easement, utilities and other and similar facilities and rights appurtenant to lease parcels adjoining or near the parcel(s) with respect to which termination occurs.

7.04 Negotiation; Mediation; Arbitration. In the event that the Non-profit has caused an Event of Default under Sections 7.01.2, 7.01.3, and 7.01.5 of this Agreement, the Non-profit shall have thirty (30) days from the date of receipt of City's written notice to cure the default, provided, however, that such disputes may be resolved by negotiation, mediation or arbitration, pursuant to this Section. The parties shall be required to attempt alternative dispute resolution first by negotiation, then by mediation, then by arbitration, prior to termination. In such a case, the thirty (30) day period shall be suspended pending the outcome of the negotiation, mediation or arbitration. All other events of default shall be resolved only by way of a cure of the event of default.

7.04.1 Negotiation. If a dispute arises between Non-profit and City, the parties shall seek a solution through negotiation. Negotiations shall be conducted on behalf of the City by the City Manager or his/her designee within seven (7) days of receipt of written notice.

7.04.2 Mediation. If negotiation does not resolve the dispute, the parties shall then attempt to resolve the dispute by use of a mediator. The mediator shall be agreed upon by the parties and the mediator's fees shall be paid one-half by the Non-profit and one-half by the City. Mediation shall be conducted on behalf of the City by the City Manager or his/her designee within seven (7) days of the selection of the mediator.

7.04.3 Arbitration. As long as Non-profit is not in Default due to non-payment of any rent due, all disputes not resolved through negotiation or mediation within thirty (30) days of the giving of written notice of Default, shall be resolved by binding arbitration according to the New Mexico Uniform Arbitration Act. If Non-profit is in Default due to non-payment of rent due or goes into non-payment Default during the resolution of the dispute, City may elect to resolve any and all disputes pending at that time by any lawful means, including, without limitation, termination or litigation. Each party may demand arbitration by sending the other party written notice demanding arbitration via first class mail. If Non-profit is in nonpayment Default, City may reject the arbitration demand sent by Non-profit.

7.04.4 Following each negotiation and mediation, the proposed resolution of any dispute shall be placed upon the next agenda of the City Council for any required final approval. In the event the City Council must but does not approve the proposed resolution, the matter shall be referred on to the next phase of alternative dispute resolution. Any dispute resolved through arbitration shall be a final and binding resolution and shall not require City Council approval.

7.05 Damage to Leasehold Improvements If any Leasehold Improvement owned by the City and located on a land lease parcel is damaged and the reasonably estimated cost of repairing or replacing the damage exceeds 25% of the reasonably estimated cost of replacing the Leasehold Improvement, then the City shall have a right to terminate so much of this Agreement as covers the damaged Leasehold Improvement and so much of the Leasehold Premises as are covered by the Leasehold Improvement. Notwithstanding the foregoing, the right of the City to decline to replace the Improvements shall not be applicable if there are also substantial Improvements on the land lease parcel owned by the Non-profit's sublease tenant. Substantial Improvements shall be equal to or greater than 25% of the value of the

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City owned Improvements. The City's termination of the portion of this Agreement affecting the land lease parcel shall require the City to assume all of the Non-profit's rights and obligations under any sublease of the parcel(s) involved and to recognize the tenant(s) under such subleases as its tenants and those tenants shall attorn to the City as landlord.

7.06 Destruction of Leasehold Premises Property Non-profit agrees that notwithstanding the destruction in part or whole of any property real or personal upon the Leasehold Premises, this Agreement shall remain in full force and effect and without any right to early termination or surrender of possession by Non-profit except as set forth in Section 7.02 above.

7.07 Termination of Unencumbered Portions of Leasehold Premises The City shall be entitled to terminate this Agreement as it affects portions of the Leasehold Premises which are not encumbered by a sublease or a leasehold mortgage. Said termination shall be made by giving notice to the Non-profit of the City's intention to terminate the Agreement for said portion of the property and providing the Non-profit ninety (90) days in which to decide whether to terminate the Agreement for the requested portion of the property thereby withdrawing it from application of the terms and conditions of this Agreement or to assign this Agreement in its entirety to the City. To the extent a partial termination adversely affects the Non-profit's revenues from the Railyard and its ability to perform its obligations hereunder, compensation under 4.01 shall be adjusted accordingly. This provision shall only be utilized in order to allow public projects with public financing or maintenance upon the Leasehold Premises, including but not limited to the maintenance of dedicated rights of way or parks and the construction of publicly owned and operated municipal facilities, or in order to carry out any of the powers granted to the City pursuant to the New Mexico Metropolitan Redevelopment Code to permit the City to promote industry and develop trade or other economic activity by inducing profit or nonprofit corporation, federal governmental offices, hospitals and manufacturing, industrial, commercial or business enterprises to locate, expand or remain in the Railyard, to mitigate the threat of unemployment and to secure and maintain a balanced and stable economy in the Railyard or otherwise protect its interest in the development of the Railyard or its property interest in the Railyard.

7.08 Cumulative. Each right and remedy of City provided for herein or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude the City from exercising any other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity, by statute or otherwise. No payment by Non-profit of a lesser amount than the rent, plus any late payments due, shall be deemed an accord and satisfaction of full payment of rent; and City may accept such payment without prejudice to City's right to recover the balance of such rent or to pursue other remedies.

AMENDMENT

8.01 Amendment This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto. In the event of an amendment by the parties hereto, any person holding a security interest under this Agreement or a sublease to this Agreement shall be provided with notice of the nature and content of the proposed amendment and an opportunity to be heard on the proposed amendment in advance of the amendment. Amendment shall only be made at a public hearing of the governing body of the City. The parties agree to confer in good faith regarding disputes on interpretation of this Agreement and regarding any matters pertaining to the Railyard which are discovered to be inadequately addressed by this Agreement and to seek administrative resolution of said matters prior to resorting to alternative dispute resolution, litigation, or an amendment by the Governing Body.

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MISCELLANEOUS PROVISIONS

9.01 Integration This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, whether in a writing or oral, between the parties respecting such matters. Any amendments or modifications hereto in order to be effective shall be in writing and executed by the parties hereto.

9.02 Severability The terms and conditions of this Agreement are severable and should any part of this Agreement be deemed illegal or in violation of law by a court of competent jurisdiction the remainder shall continue in full force and effect.

9.03 Counterparts This Agreement may be executed in any number of counterparts which together shall constitute the Agreement between the parties.

9.04 Facsimiles Nothing herein shall be deemed to limit the validity or enforceability of the terms of this Agreement in the event that the parties to this Agreement shall execute and sign originals or counterparts by way of facsimile transmissions of the executing person's signature.

9.05 Notice Any notice, demand or document which may be sent by and between the parties to this Agreement and pursuant to this Agreement shall be in writing and shall be deemed received upon the earliest of 1.) its actual receipt, 2.) three days after mailing, first class mail return receipt requested, 3.) confirmation that a facsimile transmission has been received by a return facsimile. Notice shall be provided to the city by sending the notice to: City Manager, City of Santa Fe, 200 Lincoln Avenue, P.O. Box 909, Santa Fe, New Mexico, 87504-0909 with a copy transmitted separately to the City Attorney at the same address. Notice shall be provided to the Non-profit by sending the notice to: Steven Robinson, 322 Read Street, Santa Fe, New Mexico, 87501, with a copies to W. Anthony Sawtell, P.O. Box 788, Santa Fe, New Mexico 87504-0788 and Executive Director, 332 Read Street, Santa Fe NM 87501. Both parties further agree to give reasonable notice to creditors of any default, amendment, renegotiation, mediation, sublease or assignment pursuant to this Agreement if the creditor provides the requested party with written request for notice of such events and provides a current address and the name of an authorized agent in the event service of process is required.

9.06 Further Assurances Each party hereto shall from time to time execute and deliver such further documents or instruments as the other party may reasonably request to effectuate the intent of this Agreement including without limitation documents necessary for compliance with the laws, ordinances, rules and regulations of any applicable governmental authorities. Notwithstanding the foregoing, the Non-Profit shall not be required to provide the City with copies of any land or building lease between the Non-Profit and any sublessee until the date this Agreement expires or is terminated.

9.07 Recording Either party may, at its option, record a copy of this Agreement in the real property records of the county in which the property is located.

9.08 Covenants to Run All covenants, conditions, terms and agreements contained in this Agreement are intended to be and shall be deemed to run with the land.

9.09 Heirs, Successors and Assigns All references to parties to this Agreement, and all covenants, terms, conditions and agreements of this Agreement, shall be deemed and construed to apply to and be binding upon them and their respective heirs, executors, administrators, legal representatives, successors, and assigns except as herein expressly stated to the contrary as if they were in each case fully named and stated. However, nothing in this section shall be deemed to authorize or permit transfers or assignments

which would otherwise be forbidden pursuant to this Agreement.

9.10 Prior Agreements All prior agreements between the City and the Non-profit, express or implied, written or oral, shall be deemed void and are hereby rescinded and cancelled. All prior negotiations are merged into this Agreement. No party shall be bound by this Agreement until it is executed and delivered by both parties and placed on file with the City Clerk's Office.

9.11 Force Majeure. If the City or the Non-profit is delayed, hindered, or prevented from performing any act required hereunder by reason of strikes, lockouts, inability to procure materials, failure of power, riots, insurrection, war, or other unforeseeable reasons beyond its control, then performance of the act shall be excused for the period of the delay. In that event, the period for the performance of the act shall be extended for a period equivalent to the period of the delay

9.12 City Approval. Whenever approval or other action by the City is required under this Agreement and the issue is not committed to the Business Capitol District Development Review Committee or City Council, the approval shall be given or action shall be taken by the City Manager, unless prohibited by law.

9.13 Preservation of City's Tort Claims Act Immunities. Nothing herein shall constitute a waiver of the immunities provided by the Tort Claims Act or any other immunities provided by law.

SEC CLERK RECORDED 05/11/2012

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF SANTA FE:

DAVID COSS, MAYOR

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

GENO ZAMORA, CITY ATTORNEY

APPROVED:

KATHRYN RAVELING, DIRECTOR
FINANCE DEPARTMENT

NON PROFIT
SANTA FE RAILYARD
COMMUNITY CORPORATION

By:
STEVEN ROBINSON
PRESIDENT

CRS #02-481098003
City of Santa Fe Business
Registration # 0397164

SFC CLERK RECORDED 05/11/2012

AGREEMENT (NC)
PAGES: 23

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

I Hereby Certify That This Instrument Was Filed for Record On The 11TH Day Of May, 2012 at 01:38:53 PM And Was Duly Recorded as Instrument # 1669127 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM

Deputy

SFC CLERK RECORDED 05/11/2012

STATE OF NEW MEXICO)
) ss:
COUNTY OF SANTA FE)

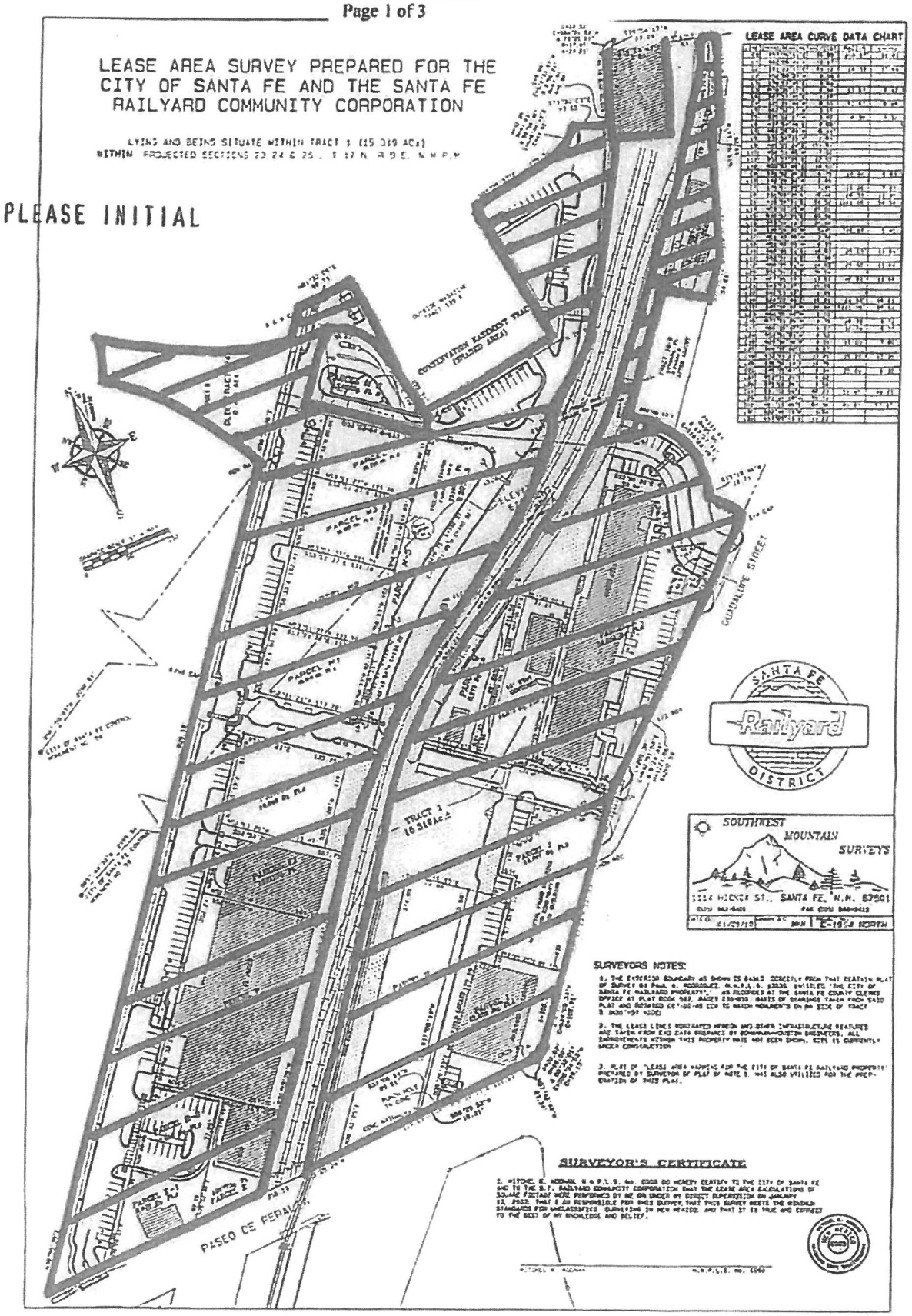
The foregoing Amended and Restated Railyard Lease and Management Agreement was acknowledged before me on May 10, 2012, by Steven Robinson, President of Santa Fe Railyard Community Corporation, a New Mexico nonprofit corporation, on its behalf.

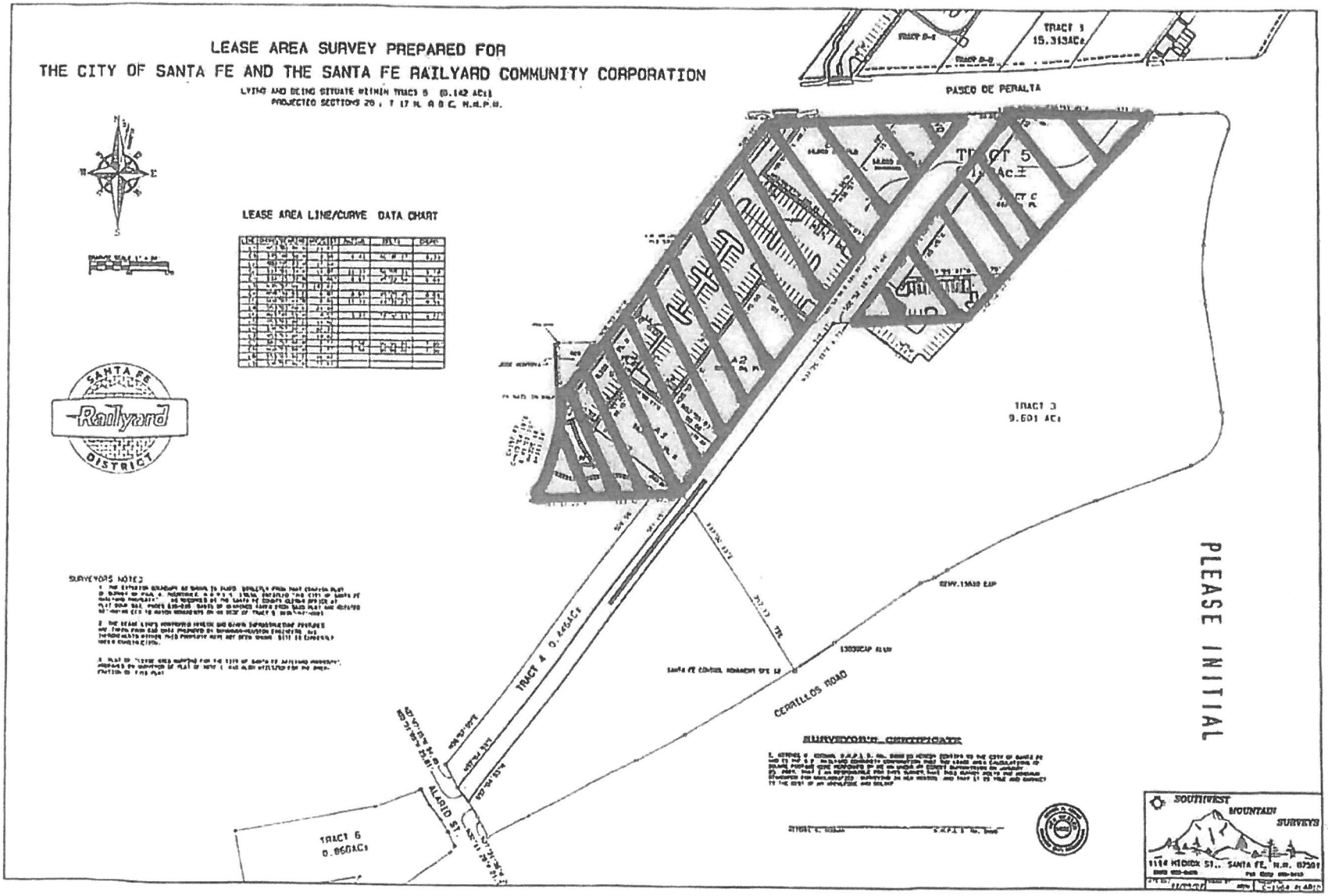
Anita L. Martinez
Notary Public

My commission expires: 5-24-15

OFFICIAL SEAL
Anita L. Martinez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 5-24-15

SFC CLERK RECORDED 05/11/2012





Leasehold Premises
Page 2 of 3

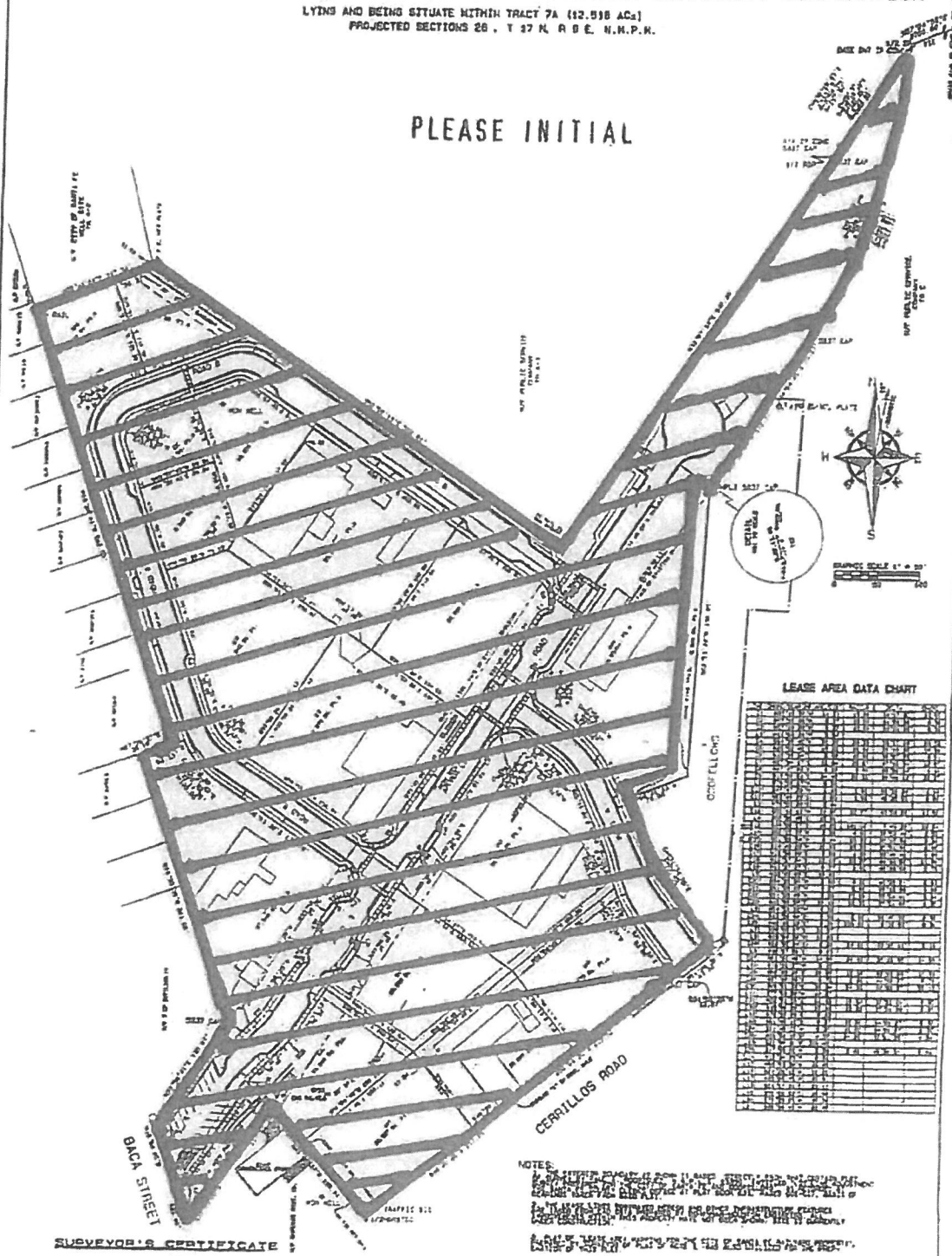
SFC CLERK RECORDED 05/11/2012

Leasehold Premises
Page 3 of 3

LEASE AREA SURVEY PREPARED FOR
THE CITY OF SANTA FE AND THE SANTA FE RAILYARD COMMUNITY CORPORATION

LYING AND BEING SITUATE WITHIN TRACT 7A (12.518 ACs)
PROJECTED SECTIONS 28 , T 17 N, R 9 E, N.M.P.M.

PLEASE INITIAL

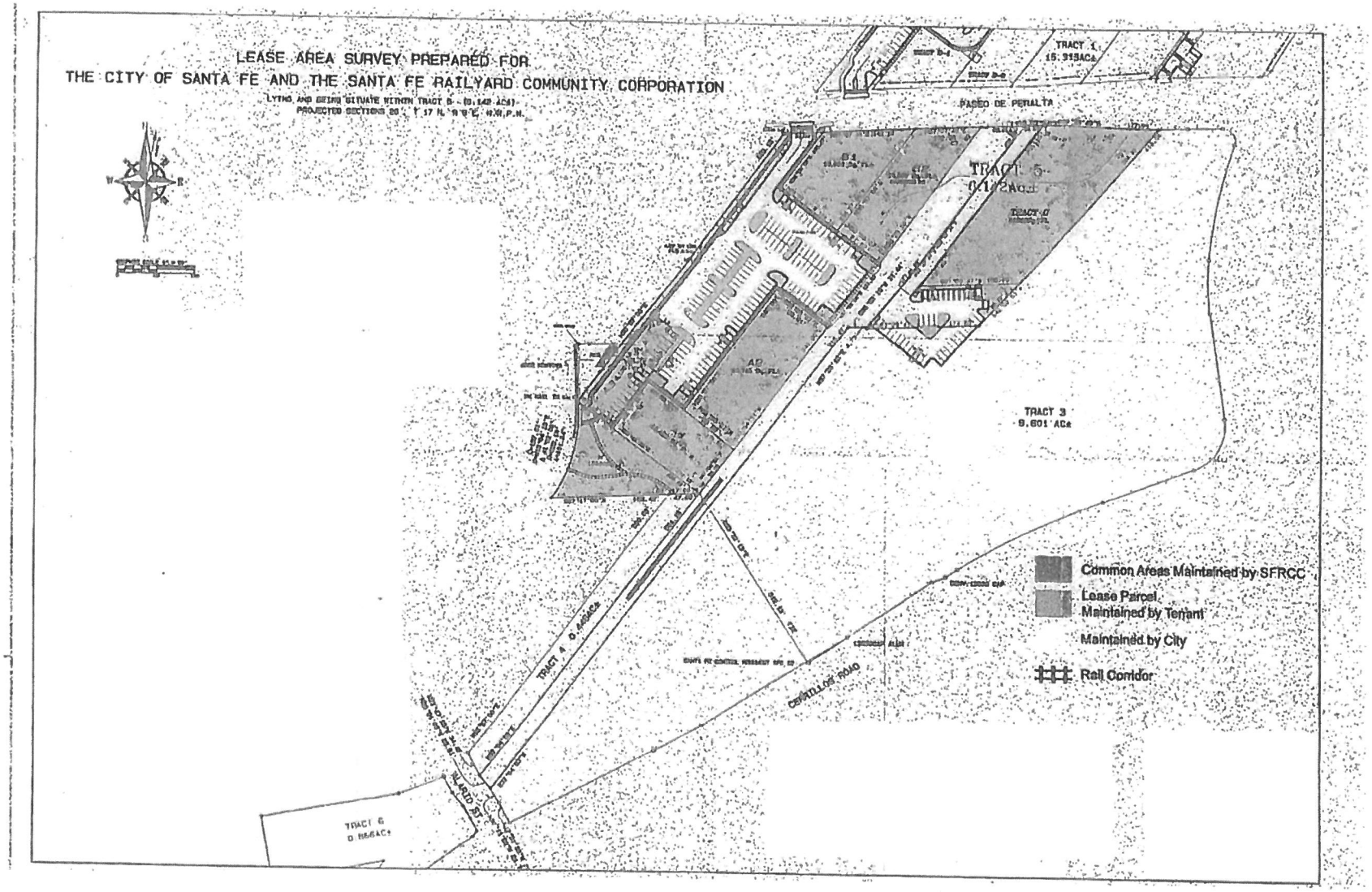


SFC CLERK RECORDED 05/11/2012

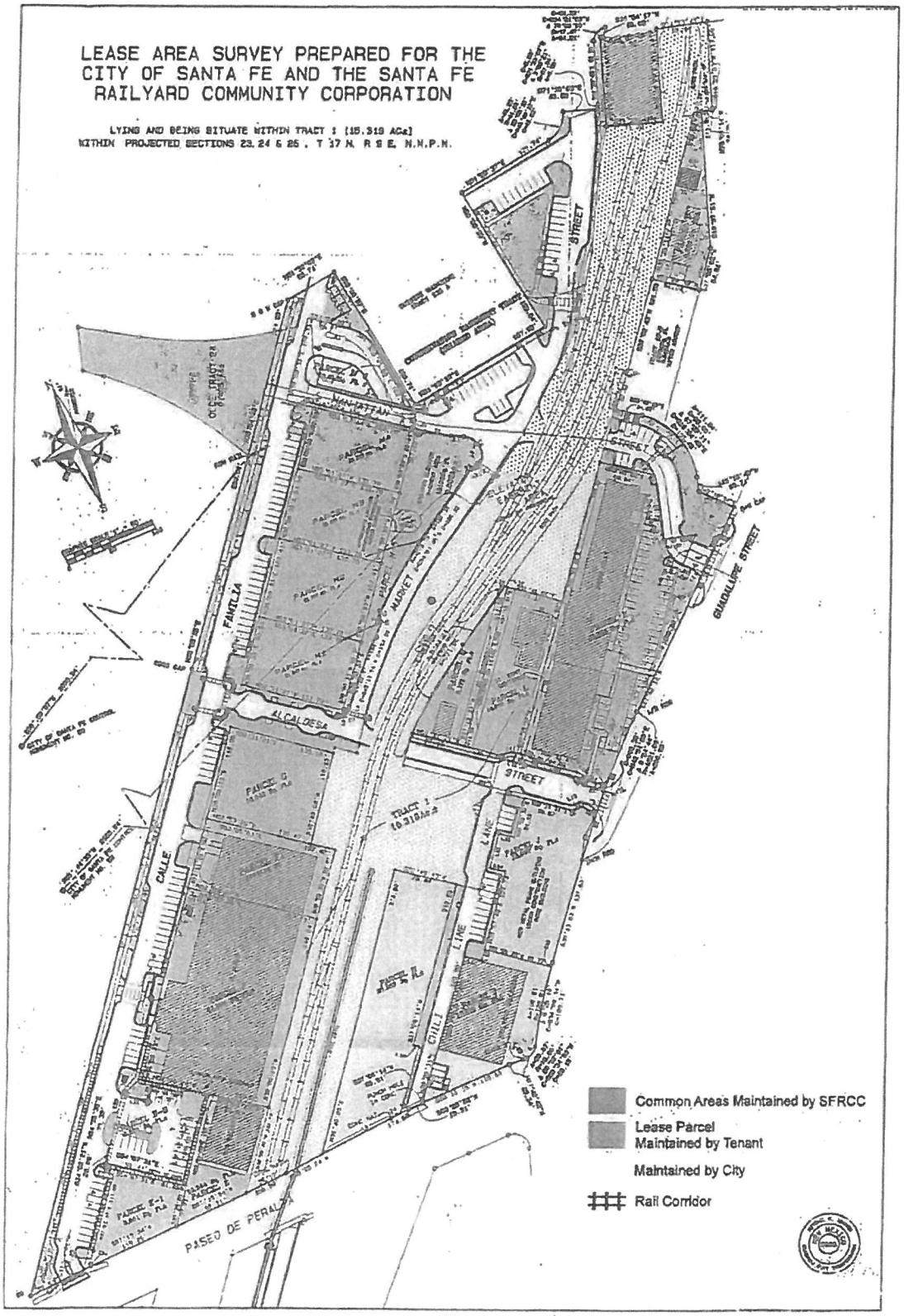
SFC CLERK RECORDED 05/11/2012

Exhibit B - Rent Schedule

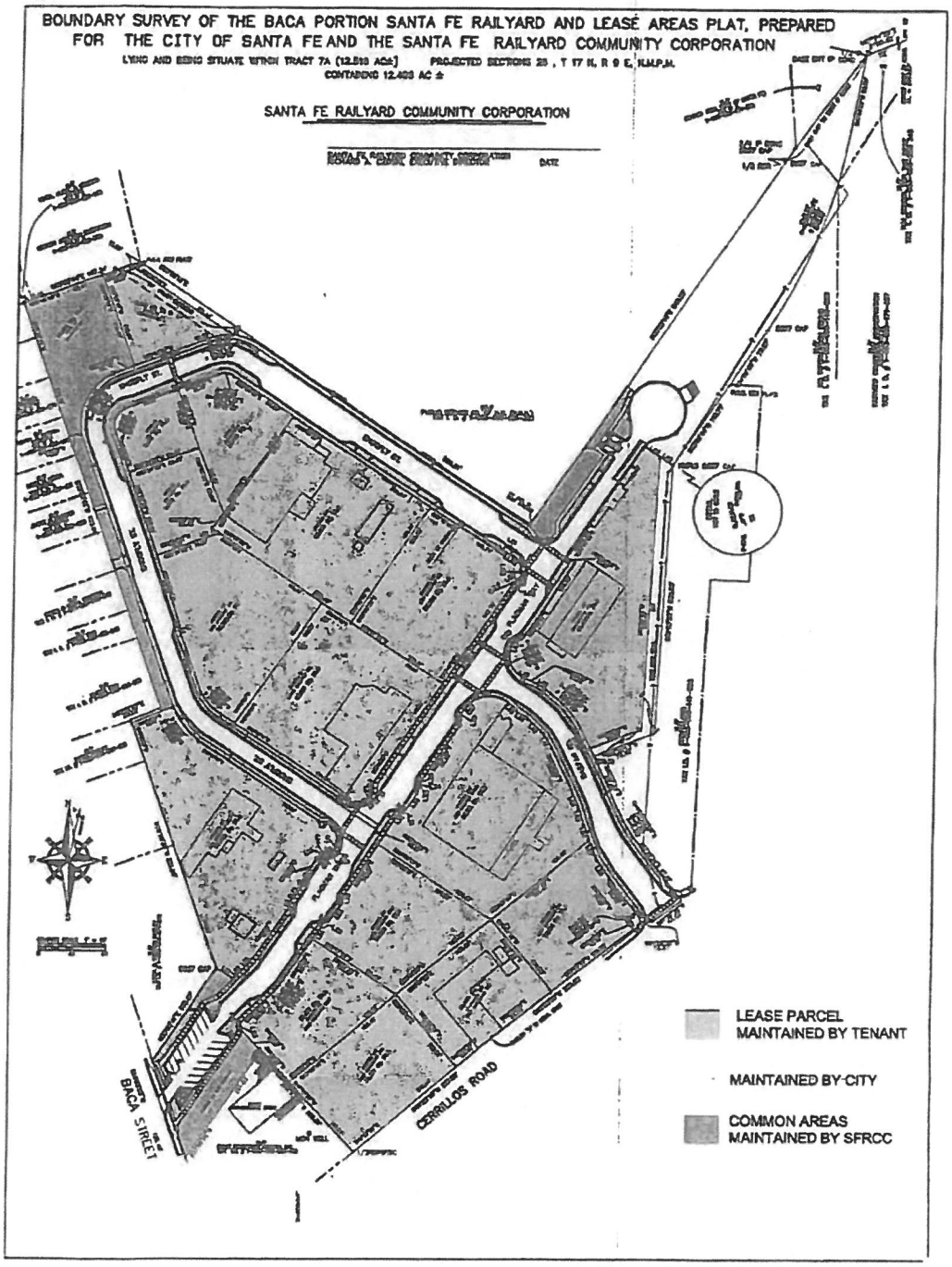
3/16/2011 9:28:46 AM	ACTUALS 2004-05	ACTUALS 2005-06	ACTUALS FY2006/07	ACTUALS FY2007/08	ACTUALS FY2008/09	ACTUALS FY2009/10	ACTUALS FY2010/11	PROJECTED FY2011/12	PROJECTED FY2012/13	PROJECTED FY2013/14	PROJECTED FY2014/15	PROJECTED FY2015/16	PROJECTED FY2016/17	PROJ FY201
DEBT SERVICE														
City of Santa Fe Land Debt for acquisition costs - see below for City sanctioned debt relief credits applied	(453,822)	(452,547)	(453,221)	(453,579)	(452,582)	(454,430)								
NMFA Loan - Infrastr Phase I (6) ($570,025) per City of SF Sch Interest only until 2010-2011	0	0	0	(222,527)	(219,337)	(212,544)	(142,260)	(53,099)	(53,115)	(52,817)	(52,821)	(52,826)	(52,829)	(52,8
NMFA Loan - Infrastr Phase II (15B) $992,227*term ends May 2026 and concurs with City SF Schedule	0	0	0	0	0	0	(239,827)	(85,150)	(85,155)	(85,161)	(85,166)	(85,172)	(85,178)	(85,1
Refinance (2010B) $10,490,000 term ends May 2026 and concurs with City of SF Schedule	0	0	0	0	0	0	(463,887)	(705,000)	(706,400)	(1,071,000)	(1,070,500)	(1,069,000)	(1,071,850)	(1,09
SUB-TOTAL	(453,822)	(452,547)	(453,221)	(676,106)	(671,919)	(666,974)	(845,764)	(843,249)	(843,670)	(1,208,977)	(1,208,486)	(1,207,997)	(1,209,857)	(1,20
Negotiated option Contingency Relief Funds credit - Land and NMFA, per PSA Amendment #3 thru 2009-10 - $769,175	30,000	276,000	180,000	60,175	121,000	102,000			0	0	0	0	0	0
Re-Payment of PSA Amendment #3 Debt Deferral of $769,175														
Debt Deferral and repayment per L&M Agreement renewal of 2011 - $2,283,441							133,441	300,000	300,000	300,000	300,000	300,000	250,000	250,0
Repayment of 2011-2016 Debt Deferral - $2,283,441														
TOTAL RENT PAYMENTS	(423,822)	(176,547)	(273,221)	(616,931)	(550,919)	(564,974)	(712,323)	(543,249)	(543,670)	(908,977)	(908,486)	(907,997)	(959,857)	(1,01



Jurisdiction Areas South of P.D.P.



Jurisdiction Areas North of PDS


BOUNDARY SURVEY OF THE BACA PORTION SANTA FE RAILYARD AND LEASE AREAS PLAT, PREPARED FOR THE CITY OF SANTA FE AND THE SANTA FE RAILYARD COMMUNITY CORPORATION
SANTA FE RAILYARD COMMUNITY CORPORATION
CERRILLOS ROAD
BACA STREET
LEASE PARCEL MAINTAINED BY TENANT
MAINTAINED BY CITY
COMMON AREAS MAINTAINED BY SFRCC

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Santa Fe Railyard Community Corporation

Procurement Title: Amendment 11 to the Amended and Restated Railyard Lease and Management Agr

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 Asset Development Staff Name Terry Lease

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:

Terry Lease	Asset Development Manager	1/24/2023
Department Rep Printed Name (attesting that all information included)	Title	Date
	Contracts Supervisor	Jan 25, 2023
Purchasing Officer (attesting that all information is reviewed)	Title	Date
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 # _____

Contractor: **Santa Fe Railyard Community Corporation**

Description: **Amendment 11 to the Amended and Restated Railyard Lease and Management Agreement Between the City of Santa Fe and The Santa Fe Railyard Community Corporation**

Contract ☐ Agreement ☐ Lease / Rent ☐ Amendment ◉

Term Start Date: _____ Term End Date: _____

☐ Approved by Council Date: _____

Contract / Lease: Lease

Amendment # 11 to the Original Contract / Lease # 11-0306

Increase/(Decrease) Amount $ -$949,882.00

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)
The Amended and Restated Railyead Lease and Management Agreement was entered into to allow the Santa Fe Railyard Community Corporation to manage the City owned Railyard Property according to the Railyard Master Plan. The agreement has been amended ten times for many different reasons. This Amendment 11, if approved, will remove the W21 land and Depot property from the leased premises.

3. Procurement History: N/A

Purchasing Officer Review: Jan 25, 2023 Date:

Comment & Exceptions: Lease only

4. Funding Source: _____ Org / Object: 2122800/460350

Andy Hopkins (Jan 24, 2023 16:55 MST)

Budget Officer Approval: Jan 24, 2023 Date:

Comment & Exceptions: _____

Staff Contact who completed this form: Terry Lease, Asset Developme Phone # 505-629-2206

Email: tjlease@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

Signature: *Richard Brown*

Email: rdbrown@santafenm.gov

(1) GB ECON DEVELOP SANTA FE RAILYARD Amendment 11

Final Audit Report 2023-01-26

Created:	2023-01-26
By:	Nina Sisneros (nasisneros@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAMWjUJT3wKG24V8qT3m7D_I6TfGlUJvqi

"(1) GB ECON DEVELOP SANTA FE RAILYARD Amendment 1 1" History

Document created by Nina Sisneros (nasisneros@ci.santa-fe.nm.us)
2023-01-26 - 3:22:06 PM GMT

Document emailed to rich brown (rdbrown@santafenm.gov) for signature
2023-01-26 - 3:24:53 PM GMT

Email viewed by rich brown (rdbrown@santafenm.gov)
2023-01-26 - 3:50:39 PM GMT

Document e-signed by rich brown (rdbrown@santafenm.gov)
Signature Date: 2023-01-26 - 3:51:28 PM GMT - Time Source: server

Agreement completed.
2023-01-26 - 3:51:28 PM GMT

City of Santa Fe, New Mexico
Memorandum

DATE: **January 25, 2023**

TO: **Governing Body**

Regina Wheeler
Regina Wheeler (Jan 26, 2023 16:52 MST)

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

Melissa A. McDonald
Melissa A. McDonald (Jan 26, 2023 16:36 MST)

FROM: **Melissa McDonald, Parks and Open Space Division Director**

ACTION:
Request for the Approval of FY23 Budget Amendment Resolution (BAR) in the Amount of $214,000 to budget for payments on the existing service contract with NM Golf Limited for management of the Marty Sanchez Links de Santa Fe Golf Course and related operations.

BACKGROUND AND SUMMARY:
It was brought to the attention of the Public Works Department that the budget and accounting for this service contract was still in the E1 system as of FY22 and had not yet been carried forward to the Munis system for FY23. This is the existing contract with NM Golf Limited to provide services to plan, organize, direct, oversee, and implement golfer activities at the City's municipal golf course, Marty Sanchez Links de Santa Fe Golf Course.

This service contract is funded from green fees, cart fees, user fees, and other revenue. This BAR is for a partial year and the full year budget will be included in FY24 budget being developed now.

ATTACHMENTS:
Contract #18-0189
BAR

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

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

DEPARTMENT / DIVISION NAME	DATE
Public Works / Parks	1/25/2023

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
SERVICE CONTRACTS	5300271	510340		214,000	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
JUSTIFICATION: *(use additional page if needed)*				$ 214,000	$ -

--Attach supporting documentation/memo

Service Contract for NM Golf Limited/Funding in place from MRC Green Fees, Rentals and Golf Shop Sales

{Complete section below if BAR results in a net change to ANY Fund}	
Fund(s) Affected	Fund Balance Increase/(Decrease)
530	214,000
TOTAL:	**214,000**

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Halona Crowe — 1/25/2023
Prepared By *{print name}* — Date

Melissa A. McDonald
Melissa A. McDonald (Jan 26, 2023 16:36 MST)
Division Director Signature *{optional}* — Date

Regina Wheeler
Regina Wheeler (Jan 26, 2023 16:52 MST)
Department Director Signature — Date

Andy Hopkins
Andy Hopkins (Jan 26, 2023 17:18 MST)
Budget Officer — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

ITEM # 18-0189

CITY OF SANTA FE

GOLF MANAGEMENT SERVICES AGREEMENT AT

MARTY SANCHEZ LINKS de SANTA FE

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and New Mexico Golf Limited (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City.

1. SCOPE OF SERVICES

The Contractor shall provide the following services for the City:

A. Plan, organize, direct and oversee golfer activities at the City's municipal golf course, "Marty Sanchez Links de Santa Fe Golf Course" located at 205 Caja del Rio Road, Santa Fe, NM.

B. Exclusive of turf management, manage all duties related to the operation of the golf course, driving range, pro shop, starter station, clubhouse restrooms, cart barn, and exterior grounds of clubhouse that consist of the patio area and walkway.

C. HOURS OF OPERATION:

(1) Subject to course conditions and inclement weather as determined by the MRC Manager, the golf course shall be open year round inclusive of all holidays (the exception being Christmas Day) from sunrise to sunset.

(2) On those days the course is closed by the City for the entire day due to inclement weather, such as snow, the proshop will remain closed and signage posted for the general public.

D. PERSONNEL:

(1) Staff the facility with a full-time certified class A, PGA golf professional and fulltime and/or part-time skilled or unskilled labor and licensed and/or certified professional personnel who are able to competently perform the duties required.

(2) Determine the number of staff to be hired based on seasonal

needs and activities to be able to provide quality customer service at all times.

(3) Shall, when the Head PGA Pro is not on site, have an alternate person such as an Assistant Head Pro who is both capable and knowledgeable to make decisions and resolve all issues as may be necessary.

(4) Implement a volunteer marshal program to be hired based on seasonal needs & activities, and to be approved by the MRC Manager or his/her designee. Ensure that MSL golf rules are followed, including a steady pace of play and also ensure that customers are paying and to provide quality customer service at all times.

(5) Develop a starter position during the busiest golfing times to ensure payment of patrons and to explain golf rules.

(6) Promptly inform the MRC Manager of any changes in personnel.

E. MANAGEMENT PRACTICES:

(1) Develop written policies and procedures for each area of responsibility, subject to City review and approval, and provide annual training to all employees on these policies and procedures, inclusive of stated performance expectations. Encourage staff to begin or continue education requirements for PGA status.

(2) Quarterly provide training to all employees on the provision of quality customer service. If the City offers such training, Contractor agrees to send staff to scheduled trainings. The Head PGA Pro will hold quarterly meetings with staff to review expectations of Contractor as they pertain to MSL policies and procedures to ensure compliance.

(3) Consistently enforce all Contractor policies and procedures developed to ensure employee compliance.

(4) The Head PGA Pro or Assistant Head Pro will meet on a weekly basis with the MRC Manager or designee and golf course superintendent to discuss pertinent issues and upcoming events or promotions. It shall be incumbent on the Head PGA Pro or Assistant

Head Pro to meet with staff following this meeting to share decisions made or concerns raised by the City.

(5) The Head PGA Pro or Assistant Head Pro will attend quarterly Advisory Subcommittee meetings and provide updated informational reports.

F. ADDITIONAL SERVICES:

(1) Collect and accurately account for applicable revenue including but not limited, to all green fees, cart fees, resident card and user fees, driving range fees and money received from the sale of pro shop merchandise and any other revenue required to be collected by the City.

(2) At the Contractor's own expense, obtain training services necessary for all staff to operate the Point of Sale System using the Point of Sale Software program.

(3) Provide professional instruction to individuals and groups in the sport of playing golf and have exclusive rights to provide all instruction as well as hire part time, qualified instructors.

(4) Provide golf equipment repair services, power and pull cart rentals, golf equipment rentals and vending machines.

(5) At the Contractor's own expense, provide functioning enclosed/caged tractor golf ball picker for use on the driving range.

G. PROGRAM DEVELOPMENT:

(1) Plan and develop activities, golf tournaments and programs for the year with the goal of increasing rounds of golf for all age groups.

(2) Develop promotional programs that, subject to City review and approval, focus on golfing activities for all ages.

(3) Work with the City to develop marketing and advertising programs and plans for the Marty Sanchez Links de Santa Fe.

(4) Develop a specific program which will increase and maintain a loyal local client base.

(5) Work with the City to develop a program that will create promotion of MSLDSF and synergy among the Convention & Visitor's Bureau to increase the out-of-town visitor client base.

H. GOLF CARTS:

(1) Develop a weekly and monthly cleaning schedule for the cart barn, which includes sweeping and washing the floor on a daily basis and ensuring staff are being held accountable for completing this duty.

(2) Ensure that cart staff are adhering to the cleaning standards developed for the daily cleaning of carts.

(3) Develop preventive maintenance schedules for each golf cart and ensure a maintenance history is kept detailing all work completed on every golf cart and provide records to the City.

(4) Regularly maintain the golf cart fleet including cleaning, preventive maintenance, fixing or replacing tires, performing all mechanical work according to specifications from the manufacturer, and keeping an inventory of necessary parts to be purchased and paid for by the City. Collaborate with the City on any golf cart maintenance needs and as needed, coordinate repairs accordingly.

(5) Ensure that sand & seed containers in golf carts are filled on each use of golf cart.

(6) Post information in each golf cart as directed by the MRC Manager.

H. CLEANING RESPONSIBILITIES:

(1) Ensure that clubhouse restrooms are checked and cleaned to a high

standard at a minimum of two times per day (midday and prior to closing) and at Contractor's expense, are sufficiently stocked with toilet paper, soap and paper towels. Restrooms are to be swept, mopped and trash removed on a daily basis.

(2) Maintain the exterior of the clubhouse by sweeping and washing cemented areas and removing trash on a daily or as much as necessary to keep the areas neat and clean.

(3) Maintain the range building and starter station by removing debris, emptying trash cans, sweeping cemented walkways, cleaning windows, and dusting countertops.

(4) Ensure that clubhouse offices, stock room and starter building are clean, and organized at all times. Also ensure that the offices are cleaned, painted and if need be refurbished annually.

J. Ensure a well stocked pro shop, inclusive of varied sizes and styles of merchandise at all times, and offer merchandise at competitive prices.

K. Maintain the driving range on a daily basis or as needed by aligning and moving ropes, emptying trash cans, removing empty buckets, and retrieving balls from the range.

L. Ensure that every staff member whose duties regularly call for dealing with the public is required to wear golf attire. Ensure that every staff person is issued and required to wear a name tag.

M. Submit a list at the end of the month indicating the number of individuals who have received golf instruction through either individual or group lessons or by attending clinics.

2. STANDARD OF PERFORMANCE; LICENSES

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

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for management services rendered, a sum not to exceed five hundred and twenty thousand ($520,000.00), inclusive of applicable gross receipts taxes in total for the extension of the term of this Agreement. Contractor shall be paid on a monthly basis and in equal installments of ten thousand eight hundred and thirty three dollars and thirty three cents ($10,833.33). The breakdown of payment is as follows:

$130,000.00	2018/2019
$130,000.00	2019/2020
$130,000.00	2020/2021
$130,000.00	2021/2022

B. The City shall reimburse the Contractor for its demonstrated actual hourly labor costs based on the City's minimum wage, for the term of this Agreement for providing staff to regularly maintaining the seventy-five (75) Club Car golf fleet of carts, including cleaning, preventive maintenance, fixing or replacing tires and performing all mechanical work according to specifications and warranties from the manufacturer and the requirements of the vendor or lessor.

C. In the event that golf cart fleet repairs are not or have not been addressed by the Contractor before the return of golf cart fleets to the golf cart fleet vendor or lessor, , the Contractor shall be responsible for payment of all costs of repairs, exclusive of normal wear and tear, to the golf cart fleet vendor or lessor.

D. The City shall reimburse the Contractor for miscellaneous parts and repairs of golf cart fleet when parts are necessary and based on emergency need.

E. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement, except for the sums paid pursuant to paragraph 3B.

F. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

G. Upon termination of this Agreement, the City or a new Contractor agrees to purchase from the Contractor at negotiated cost, any pro shop merchandise personalized with the name or logo of the Marty Sanchez Links de Santa Fe golf course.

H. In the event of termination of this Agreement, the City or a new Contractor shall have the option of purchasing from the Contractor, said equipment, fixtures, supplies and inventory at the depreciated fair market value.

4. CASH HANDLING REPORTING, LEASE, FEES & BILLINGS

A. CASH HANDLING REPORTING: The Contractor shall collect and deposit on a daily basis all cash, checks, and credit cards settlements in the Contractor's account established only for Marty Sanchez Links de Santa Fe golf course. The Contractor shall submit to the City a daily sales report, cash reconciliation, deposit slip with copies of all deposit receipts, cash register tapes, credit card settlement reports, monthly copies of the bank statements and copy of the monthly bank reconciliation. The City and the Contractor shall each be responsible for the gross receipts tax and on their respective share of this revenue.

B. LEASE OF CONCESSION AREA: Concession area consists of Pro shop and driving range. The Contractor shall pay the City per fiscal year for use of its pro shop areas, as follows: Five (5%) percent of gross sales shall be paid to the City on a monthly basis, due on the 30th day of the following month. If payment is received late, interest of five (5) percent will be charged by the City. Fees for golf lessons are not included as gross revenue of pro shop areas as those fees are the sole property of the

Contractor or its employees. The City and the Contractor shall each be responsible for the gross receipt tax on their share of the revenue.

C. REVENUE FROM FEES:

(1) Player/Membership Card currently not used if applicable if used in the future: Player card fees and material costs, or any costs associated with the operations or maintenance of the resident cards program, shall be split fifty percent (50%) for the City and fifty percent (50%) for the Contractor. The City shall set the fees and the City and/or the Contractor shall sell the players cards. The City and the Contractor shall each be responsible for the gross receipts tax on their share of the revenue. The players card program shall be split fifty percent (50%) for the City and fifty percent (50%) for the Contractor. A maintenance agreement will be purchased for the maintenance and repair of the equipment used to create a resident card or players card with the cost being equally shared between the Contractor and the City. In the event there is abuse of the equipment, repairs beyond normal wear and tear will be assessed to the Contractor.

(2) Green Fees: All green fees belong to the City.

(3) Golf Cart Fees: All golf cart rental fees belong to the City.

(4) Driving Range: To be split ninety five percent (95%) for the Contractor and five percent (5%) for the City, up to one hundred thousand dollars ($100,000) in revenues collected each fiscal year during the term of this Agreement. Above this amount, the Contractor will receive ninety percent (90%) and the City will receive ten percent (10%).

(5) Armored Car Services Fee: To be split fifty percent (50%) for the City and fifty percent (50%) for the Contractor.

(6) Credit Card Service Fee: To be split eighty percent (80%) for the City and twenty percent (20%) for the Contractor. At the end of each contract year, the City will conduct an annual audit to determine and verify the agreed amount to split. In the event that a new point of sale system is implemented that will distinguish between green

fee, cart sales, proshop merchandise and driving range sales, the Contractor shall agree to pay credit card service fees that are attributed to the proshop and driving range sales and the City shall agree to pay credit card service fees that are attributed to green fees and golf cart sales.

(7) All lessons conducted while playing a round of golf are subject to the payment of applicable green fees and cart fees.

5. UTILITIES

A. Contractor shall pay forty percent (40%) of all clubhouse (gas/electric) utility costs, billed by the City on a monthly basis and due within fifteen (15) days of billing.

B. Contractor shall pay forty percent (40%) of all clubhouse refuse/telephone utility costs, billed by Lessor on a monthly basis and due within fifteen (15) days of billing.

C. Contractor shall pay thirty three percent (33%) of all clubhouse pest control service costs, billed by Lessor on a monthly basis and due within fifteen (15) days of billing. Pest control service costs excludes fly trap machines and parts.

D. Contractor shall pay forty percent (40%) of all clubhouse septic/grease trap service costs, billed by Lessor on a monthly basis and due within fifteen (15) days of billing.

6. GIVEAWAYS

Neither Contractor, nor its employees, shall give away any free golf play which by such act would lessen the gross revenue, which otherwise would be derived from the operation of the clubhouse, concession or golf course, nor shall Contractor or its employees, sell any tickets for play at less than the established rate or give out or make available any free passes for play on the course without the prior approval of the City Manager or his/her designee.

7. CARE OF BUILDING AND EQUIPMENT

A. The Contractor shall be responsible and pay for any and all routine maintenance of the interior and operating equipment within the clubhouse/pro shop, starter building, driving range and cart barn whether the same be owned by the City or the Contractor, and shall keep all City property in good condition with ordinary wear and tear excepted.

B. In the event of any breakdown or malfunction of any City property necessitating repair or replacement, the Contractor shall immediately notify in writing to the City of such conditions. The City shall replace or repair such property within a reasonable time upon receipt of written notification. The Contractor waives its rights to make any repairs at the expense of the City except upon the written approval of the City Manager or his/her designee.

8. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement 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.

9. TERM AND EFFECTIVE DATE

Subject to an annual performance review conducted by the City and based upon receiving a satisfactory rating, the term of this Agreement shall be effective on July 1, 2018 and shall terminate on June 30, 2021, unless sooner pursuant to Article 10 below. Contractor is granted, upon a satisfactory performance, an option to renew this Agreement for an additional one (1) year term. If the end of this Agreement occurs between May 1st and September 30th, the parties may continue on a month to month basis, not to exceed September 30, 2022. Contractor and the City shall renegotiate the terms and conditions upon renewal. The option shall be exercised by the parties prior to the expiration date of this Agreement.

10. TERMINATION

A. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party 90 days prior to the intended date of termination.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) Compensation is based upon hourly rates and expenses, therefore the Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

11. CONFIDENTIALITY

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

12. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

13. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

14. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and

obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

15. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

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

16. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's

performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

17. 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.

18. THIRD PARTY BENEFICIARIES

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

19. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

20. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall

be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

21. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

22. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

23. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

24. SEVERABILITY

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

25. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:
Jennifer Romero,
MRC Manager
205 Caja del Rio
Santa Fe, NM 87506

Contractor:
Jose A. Hidalgo, Owner
New Mexico Golf Limited
7001 Osuna Road, NE
Albuquerque, NM 87109

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

JAVIER GONZALES, MAYOR

Date:_____

LESSEE:

Jose A. Hidalgo, Owner

Date:_____

CRS #01-797945-00-5
City of Santa Fe Business
Registration No.18-00110630

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

ADAM K. JOHNSON, DIRECTOR
FINANCE DEPARTMENT
52600.510340
BUSINESS UNIT/LINE ITEM

25. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

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Jennifer Romero,
MRC Manager
205 Caja del Rio
Santa Fe, NM 87506

Contractor:
Jose A. Hidalgo, Owner
New Mexico Golf Limited
7001 Osuna Road, NE
Albuquerque, NM 87109

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

JAVIER GONZALES, MAYOR

Date: 3/7/18

LESSEE:

Jose A. Hidalgo, Owner

Date: 3/23/18

CRS #01-797945-00-5
City of Santa Fe Business
Registration No.18-00110630

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK
CCmtg 2/28/18

APPROVED AS TO FORM:

KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

3.12.18
ADAM K. JOHNSON, DIRECTOR
FINANCE DEPARTMENT
52600.510340
BUSINESS UNIT/LINE ITEM

City of Santa Fe, New Mexico
Memorandum

DATE: **December 14, 2022**

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

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

Sam Burnett, Facilities Division Director

FROM: **Caryn Grosse, PMP, Facilities Project Administrator Sr.**

Therese Martinez, Facilities Project Administrator

ACTION:
Request approval of Amendment to the Contract with TK Elevator extending the contract term for the Main Library Elevators Rehabilitation Modernization Project by one (1) year with no corresponding increase in cost; Caryn Grosse, clgrosse@santafenm.gov, 505-955-5938, Therese Martinez, tmartinez@santafenm.gov, 505-955-5937

BACKGROUND AND SUMMARY:
Due to the volatility of the material and equipment markets, the manufacturing of materials needed for the Rehabilitation and Modernization of the Main Library Elevators, servicing both the public and staff, will delay the project start date until May 5, 2023. The Contract is set to expire June 30, 2023.

The manufacturing is currently in process, and the contract is enforce. The actual completion of the work is set to take approximately two additional months, putting the time frame beyond the contract completion date.

PROCUREMENT METHOD:
The procurement method is NM Statewide Price Agreement (SWPA) Number 70-00000-17-00054 which expires on January 30, 2023, and NM Statewide Price Agreement (SWPA) Number 20-00000-22-00064 which expires on August 27, 2024, and SPA GSA contract Number 47QSHA19D005H which expires on August 27, 2039.

CONTRACT NUMBER:
The Munis contract number is 3203754.

FUNDING SOURCE:
Received $243,864.15 from Main Library Elevators and Drinking Fountains-2018 GRT Bond

Munis Fund Name/Number: Bond Acquisition/335
Project String: GRT18FMD
Munis Org Name/Number: BondAcq/3359980
Munis Object Name/Number: Remodeling & Replacement/572500

ATTACHMENTS:
Amendment #1
Summary of Contracts

Halona Crowe

Procurement Checklist
Original Contract with Proposal
TKE Project Schedule
TKE Statewide Price Agreement
TKE Certificate of Insurance
TKE Business License
Other Supporting Documentation

Item# _____
Munis Contract#3203754

CITY OF SANTA FE
AMENDMENT No. 1 TO
SERVICES AGREEMENT
ITEM#22-0450

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE SERVICES AGREEMENT, dated September 14, 2022 (the "Agreement"), between the City of Santa Fe (the "City") and Thyssenkrupp Elevator Corporation. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, Contractor has agreed to provide the rehabilitation of the existing Staff and Public Elevators for the Main Branch of the Santa Fe Public Library. This includes, but is not limited to, refurbishing, retaining, or replacing the existing Mechanical and Electrical components of the Main Library elevators.

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

1. TERM:

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

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall be effective when signed by the City and the

Contractor, whichever occurs last, and shall terminate on June 30, 2024. This City reserves the right to renew the contract on an annual basis by mutual Agreement not to exceed a total of four years in accordance with NMSA 1978 §§ 13-1-150 through 152.

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 Agreement as of the dates set forth below.

CITY OF SANTA FE:

_____
ALAN WEBBER, CITY MAYOR

DATE:_____

CONTRACTOR: MODERNIZATION
SALES/TK Elevator Corporation

Liesje Gebler
LIESJE GEBLER, BRANCH MANAGER

DATE: 12/28/2022

CRS# 2017456000
Registration # 224922

ATTEST:

_____
KRISTINE BUSTOS MIHELCIC, CITY CLERK

CITY ATTORNEY'S OFFICE:
Marcos Martinez
Marcos Martinez (Dec 15, 2022 13:07 MST)
_____
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

_____
EMILY OSTER, FINANCE DIRECTOR

3359980/572500 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 # **3203754**

Contractor: **TK Elevator**

Description: **Amendment #1 Extending Term of Agreement.**

Contract ☐ Agreement ☐ Lease / Rent ☐ Amendment ☉

Term Start Date: **TBD** Term End Date: **June 30, 2024**

☐ Approved by Council Date: _____

Contract / Lease:

Amendment # **1** to the Original Contract / Lease # **3203754**

Increase/(Decrease) Amount $ _____

Extend Termination Date to: **June 30, 2024**

☐ Approved by Council Date: _____

Amendment is for: **Extending Term of the Agreement.**

2. **HISTORY** of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)
Agreement is to provide rehabilitation of existing staff and public elevators for the Main Branch of the Santa Fe Public Libraries. The volatility of the materials and equipments markets will delay the project's start date until May, 5 2023.

3. **Procurement History:** **SWPA 20-00000-22-00064, SPA GSA 47QSHA19D005H**

Purchasing Officer Review: Jan 30, 2023 Date:

Comment & Exceptions: Extending term. utilizing SWPA.

4. **Funding Source:** **GRT18PKG-Main Lib Elevators & Fountains** **Org / Object:** **3359980/572500**

Andy Hopkins
Andy Hopkins (Jan 30, 2023 11:16 MST)

Budget Officer Approval: Jan 30, 2023 Date:

Comment & Exceptions: _____

Staff Contact who completed this form: **Therese Martinez** Phone # **505-955-5937**

Email: **tmartinez@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: TK Elevator

Procurement Title: Amendment #1 Extending Term 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 Public Works/Facilities Div. Staff Name Therese Martinez

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:

Therese Martinez	Project Administrator	1/30/2023
Department Rep Printed Name (attesting that all information included)	Title	Date
	Contracts Supervisor	Jan 30, 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.

Item# **22-0450**
Munis Contract# ~~3203181~~ **DG**
3203754

City of Santa Fe Contract
For Elevator Rehabilitation
At the Main Branch of the Santa Fe Public Library

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and TK Elevator Corporation, a Vendor under the Statewide Price Agreement through NM GSD (New Mexico General Services Department), 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 **TK Elevator Corporation**. "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:

Rehabilitation of the existing Staff and Public Elevators for the Main Branch of the Santa Fe Public Library. This includes, but is not limited to, refurbishing, retaining, or replacing the existing Mechanical and Electrical components of the Main Library elevators.

Work will proceed per the Modernization Proposal submitted by Modernization Sales/TK Elevator Corporation- SPA Procurement number: 70-00000-17-00054 marked "Exhibit 1" attached hereto and made a part of thereof.

The Project location is 145 Washington Avenue near the downtown Plaza.

3. **Compensation**

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

Deliverable item:		Price
01	Rehabilitation of Public and Staff Elevators	$ 221,821.00
	NM GRT	$ 18, 716.15
	Performance and Payment Bond	$ 3,327.00

The total compensation under this Agreement shall not exceed $243,864.15 including New Mexico gross receipts tax ($18,716.15).

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, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

28. **Limitation of Liability**

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

29. **Incorporation by Reference and Precedence**

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

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

30. **Workers' Compensation**

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

31. **Inspection**

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

32. **Inspection of Services**

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

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

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long

thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

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

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

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

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

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

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

(2) terminate the contract for default.

33. **Insurance**

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

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

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

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

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

34. **Impracticality of Performance**

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

35. **Invalid Term or Condition**

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

36. **Enforcement of Agreement**

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

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

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

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

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

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

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

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

38. **Survival**

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

39. **Disclosure Regarding Responsibility**

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

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

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

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

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

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

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

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

41.The Contractor shall not be liable for any loss, damage or delay caused by acts of government, labor troubles, strikes, lockouts, fire explosion, theft, floods, riot, civil commotion, war, malicious mischief, acts of God, or any cause beyond its control, and in no event shall the Contractor be liable for consequential damages. The Contractor shall automatically receive an extension of time commensurate with any delay regarding the aforementioned.

42.In the event of termination for convenience, the City agrees to pay the Contractor the proportional contract value of work performed including Agreement value of materials in process of fabrication, in transit, stored at the jobsite, or in the Contractor's possession. The City agrees to limit possession to work, and materials previously paid for by the City to the Contractor.

43.The Guarantee/Warranty covering parts only shall commence upon acceptance of Contractor's work by the City and shall continue for a period of one (1) year, provided that a manufacturer approved preventative maintenance program is in effect during the Guarantee/Warranty period.

44.The Contractor's obligations to indemnify, defend and hold harmless shall be limited to property damage and bodily injury claims only, and then, only to the extent of the Contractor's own acts, omissions, or negligence, and shall in no way include for the acts, omissions, or negligence of a party indemnified hereunder, or for bare allegations.

45.Additional insured coverage shall only apply to the extent any damages covered by the

policy are determined to be caused by the Contractor's acts, actions, omissions, or neglects and not to the extent caused by the additional insured's own acts, actions, omissions, or neglects or for bare allegations. The Contractor shall provide their standard manuscript endorsement. Any deviation from the insurance set forth in this Agreement and modified herein shall be mutually agreed to by both parties in writing prior to becoming effective. The Contractor's Certificate of Insurance only contains standard ACORD cancellation language. The waiver of subrogation shall be limited to the extent any claim is caused by the Contractor.

46. If the City materially suspends or delays the Contractor's work, prior to commencing work again, the Contractor reserves the right to survey its work, including materials stored at jobsite, and based on the Contractor's findings, the City shall execute a change order. Substantial delays to include increases in the Contractor's wage rates based on its agreement with the International Union of Elevator Constructors (IUEC), increases in material costs, as well as remobilization costs incurred by the Contractor.

Sanctions: The City has to inform the Contractor if he is, or becomes, an individual or entity that is - or that is majority owned or controlled by a party that is - included on any list of restricted parties maintained by (i) the United States of America; (ii) the United Nations; (iii) the European Union or any EU member state; (iv) the UK; or (v) any other national authority binding the Parties of this Agreement.

In case the City, or any other beneficiary of this transaction, e.g., the end-user, is or becomes an individual or entity that is - or that is majority owned or controlled by a party that is - included on any list of restricted parties, the Contractor reserves the right to cancel the Agreement immediately.

If the goods subject to this Agreement would be exported, re-exported, resold, used, transferred, or otherwise disposed of in violations of any sanctions applicable to the Contractor, the Contractor also reserves the right to cancel the Agreement immediately. In this respect, the City shall be obliged to disclose the final delivery address, end-user and end-use of the goods upon request - insofar as legally permissible - and to notify the Contractor of all circumstances that indicate an infringement.

"Sanctions" means here any economic, trade or financial sanctions, laws, regulations, embargoes, or restrictive measures imposed, enacted, administered, or enforced by any Sanctions Authority.

"Sanctions Authority" means (i) the US; (ii) the UN Security Council; (iii) the EU and any EU member state; (iv) the UK; or (v) any governmental institutions of any of the foregoing which administer Sanctions, including HM Treasury, OFAC, the US State Department and the US Department of the Treasury.

Claims of the City against the Contractor based on the termination due to these reasons shall be excluded.

Miscellaneous: The City shall issue a change order covering any additional, or any increase in, applicable taxes, tariffs, duties, permit and/or license fees imposed upon the Contractor after full execution of the Agreement between the parties by any governmental authority or by any of the Contractor's applicable component or material suppliers.

47. **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:

Therese Martinez,
Project Administrator
City of Santa Fe
2651 Siringo Road, Building E
PO Box 909
Santa Fe, NM 87504-0909
505-955-5937 (O)
tmartinez@santafenm.gov

To the Contractor:

Modernization Sales/TK Elevator Corporation

Kyle Olsen
1-505-203-9204
TK Elevator Corporation
P.O Box 3796
Carol Stream, IL 60132-3796
kyle.olsen@tkelevator.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.

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

a. When a construction contract is awarded in excess of twenty-five thousand dollars ($25,000), the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's bid shall be rejected, its bid security shall be enforced to the extent of actual damages. Award of the contract shall be made pursuant to the Procurement Code in the following manner:

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

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

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

49. **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:
MODERNIZATION
SALES/TK Elevator
Corporation

ALAN WEBBER
CITY MAYOR

DATE: Sep 16, 2022

ROBBIE ELROD / CONTRACT ANALYST
CONTRACTOR

DATE: July 15, 2022
CRS# 2017456000

Registration # 224922

ATTEST:

KRISTINE BUSTOS MIHELCIC, CITY CLERK
GB MTG 09/14/2022

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jul 13, 2022 09:54 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
Emily K. Oster (Sep 16, 2022 16:04 MDT)

EMILY OSTER, FINANCE DIRECTOR

Main Library Elevators and Drinking Fountains/GRT18PKG/3359980 & 572500 AH
Org.Name/Org.#

EXHIBIT 1

Modernization Proposal

SANTA FE PUBLIC LIBRARY

July 11, 2022

Purchaser:	City of Santa Fe	Location:	SANTA FE PUBLIC LIBRARY
Address:	PO Box 909	Address:	145 Washington Ave
	Santa Fe, NM 87504-9909		Santa Fe, NM 87501-2016

TK Elevator Corporation (hereinafter "TK Elevator") is dedicated to delivering Santa Fe Public Library (hereinafter "Purchaser") the safest, highest quality vertical transportation solutions. I am pleased to present this customized Proposal (the "Proposal") in the amount of **$221,821.00** plus any applicable sales tax to modernize the elevator equipment described in the pages that follow at the above-referenced location.

TOTAL PROPOSAL PRICE INCLUDING BONDS/TAXES: $243,864.15

Our modernization package is engineered specifically for your elevator system and will include the elevator mechanical and electrical components being replaced, refurbished or retained.
Benefits of Modernization include;

- Increased durability and reliability
- Improved fire and life safety features
- Decreased waiting times
- Reduced energy consumption
- Reduced operational cost
- Reduced troubleshooting time

This Proposal shall remain in effect for the next forty-five (45) days unless it is revoked earlier by TK Elevator in writing. The price above is subject to escalation - even after Purchaser's acceptance of this Proposal – under certain circumstances including the possibility that TK Elevator may be subjected to increased charges by its suppliers for any of the applicable materials and/or components due to the imposition of new or increased taxes, tariffs, or other charges imposed by applicable governmental authorities or the possibility that the work described in this Proposal is not completed by December 31, 2023.

In the event you have any questions regarding the content of this Proposal, please do not hesitate to contact me. We appreciate your consideration.

Sincerely,



Kyle Olsen
Modernization Sales
kyle.olsen@tkelevator.com
+1 505-203-9204

Modernization Proposal

Job-Specific Clarifications for Proposal

1. Under "Work Not Included, A. Hoistways and Equipment Rooms," please note that the purchaser will be required to sign off on the special use agreement prior to providing access to the hoistway for the other tradesmen." A copy of the special use agreement will be provided upon request.

2. Overtime/Additional/Expedited work will be performed at the following rates below only after receipt of an executed change order;

SCOPE OF WORK	HOURLY RATE
Expedited Installation Hourly OT Rate (Up to 100 Team Hours)	$281/ Team Hour
Hourly Team Rate for Out-of-Scope Work during Normal Hours	$378/ Team Hour
Hourly Team Rate for Out-of-Scope Work during OT Hours	$566/Team Hour
Hourly Mechanic Rate for Out-of-Scope Work during Normal Hours	$302/ Mechanic Hour
Hourly Mechanic Rate for Our-of-Scope Work during OT Hours	$452/ Mechanic Hour

- Rates are subject to change after 12-31-2023
- Expenses, if applicable, are in addition to the laborrates
- Out of scope work includes providing any required access to the hoistway for other trades (i.e. life safety, electrician,etc.).
- See also Special Use Agreement, provided upon request.

3. Proposal is based on work completed in 2023. Labor hours performed after 12/31/2023 will be subject to a labor rate increase up to **$6,500 for work completed after 2023.**

4. Please be advised that this scope **includes** the work by others as mentioned in **Exhibit A.** Anything excluded from this scope will be the owner's responsibility.

5. Under Warranty/Preventative Maintenance - The existing elevator being modernized on the Gold elevator maintenance agreement Contract #US37166 will be suspended until final acceptance of the elevator. Upon Final Acceptance of the modernized elevator, that specific elevator will be reinstated.

6. The below will be included as part of this Modernization Proposal.

-delete all references to Thyssenkrupp Elevator Corporation and replace with TK Elevator Corporation.
-any documents not furnished hereunder shall not be binding upon Contractor until such time that Contractor is furnished with same and specifically accepts in writing.
-the following payment terms shall govern: Upon receipt of the material in TKE's local warehouse, City shall furnish Contractor with sixty-five percent (65%) of the Agreement value prior to mobilization. The remaining 35% will be progress billed as labor is applied to the job. City shall include in progress payments for materials stored at jobsite or in Contractor's possession. Should payments lag, Contractor reserves the right to demobilize until such a time that the payments have been brought up to date, and Contractor has the available manpower. City agrees to increase progress payments to ninety-five percent (95%) of contract value on or before City's acceptance of Contractor's work. City agrees to waive any and all claims to the turnover and/or use of that equipment until such time as those amounts are paid in full. Default by City in payment terms may result in suspension of work until all outstanding balances are paid. Final payment shall be made within thirty 30) days of City's acceptance of Contractor's work. notwithstanding any language therein to the contrary, any waiver or release shall be limited to lien rights for work performed and billed up to the date of the waiver or release, and the waiver or release is conditional upon receipt and clearance of the payment. Contractor otherwise reserves all other rights, claims, remedies, or defenses to which it may otherwise be entitled at law or in equity.
-Contractor (Elevator Contractor) shall not be liable for any loss, damage or delay caused by acts of

government, labor troubles, strikes, lockouts, fire explosion, theft, floods, riot, civil commotion, war, malicious mischief, acts of God, or any cause beyond its control, and in no event shall Contractor be liable for consequential damages. Contractor shall automatically receive an extension of time commensurate with any delay regarding the aforementioned.
- in the event of termination for convenience, City agrees to pay Contractor the proportional contract value of work performed including Agreement value of materials in process of fabrication, in transit, stored at jobsite or in Contractor's possession. City agrees to limit possession to work, and materials previously paid for by City to Contractor.
-that Guarantee/Warranty covering parts only shall commence upon acceptance of Contractor's work by City and shall continue for a period of one (1) year, provided that a manufacturer approved preventative maintenance program is in effect during the Guarantee/Warranty period.
-Contractor's obligations to indemnify, defend and hold harmless shall be limited to property damage and bodily injury claims only, and then, only to the extent of Contractor's own acts, omissions, or negligence, and shall in no way include for the acts, omissions, or negligence of a party indemnified hereunder, or for bare allegations.
-additional insured coverage shall only apply to the extent any damages covered by the policy are determined to be caused by Contractor's acts, actions, omissions, or neglects and not to the extent caused by the additional insured's own acts, actions, omissions, or neglects or for bare allegations. Delete reference to ISO form, Contractor shall provide its standard manuscript endorsement. Any deviation from the insurance set forth in the Agreement and modified herein shall be mutually agreed to by both parties in writing prior to becoming effective.
-Contractor's Certificate of Insurance only contains standard ACORD cancellation language. The waiver of subrogation shall be limited to the extent any claim is caused by Contractor.
-that if City materially suspend/delay Contractor's work, prior to commencing work again, Contractor reserves the right to survey its work (including materials stored at jobsite) and based on Contractor's findings City shall execute a change order. Substantial delays to include increases in Contractor's wage rates based on its agreement with the International Union of Elevator Constructors (IUEC), increases in material costs, as well as remobilization costs incurred by Contractor.
-bonds, if requested in writing, shall be an addition based on one percent (1%) of the contract value per annum, to be paid by City.
Sanctions: The City has to inform the Contractor if he is, or becomes, an individual or entity that is - or that is majority owned or controlled by a party that is - included on any list of restricted parties maintained by (i) the United States of America; (ii) the United Nations; (iii) the European Union or any EU member state; (iv) the UK; or (v) any other national authority binding the Parties of this Agreement.
In case the City, or any other beneficiary of this transaction, e.g., the end-user, is or becomes an individual or entity that is - or that is majority owned or controlled by a party that is - included on any list of restricted parties, the Contractor reserves the right to cancel the Agreement immediately.
If the goods subject to this Agreement would be exported, re-exported, resold, used, transferred, or otherwise disposed of in violations of any sanctions applicable to the Contractor, the Contractor also reserves the right to cancel the Agreement immediately. In this respect, the City shall be obliged to disclose the final delivery address, end-user and end-use of the goods upon request - insofar as legally permissible - and to notify the Contractor of all circumstances that indicate an aforementioned infringement.
"Sanctions" means here any economic, trade or financial sanctions, laws, regulations, embargoes, or restrictive measures imposed, enacted, administered, or enforced by any Sanctions Authority.
"Sanctions Authority" means (i) the US; (ii) the UN Security Council; (iii) the EU and any EU member state; (iv) the UK; or (v) any governmental institutions of any of the foregoing which administer Sanctions, including HM Treasury, OFAC, the US State Department and the US Department of the Treasury.
Claims of the City against the Contractor based on the termination due to these reasons shall be excluded.
Miscellaneous: City shall issue a change order covering any additional (or any increase in) applicable taxes, tariffs, duties, permit and/or license fees imposed upon Contractor after full execution of the Agreement between the parties by any governmental authority or by any of Contractor's applicable component or material suppliers.

Modernization Proposal

SCOPE OF WORK

Grouping Name: Public

Equipment Type: Hydraulic	Speed: 115 fpm
3 Stops (3 Front /0 Rear)	Capacity: 2000 lbs.

Units Included

Building	Nickname	OEM Serial #	TKE Serial #	Legal ID
Library	Public	409393	US95707	PENDING

Description of Work

Controller

- TAC 32 Controller (Includes Options listed below)
  - 24 VDC Signal Voltage
  - Auto Light and Fan Feature
  - Car Independent Service
  - Car Traveling Lantern Circuitry
  - Door Bypass Operation
  - Electronic Door Detector Interface
  - Hoistway Access and Enable
  - THY Board
- eMax Monitoring Device Provisions
- Battery Lowering in Controller
- Solid State Starters (6 or 12 leads) 208 VAC

Power Unit

- EP-80 Power Unit (Submersible)
- 5 gallon drum of Biodegradable oil (Citgo NZ)
- 55 gallon drum of Biodegradable oil (Citgo NZ)
- 2" Shutoff Valve Kit (Pump)
- Overspeed Valve Kits for 2" (less than 150 GPM)

Jack

- Packing

Car

- Car Top Exit Switch
- Cab Wiring Material (200MK1)

Modernization Proposal

Hoistway

- HN Boxes (per each 2 cars, grouped)
- Steel Tape with Mounting hardware, Selector and magnets (terminal limits included)
- TAC 32 Field Friendly Wiring Package Includes single traveling cable, hoistway wiring, interlock wiring, interlock connectors, and serial wiring.
- Additional Hoistway Wiring for TAC 32 with Remote Machine Room
- Miscellaneous
- Miscellaneous

Pit

- Pit Stop Switch

Cab

Door Equipment

- LD-16 Plus Drive Only (FRONT)
  - includes Car Top Inspection station (w/ alarm signal)
- Micro Light (Front)

Car Fixtures

- Main Car Station Includes Options Below
- • Applied Panel
- Debranded Car Station (No Logo)
- Vandal Resistant Floor Buttons
- Cast Braille Plates for Car Features
- Standard Key Switch Package
  - Fan
  - Light
  - Independent
  - Stop
  - Inspection/Hoistway Enable)
- Emergency Light mounted in COP
- 2004 and later Fire Service Phase II Features (includes instructions signage)
- Handicap Signal (Passing signal)
- Position Indicator (2" CE Segmented)
- ADA Phone System integral with COP (Rath)
- Speaker Pattern for Intercom System/ADA Phone
- Locked Service Cabinet
- Certificate Window
- Default Engravings
- #4 Stainless Steel Finish (441)

Modernization Proposal

Hall Fixtures

- Hoistway Access Switch (in Hall Station)
- Fire Service Phase I Key Switch
- Fire Service Phase I Engraved Instructions
- Fusion Hall Lanterns (Standard) White Up/Down LED's #4 S/S (304)
- Hoistway Jamb Braille (Pair of Standard) (# of Floors)
- Car Identification Plate (Pair)
- Terminal Hall Stations (Surface Mounted) with
  - Appendix O (Polycarbonate insert flame with engraved verbiage)
  - Fusion (#4 S/S (304))
- 2009 & 2010 Elevator Communications Failure add
- Terminal Hall Stations (Surface Mounted) with
  - Appendix O (Polycarbonate insert flame with engraved verbiage)
  - Fusion (#4 S/S (304))
- Intermediate Hall Stations (Surface Mounted) with
  - Appendix O (Polycarbonate insert flame with engraved verbiage)
  - Fusion (#4 S/S (304))

Modernization Proposal

Grouping Name: Staff

Equipment Type: Hydraulic	Speed: 115 fpm
3 Stops (3 Front /0 Rear)	Capacity: 2000 lbs.

Units Included

Building	Nickname	OEM Serial #	TKE Serial #	Legal ID
Library	Staff	409394	US95708	PENDING

Description of Work

Controller

- TAC 32 Controller (Includes Options listed below)
  - 24 VDC Signal Voltage
  - Auto Light and Fan Feature
  - Car Independent Service
  - Car Traveling Lantern Circuitry
  - Door Bypass Operation
  - Electronic Door Detector Interface
  - Hoistway Access and Enable
  - THY Board
- eMax Monitoring Device Provisions
- Battery Lowering in Controller
- Solid State Starters (6 or 12 leads) 208 VAC

Power Unit

- EP-80 Power Unit (Submersible)
- 5 gallon drum of Biodegradable oil (Citgo NZ)
- 55 gallon drum of Biodegradable oil (Citgo NZ)
- 2" Shutoff Valve Kit (Pump)
- Overspeed Valve Kits for 2" (less than 150 GPM)

Jack

- Packing

Car

- Car Top Exit Switch
- Cab Wiring Material (200MK1)

Hoistway

- HN Boxes (per each 2 cars, grouped)
- Steel Tape with Mounting hardware, Selector and magnets (terminal limits included)

- TAC 32 Field Friendly Wiring Package Includes single traveling cable, hoistway wiring, interlock wiring, interlock connectors, and serial wiring.
- Additional Hoistway Wiring for TAC 32 with Remote Machine Room
- Miscellaneous
- Miscellaneous

Pit

- Pit Stop Switch

Cab

Door Equipment

- LD-16 Plus Drive Only (FRONT)
  - includes Car Top Inspection station (w/ alarm signal)
- Micro Light (Front)

Car Fixtures

- Main Car Station Includes Options Below
- • Applied Panel
- Debranded Car Station (No Logo)
- Vandal Resistant Floor Buttons
- Cast Braille Plates for Car Features
- Standard Key Switch Package
  - Fan
  - Light
  - Independent
  - Stop
  - Inspection/Hoistway Enable)
- Emergency Light mounted in COP
- 2004 and later Fire Service Phase II Features (includes instructions signage)
- Handicap Signal (Passing signal)
- Position Indicator (2" CE Segmented)
- ADA Phone System integral with COP (Rath)
- Speaker Pattern for Intercom System/ADA Phone
- Locked Service Cabinet
- Certificate Window
- Default Engravings
- #4 Stainless Steel Finish (441)

Hall Fixtures

- Hoistway Access Switch (in Hall Station)
- Fire Service Phase I Key Switch
- Fire Service Phase I Engraved Instructions

Modernization Proposal

- Fusion Hall Lanterns (Standard) White Up/Down LED's #4 S/S (304)
- Hoistway Jamb Braille (Pair of Standard) (# of Floors)
- Car Identification Plate (Pair)
- Terminal Hall Stations (Surface Mounted) with
  - Appendix O (Polycarbonate insert flame with engraved verbiage)
  - Fusion (#4 S/S (304))
- 2009 & 2010 Elevator Communications Failure add
- Terminal Hall Stations (Surface Mounted) with
  - Appendix O (Polycarbonate insert flame with engraved verbiage)
  - Fusion (#4 S/S (304))
- Intermediate Hall Stations (Surface Mounted) with
  - Appendix O (Polycarbonate insert flame with engraved verbiage)
  - Fusion (#4 S/S (304))

1. Key Tasks and Approximate Lead Times

Key Tasks to be performed to be performed by Purchaser prior to equipment fabrication:

a. Execution of this Proposal
b. Payment for pre-production and engineering
c. Approval of layout (if applicable)
d. Execution of TK Elevator's Material Release Form

Approximate Durations/Lead Times

Contract execution (can run concurrently with layout drawing package preparation and approval)	Varies
Survey and Order of Materials (additional time required for cab, signal, entrance preparation and approval, if applicable)	4 - 6 Weeks
Fabrication time (from receipt of all approvals, fully executed contract, Material Release Form and initial progress payment)	8-10 Weeks
Modernization of elevator system (Per Unit): (Upon completion of all required preparatory work by others)	3 - 5 Weeks

The durations or lead times listed above are strictly approximations that can vary due to factors both within and outside of TK Elevator's control, are subject to change without notice to Purchaser and shall not be binding on TK Elevator.

2. Payment Terms

0% of the price set forth in this Proposal as modified by options selected from the section entitled "Value Engineering Opportunities & Alternates" (if applicable) will be due and payable as an initial progress payment within 30 days from TK Elevator's receipt of a fully executed copy of this Proposal. This initial progress payment will be applied to project management, permits, engineering and shop drawings, submittals, drilling mobilization (if required) and raw material procurement. Material will be ordered once this payment is received and the parties have both executed this Proposal and the Material Release Form.

65% of the price set forth in this Proposal as modified by options selected from the section entitled "Value Engineering Opportunities & Alternates" (if applicable) shall be due and payable when the material described above has been furnished. Material is considered furnished when it has been received at the jobsite or TK Elevator staging facility. Supporting documentation of materials stored shall be limited to stored materials certificates of insurance and bills of lading. Receipt of this payment is required prior to mobilization of labor.

35% of the price set forth in this Proposal shall be made as progress payments throughout the life of the project. In the event TK Elevator fails to receive payment within thirty (30) days of the date of a corresponding invoice, TK Elevator reserves the right to demobilize until such a time that the payments have been brought up to date, and TK Elevator has the available manpower.

It is agreed that there will be no withholding of retainage from any billing and by the customer from any payment.

The payment terms breakdown above shall be considered the Schedule of Values for the project as written. Billing shall be submitted on or before the 25th day of the month according to the payment schedule above and accompanied by a form of G702-703 pay application/schedule of values and a conditional waiver, the format of which is hereby acknowledged and accepted.

The use of online Portals for the submission of billing shall follow the terms of the Proposal and Customer agrees to permit billing in accordance with the executed contract terms. Portal access and usage is to be provided free of additional charge to TK Elevator and any additional cost for such use is to be reimbursed to TK Elevator via a reimbursable change order immediately upon acceptance.

Purchaser agrees that TK Elevator shall have no obligation to complete any steps necessary to provide Purchaser with full use and operation of the installed equipment until such time as TK Elevator has been paid 100% both of the price reflected in this Proposal and for any other work performed by TK Elevator or its subcontractors in furtherance of this Proposal. Purchaser agrees to waive any and all claims to the turnover and/or use of that equipment until such time as those amounts are paid in full.

Modernization Proposal

Proposal price:		$221,821.00	
Estimated tax:	8.4400	$18,716.15	
Estimated contract price:		$243,864.15	(incl. taxes/bonds)
Payment - Performance Bond:		$3,327.00	

3. Warranty

TK Elevator warrants any equipment it installs as described in this Proposal against defects in material and workmanship for a period of one (1) year from the date of Purchaser's execution of TK Elevator's "Final Acceptance Form" on the express conditions that all payments made under this Proposal and any mutually agreed-to change orders have been made in full and that such equipment is currently being serviced by TK Elevator. In the event that TK Elevator's work is delayed for a period greater than six (6) months, the warranty shall be reduced by the amount of the delay. This warranty is in lieu of any other warranty or liability for defects. TK Elevator makes no warranty of merchantability and no warranties which extend beyond the description in this Proposal, nor are there any other warranties, expressed or implied, by operation of law or otherwise. Like any piece of fine machinery, the equipment described in this Proposal should be periodically inspected, lubricated, and adjusted by competent personnel. This warranty is not intended to supplant normal maintenance service and shall not be construed to mean that TK Elevator will provide free service for periodic examination, lubrication, or adjustment, nor will TK Elevator correct, without a charge, breakage, maladjustments, or other trouble arising from normal wear and tear or abuse, misuse, improper or inadequate maintenance, or any other causes other than defective material or workmanship. In order to make a warranty claim, Purchaser must give TK Elevator prompt written notice at the address listed on the cover page of this Proposal and provided all payments due under the terms of this Proposal and any mutually agreed to written change orders have been made in full, TK Elevator shall, at its own expense, correct any proven defect by repair or replacement. TK Elevator will not, under any circumstances, reimburse Purchaser for cost of work done by others, nor shall TK Elevator be responsible for the performance of any equipment that has been the subject of service, repair, replacement, revisions or alterations by others. If there is more than one (1) unit which is the subject of work described in this Proposal, this section shall apply separately to each unit as accepted.

4. Preventative Maintenance Program

This Proposal does not include any maintenance, service, repair or replacement of the equipment or any other work not expressly described herein. TK Elevator will submit a separate proposal to Purchaser covering the maintenance and repair of this equipment to be supplied to Purchaser at an additional cost.

5. Work Not Included

There are certain items that are not included in this Proposal, many of which must be completed by Purchaser prior to and as a condition precedent to TK Elevator's performance of its work as described in this Proposal. In order to ensure a successful completion of this project, it shall be solely Purchaser's responsibility to coordinate its own completion of those items with TK Elevator. The following is a list of those items that are not included in this Proposal:

Modernization Proposal

A. Hoistways and Equipment Rooms

1. Purchaser shall provide the following:

a. A dry legal hoistway, properly framed and enclosed, and including a pit of proper depth and overhead. This is to include steel safety beam, inspection or access platforms, access doors, sump pump, lights, waterproofing and venting as required; dewatering of pit(s) and required permanent screening/

b. A legal machine/control room, adequate for the elevator equipment, including floors, trap doors, gratings, access platforms, ladders, railings, foundations, lighting, ventilation sized per the TK Elevator shop drawings. Purchaser must maintain machine/control room temperature between 55 and 90 degrees Fahrenheit, with relative humidity less than 95% non-condensing at all times.

c. Adequate bracing of entrance frames to prevent distortion during wall construction.

d. All grouting, fire caulking, cutting, x-ray and removal of walls and floors, patching, coring, setting of sleeves/knockouts, penetrations and painting (except as specified) and removal of obstructions required for elevator work; along with all proper trenching and backfilling for any underground piping and/or conduit.

e. All labor and materials necessary to support the full width of the hoistway at each landing for anchoring or welding TK Elevator sill supports, steel angles, sill recesses;

f. The furnishing, installing and maintaining of the required fire rating of elevator hoistway walls, including the penetration of firewall by elevator fixture boxes;

g. Ensuring that the elevator hoistways and pits are dewatered, cleaned and properly waterproofed;

B. Electrical and Life Safety:

1. Purchaser shall provide a dedicated, analog telephone or data line to the elevator telephone or communication device; one additional data line per group of elevators for diagnostic capability wired to designated controller;

2. Purchaser shall provide the following:

a. suitable connections from the power main to each controller and signal equipment feeders as required, including necessary circuit breakers and fused mainline disconnect switches per N.E.C. prior to installation. Suitable power supply capable of operating the new elevator equipment under all conditions;

b. piping and wiring to controller for mainline power, car lighting, and any other building systems that interface with the elevator controls per N.E.C. Articles 620-22 and 620-51;

c. any required hoistway / wellway, machine room, pit lighting and/or 110v service outlets;

d. conduit and wiring for remote panels to the elevator machine room(s) and between panels. Remote panels required by local jurisdictions are not included in this proposal;

e. a bonded ground wire, properly sized, from the elevator controller(s) to the primary building ground; and all remote wiring to the outside alarm bell as requested by all applicable code provisions;

f. installed sprinklers, smoke/heat detectors on each floor, machine room and hoistways / wellways, shunt trip devices (not self-resetting) and access panels as may be required as well as normally open dry contacts for smoke/heat sensors, which shall be terminated by Purchaser at a properly marked terminal in the elevator controller;

g. a means to automatically disconnect the main line and the emergency power supply to the elevator prior to the application of water in the elevator machine room that shall not be self-resetting;

h. emergency power supply including automatic time delay transfer switch and auxiliary contacts with wiring to the designated elevator controller and along with electrical cross connections between elevator machine rooms for emergency power purposes;

i. the following emergency power provisions are not included: interface in controller, pre-testing and testing, emergency power keyswitches;

j. emergency power operation is included as part of the design of the elevator control system and based on each car in the group only, to properly sequence, one at a time to the programmed landing, and park. The design requires that the generator, transfer switch, and related circuitry are sufficient to run this function or any other function for any building other system that is associated with this project. In the event that the generator, transfer switch, and related circuitry are not sufficient, TK Elevator will provide Purchaser with a written change order for Purchaser's execution.

k. a dry set of contacts which close 20 seconds prior to the transfer from normal power to emergency power or from emergency power to normal power whether in test mode or normal operating conditions in the event that an emergency power supply will be provided for the elevator;

l. confirmation that the emergency standby power generator and/or building can accept the power generated to and from the elevator during both Hi-Speed and Deceleration. In cases where the generator and/or building load is not electrically sized to handle the power return from the regen drive, additional separate chopper and resistor units are available for purchase but not included in this proposal. The additional chopper and resistor units allow regenerated power to be dissipated in the resistor bank and not sent back into the building grid.

C. Miscellaneous:

1. Purchaser shall provide all work relating to the finished cab flooring including, but not limited to, the provision of materials and its installation to comply with all applicable codes;
2. Hydraulic jack replacement:

a. the excavation of the elevator cylinder well hole in the event drilling is necessary through soil that is not free from rock, sand, water, building construction members and obstructions. Should obstructions be encountered, TK Elevator will proceed only after written authorization has been received from the Purchaser. The contract price shall be increased by the amount of additional labor at TK Elevator's standard labor rates as per the local office along with any additional expenses and materials required;

b. adequate ingress and egress, including ramping, for rail-mounted or truck-mounted drill rig;

c. Purchaser is responsible for pumping truck contractor to remove and dispose of spoils from the site. In the event that unforeseen and unfavorable below ground conditions are encountered, including but not limited to concrete around the cylinder, construction debris, adverse water and/or soil conditions, erosion, cavitations, oil contamination, or circumstances necessitating increased hole depth, etc., which require the employment of specialized contractors, TK Elevator shall immediately advise the Purchaser and costs will be extra to the contract;

d. in ground protection systems other than TK Elevator's standard HDPE or PVC protection system with bottomless corrugated steel casing;

e. any required trenching and backfilling for underground piping or casings, and conduit as well as any compaction, grouting, and waterproofing of block-out;

f. engineering, provision and installation of methane barriers or coordination/access;

g. access to 2" pressurized water supply within 100'-0" of the jack hole location;

h. a safe, accessible storage area for placement of D.O.T. 55 gallon containers for the purpose of spoils containment; obtaining of local environmental or disposal permits

i. any spoils or water testing;

6. Working Hours, Logistics and Mobilization

a. All work described in this Proposal shall be performed during TK Elevator's regular working days – defined as Monday thru Friday and excluding IUEC recognized holidays – and regular working hours – defined as those hours regularly worked by TK Elevator modernization mechanics at the TK Elevator branch office that will provide labor associated with the performance of the work described in this Proposal - unless otherwise specified

and agreed to in writing by both TK Elevator and Purchaser (hereinafter TK Elevator's regular working days and regular working hours shall be collectively defined as “normal working hours”). TK Elevator shall be provided with uninterrupted access to the elevator hoistway and machine room areas to perform work during normal working hours.

b. Purchaser shall provide on-site parking to all TK Elevator personnel at no additional cost to TK Elevator.

c. Purchaser shall provide traffic control, lane closures, permits and flagmen to allow suitable access/unload of tractor trailer(s).

d. Purchaser agrees to provide unobstructed tractor-trailer access and roll-able access from the unloading area to the elevator or escalator hoistways or wellways (as applicable).

e. Purchaser will be required to sign off on the Material Release Form, which will indicate the requested delivery date of equipment to the site. If Purchaser is not ready to accept delivery of the equipment within ten (10) business days of the agreed upon date, Purchaser will immediately make payments due for equipment and designate an area adjacent to the elevator shaft where Purchaser will accept delivery. If Purchaser fails to provide this location or a mutually agreeable alternative, TK Elevator is authorized to warehouse the equipment at the TK Elevator warehouse or designated distribution facility at Purchaser's risk and expense. Purchaser shall reimburse TK Elevator for all costs due to extra handling and warehousing. Storage beyond ten (10) business days will be assessed at a rate of $100.00 per calendar day for each unit listed in this Proposal, which covers storage and insurance of the elevator equipment and is payable prior to delivery.

f. Purchaser agrees to provide a dry and secure area adjacent to the hoistway(s) at the ground level for storage of the elevator equipment and tools within ten (10) business days from receipt at the local TK Elevator warehouse. Any warranties provided by TK Elevator for vertical transportation equipment will become null and void if equipment is stored in any manner other than a dry, enclosed building structure. Any relocation of the equipment as directed by Purchaser after initial delivery will be at Purchaser's expense.

g. TK Elevator includes one mobilization to the jobsite. A mobilization fee of $2,500.00 per crew per occurrence will be charged for pulling off the job or for any delays caused by others once material has been delivered and TK Elevator's work has commenced.

h. Access for this project shall be free and clear of any obstructions. A forklift for unloading and staging material shall also be provided by Purchaser at no additional cost.

i. Purchaser shall provide an on-site dumpster. TK Elevator will be responsible for cleanup of elevator/ escalator packaging material; however, composite cleanup participation is not included in this Proposal.

j. The hiring of a disposal company which MUST be discussed prior to any material being ordered or work being scheduled. TK Elevator will provide environmental services ONLY if this is specifically included under the "Scope of Work" section above. TK Elevator assumes no responsibility and/or liability in any way whatsoever for spoils or other contamination that may be present as a result of the cylinder breach and/or other conditions present on the work site.

k. One or more of the units described in this Proposal will be out of service and unavailable to move passengers and/or property during entire duration of the performance of the work described in this Proposal until re-certified by the applicable authority(ies) having jurisdiction and in good standing with payment schedules.

7. Temporary Use, Inspection and Turnover

a. Unless required by specification, TK Elevator will not provide for “temporary use” of the elevator(s) described in this Proposal prior to completion and acceptance of the complete installation. Temporary use shall be agreed to via a change order to this Proposal which shall require Purchaser’s execution of TK Elevator's standard Temporary Use Agreement. Cost for temporary use of an elevator shall be $200.00 per calendar day per hydraulic elevator and $250.00 per calendar day for each traction elevator for rental use only, excluding personnel to operate. All labor and parts, including callbacks required during the temporary use period will be

billed at TK Elevator's standard local billing rates. In the event that an elevator must be provided for temporary use, TK Elevator will require 30 days to perform final adjustments and re-inspection after the elevator has been returned to TK Elevator with all protection, intercoms and temporary signage removed. This duration does not include any provisions for finish work or for repairs of same, which shall be addressed on a project-by-project basis. Cost for preparation of controls for temporary use, refurbishment due to normal wear and tear, readjustment and re-inspection is $3,500.00 per elevator up to 10 floors. For projects above 10 stops, an additional cost of $1,500.00 / 10 floors shall apply. These costs are based on work performed during normal working hours. Temporary use excludes vandalism or misuse. Any required signage, communication devices, elevator operators, and protection are not included while temporary use is being provided. All overtime premiums for repairs during the temporary use period will be billed at TK Elevator's local service billing rates.

b. The Proposal price set forth above includes one (1) inspection per unit by the applicable authority having jurisdiction if required by the government of the locality where the equipment is located. In the event the equipment fails that inspection due to no fault of TK Elevator, TK Elevator will charge Purchaser for both the cost of each re-inspection which shall be $1,500.00 and a remobilization fee which shall be $2,500.00 via change order prior to scheduling a re-inspection.

c. Upon notice from TK Elevator that the installation and/or modernization of the equipment is complete, Purchaser will arrange to have present at the jobsite a person authorized to make the final inspection and to execute TK Elevator's "Final Acceptance Form." The date and time that such person will be present at the site shall be mutually agreed upon but shall not be more than ten (10) business days after the date of TK Elevator's notice of completion to Purchaser unless both TK Elevator and Purchaser agree to an extension of that ten (10) day period in writing. Such final inspection and execution of TK Elevator's "Final Acceptance Form" shall not be unreasonably delayed or withheld.

d. Should the Purchaser or the local authority having jurisdiction require TK Elevator's presence at the inspection of equipment installed by others in conjunction with the work described in this Proposal, Purchaser agrees to compensate TK Elevator for its time at TK Elevator's current billing rate as posted at its local office.

e. At the conclusion of its work, TK Elevator will remove all equipment and unused or removed materials from the project site and leave its work area in a condition that, in TK Elevator's sole opinion, is neat and clean.

f. Purchaser agrees to accept a live demonstration of equipment's owner-controlled features in lieu of any maintenance training required in the bid specifications.

g. Purchaser agrees to accept TK Elevator's standard owner's manual in lieu of any maintenance, or any other, manual(s) required in the bid specifications.

8. MAX

MAX is a cloud based Internet of Things (IoT) platform that we, at our election, may connect to your elevators and escalators by means of installation of a remote-monitoring device or modem (each a "device"). MAX will analyze the unique signal output of your equipment 24/7 and when existing or potential outages are identified, MAX will automatically communicate with our dispatch centers. When appropriate, the dispatch center will alert our technicians during normal working hours. These MAX alerts provide the technician with precise diagnostics detail, which greatly enhances our ability to fix your equipment right the first time, MAXimizing the equipment uptime.

a. Purchaser authorizes TK Elevator and its employees to access purchaser's premises to install, maintain and/or repair the devices and, upon termination of the service agreement, to remove the same from the premises if we elect to remove.

b. TK Elevator is and shall remain the sole owner of the devices and the data communicated to us by the devices. The devices shall not become fixtures and are intended to reside where they are installed. TK Elevator may remove the devices and cease all data collection and analysis at any time.

c. If the service agreement between TK Elevator and Purchaser is terminated for any reason, TK Elevator will automatically deactivate the data collection, terminate the device software and all raw data previously received from the device will be removed and/or expunged or destroyed.
d. Purchaser consents to the installation of the devices in your elevators and to the collection, maintenance, use, expungement and destruction of the daily elevator data as set forth in this agreement.
e. The devices installed by TK Elevator contain trade secrets belonging to us and are installed for the use and benefit of our personnel only.
f. Purchaser agrees not to permit purchaser personnel or any third parties to use, access, tamper with, relocate, copy, disclose, alter, destroy, disassemble or reverse engineer the device while it is located on purchaser's premises.
g. The installation of this equipment shall not confer any rights or operate as an assignment or license to you of any patents, copyrights or trade secrets with respect to the equipment and/or any software contained or imbedded therein or utilized in connection with the collection, monitoring and/or analysis of data.

9. Additional Terms and Conditions

a. In no event shall TK Elevator be responsible for liquidated, consequential, indirect, incidental, exemplary, and special damages associated with the work described in this Proposal.
b. This Proposal is made without regard to compliance with any special purchasing, manufacturing or construction/installation requirements including, but not limited to, any socio-economic programs, such as small business programs, minority or woman owned business enterprise programs, or local preferences, any restrictive sourcing programs, such as Buy American Act, or any other similar local, state or federal procurement regulations or laws that would affect the cost of performance. Should any such requirements be applicable to the work described in this Proposal, TK Elevator reserves the right to modify this Proposal or rescind it altogether.
c. TK Elevator is an equal opportunity employer.
d. TK Elevator's performance of the work described in this Proposal is contingent upon Purchaser furnishing TK Elevator with any and all necessary permission or priority required under the terms and conditions of government regulations affecting the acceptance of this Proposal or the manufacture, delivery or installation of the equipment. All applicable sales and use taxes, permit fees and licenses imposed upon TK Elevator as of the date of the Proposal are included in the price of the Proposal. Purchaser is responsible for any additional applicable sales and use taxes, permit fees and licenses imposed upon TK Elevator after the date of the Proposal or as a result of any law enacted after the date of the Proposal.
e. All taxes, tariffs, duties, permit and/or license fees imposed upon TK Elevator as of the date of the execution of this Proposal are included in the price of the Proposal. Purchaser is responsible, in addition to the Proposal price, to pay TK Elevator for any additional (or any increase in) applicable taxes, tariffs, duties, permit and/or license fees imposed upon TK Elevator after the date of acceptance of this Proposal by any governmental authority or by any of TK Elevator's suppliers of the materials and/or components required in connection with this Proposal.
f. Purchaser agrees to provide TK Elevator's personnel with a safe place in which to work and TK Elevator reserves the right to discontinue work at the jobsite whenever, in TK Elevator's sole opinion, this provision is being violated.
g. The pricing set forth in this Proposal assumes that the elevator pits will not be classified as a confined space. TK Elevator will follow its standard safety policy and procedures. Any job specific safety requirements over and above TK Elevator's standard practices and policies may require additional costs.
h. TK Elevator will furnish and install all equipment in accordance with the terms, conditions, scope and equipment nomenclature as noted herein. Requested changes or modifications to such provisions will require a

written change order issued on the Purchaser's letterhead and accepted by TK Elevator in writing prior to the execution of such work. This change order shall detail the current contract price, the amount of the change, and new contract value.

i. This Proposal does not include a schedule for the work described and any such schedule shall be mutually agreed upon by an authorized representative of both TK Elevator and Purchaser in writing before becoming effective.

j. In the event asbestos material is knowingly or unknowingly removed or disturbed in any manner at the jobsite, Purchaser shall monitor TK Elevator's work place and prior to and during TK Elevator's manning of the job, Purchaser shall certify that asbestos in the environment does not exceed .01 fibers per cc as tested by NIOSH 7400.

k. TK Elevator retains title to and a security interest in all equipment it supplies – which TK Elevator and Purchaser agree can be removed without material injury to the real property – until all payments including deferred payments and any extensions thereof, are made. In the event of any default by Purchaser on any payment, or any other provision of this Proposal, TK Elevator may take immediate possession of the equipment and enter upon the premises where it is located – without legal process – and remove such equipment or portions thereof, irrespective of the matter of its attachment to the real estate or the sale, mortgage or lease of the real estate. Pursuant to the Uniform Commercial Code, and at TK Elevator's request, Purchaser agrees to execute any financial or continuation statements which may be necessary for TK Elevator to file in public offices in order to perfect TK Elevator's security interest in such equipment.

l. TK Elevator reserves the right to assign payments owed to TK Elevator under this Proposal.

m. TK Elevator shall not be liable for any loss, damage or delay caused by acts of government, labor troubles, strikes, lockouts, fire, explosion, theft, floods, riot, civil commotion, war, malicious mischief, acts of God or any cause beyond its control.

n. The rights of TK Elevator under this Proposal shall be cumulative and the failure on the part of the TK Elevator to exercise any rights hereunder shall not operate to forfeit or waive any of said rights. Any extension, indulgence or change by TK Elevator in the method, mode or manner or payment or any of its other rights shall not be construed as a waiver of any of its rights under this Proposal.

n.

o. TK Elevator can furnish Certificate of Workers' Compensation, Bodily Injury and Property Damage Liability Insurance coverage to Purchaser upon written request.

p. Should loss of or damage to TK Elevator's material, tools or work occur at the project site, Purchaser shall compensate TK Elevator for such loss, unless such loss or damage results from TK Elevator's own acts or omissions.

r.

s.
t. TK Elevator's participation in any controlled insurance program is expressly conditioned upon review and approval of all controlled insurance program information and documentation prior to enrollment. Any insurance credits if applicable, will be provided at that time.
u. Unless so mutually agreed upon in a separate signed agreement, TK Elevator shall not be required to interact or correspond with any third party with whom Subcontractor is not in privity of contract concerning matters pertinent to this Agreement.
v. The Purchaser must inform TK Elevator if Purchaser is, or becomes, an individual or entity that is - or that is majority owned or controlled by a party that is - included on any list of restricted parties maintained by (i) the United States of America; (ii) the United Nations; (iii) the European Union or any EU member state; (iv) the UK; or

(v) any other national authority binding the parties of this contract.
In case the Purchaser, or any other beneficiary of this transaction, e.g. the end-user, is or becomes an individual or entity that is - or that is majority owned or controlled by a party that is - included on any list of restricted parties, TK Elevator reserves the right to cancel this Proposal immediately.
If the goods subject to this Proposal would be exported, re-exported, resold, used, transferred or otherwise disposed of in violation of any sanctions applicable to TK Elevator, TK Elevator also reserves the right to cancel this Proposal immediately. In this respect, the Purchaser shall be obliged to disclose the final delivery address, end-user and end-use of the goods upon request - insofar as legally permissible - and to notify TK Elevator of all circumstances that indicate an aforementioned infringement.
"Sanctions" means here any economic, trade or financial sanctions, laws, regulations, embargoes or restrictive measures imposed, enacted, administered or enforced by any Sanctions Authority. "Sanctions Authority" means (i) the US;(ii) the UN Security Council;(iii) the EU and any EU member state;(iv) the UK; or(v) any governmental institutions of any of the foregoing which administer Sanctions, including HM Treasury, OFAC, the US State Department and the US Department of the Treasury.

Modernization Proposal

Acceptance

Purchaser's acceptance of this Proposal and its approval by an authorized manager of TK Elevator will constitute exclusively and entirely the agreement between the parties for the goods and services herein described and full payment of the sum of Two Hundred Twenty One Thousand Eight Hundred Twenty One Dollars ($221,821.00) plus any applicable sales tax.

All other prior representations or regarding this work, whether written or verbal, will be deemed to be merged herein and no other changes in or additions to this Proposal will be recognized unless made in writing and properly executed by both parties as a change order. Should Purchaser's acceptance be in the form of a purchase order or other similar document, the provisions of this Proposal will exclusively govern the relationship of the parties with respect to this transaction. No agent or employee shall have the authority to waive or modify any of the terms of this Proposal without the prior written approval of an authorized TK Elevator manager.

Santa Fe Public Library (Purchaser):	TK Elevator Corporation Management Approval
By:	By:
(Signature of Authorized Individual)	(Signature of Branch Representative)
(Print or Type Name)	Liesje Gebler Branch Manager
(Print or Type Title)	
(Date of Acceptance)	(Date of Execution)

SCHEDULING AND PRODUCTION
REQUEST FOR PAYMENT

Please Remit To: TK Elevator
PO Box 3796
Carol Stream, IL 60132-3796

Date	Terms	Reference ID	Customer Reference # / PO
July 11, 2022	Immediate	ACIA-1SPH4CR	

Total Contract Price:		$221,821.00
Estimated Tax:	8.4400	$18,716.15
Estimated Invoice Amount (Incl. of taxes/bonds)		$243,864.15

For inquiries regarding your contract or services provided by TK Elevator, please contact your local account manager at +1 505 8565800. To make a payment by phone, please call 678-424-5640 with the reference information provided below.

Current and former service customers can now pay online at:
https://secure.billtrust.com/thyssenkruppelevator/ig/one-time-payment

Thank you for choosing TK Elevator. We appreciate your business.

Please detach the below section and provide along with payment.

- - - -

EXHIBIT A

K-Hoff Construction, LLC

PO BOX 707, Fence Lake, NM 87315

Phone (505) 280-8967

PROPOSAL SUBMITTED TO:	PHONE	MOBILE	DATE
T K Elevator Corp	505-858-2176	505-203-9204	3/8/2022
STREET	JOB NAME		
8500 Washington St NE- Suite A4	Santa Fe Public Library		
CITY, STATE & ZIP CODE	JOB LOCATION		
Albuquerque, New Mexico 87113	145 Washington St - Santa Fe, NM - 87501		
Attention	DATE OF PLANS	PAGE 1 OF 1	JOB PHONE
Kyle Olson			

We hereby submit this proposal & estimate for materials & labor as specified for the electrical connection of TK's equiptment

(2 - 20 HP 240 Volt - 3 Phase Controller / Power Unit)

2- 100 amp 3 Phz 240 volt shunt trip breakers with auxilary contact switch for battery lowering. Use existing feeder wires & add new to the controller

2- 30 amp disconect,fuse's, Use existing circuit for cab light & fan

1- 4' LED light fixture installed in machine room to replace existing

1 - 4' LED fixture & 1 single pole switch installed in each hoist way

1 - GFCI plug installed in each hoist way

1- GFCI plug installed in machine room

1- 1/2" conduit installed for existing phone line to new controller's

1- City of Santa Fe electrical permit if required

Price does not include the following :

Any low voltage,telephone ,fire alarm wireing or connections.

Upgrades that the Fire Dept, City Building Dept or AHJ may require

Shunt trip devices per TKE's Survey indicating no sprinklers present

Notice: *Neither the Contractor's License Bond nor the license issued under 60-13-19 of the Construction Industries Licensing Act protects the consumer if the contractor defaults on this contract.*

We PROPOSE hereby to furnish material and labor - complete in accordance with above specifications for the sum of: _____

Payments to be made as follows : 100 % due upon completion

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workers Compensation insurance.

Authorized Signature Karl S. Hoffman

NOTE: This proposal may be withdrawn by us if not accepted within Thirty (30) days.

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

Signature _____

Date of Acceptance: _____

Signature _____

EXHIBIT A

Johnson Controls Fire Protection LP
5500 Midway Park Place NE
Albuquerque , NM 87109
505-401-2605 Mobile

Johnson Controls Fire Protection LP Quotation

To:
City of Santa Fe
2651 Siringo Rd
Santa Fe, NM 87505

Project: SF Public Library Fire Alarm Elevator - CPQ-198354
Johnson Controls Reference: 650198354
Proposal #: 1
Date: 03/10/2022

Johnson Controls is pleased to offer for your consideration this quotation for the above project

Scope of Work

PLUS APPLICABLE TAX

FIRE ALARM -- Santa Fe Public Library Elevator Modernization Fire Alarm System

SCOPE OF WORK:

- Supply and Installation of a Simplex 4007ES Fire Alarm System for the Two Elevator Modernizations at the Santa Fe Public Library on 145 Washington Ave Santa Fe.
- Included are: Fire Alarm Control Panel, Smoke Detectors, Heat Detector, Control Relay's, Monitoring Modules, Pull Station, Horn Strobes.
- Programming, Testing, AHJ Submittal and Approval of Fire Alarm Drawings.

PLEASE NOTE:

- There is a three week window or more between designing CAD and AHJ Approval of Fire Alarm Drawings.
- Building Permit will be required for Fire Alarm Drawings, please provide once quote is accepted if applicable.
- This price does not include upgrade of the entire facilities Fire Alarm system.
- Does not include connection to the existing Fire Alarm system.

BASED ON:

- Requested by ThyssenKrupp

SCOPE OF WORK INCLUDES:

- CAD design drawings showing detailed location of devices
- Equipment Submittals
- Submission to AHJ for review, acceptance and permit -- fire alarm

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EXHIBIT A

Johnson Controls Fire Protection LP
5500 Midway Park Place NE
Albuquerque , NM 87109
505-401-2605 Mobile

- Installation of Conduit, Back Boxes, Cable and Devices.
- System Calculations
- System Programming
- System Test
- Operator Training (local 1 hour, one trip)
- Operation and Maintenance Manuals
- One Year Warranty on Material

PRICING ESCALATION:

- Due to inflation JCI has been forced to consider estimated escalation in pricing on all projects after the quote validity period.
- Pricing is valid for 30 days. After 30 pricing may be adjusted to account for equipment or labor increases.
- Effective January 1, 2022, material pricing is subject to the true material cost at time of shipment, not time of signed contract.

SCOPE OF WORK DOES NOT INCLUDE:

- Repairs to existing systems condition (FireLite system is existing)
- Demo of existing cable and devices
- Additional devices or equipment required by the local Authority Having Jurisdiction. These devices will be negotiated separately
- Wiremold, J-hooks, Cable Management, Pathways or non-standard back boxes.
- **120vac, or any associated cabling or conduit as required. (on site electrician to provide for Fire Alarm Control Panel).**
- Connection of the Fire Alarm System to a central monitoring facility, this can be provided under separate contract.
- Installation of two telephone lines for the purpose of monitoring (by owner)
- Painting, patching, channeling, roof penetration, patch or repair or ceiling tile work. (by owner)
- Coring and Drilling of floors, walls or headers
- Concrete or asphalt cutting and/or patching
- Underground trenching or boring
- Improvements to Building Grounding system
- Costs Associated with Parking
- Moving of Furniture or Equipment
- Volce EVAC System
- Radio Communication System
- Area Refuge System
- Lift Rental

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EXHIBIT A

Johnson Controls Fire Protection LP
5500 Midway Park Place NE
Albuquerque , NM 87109
505-401-2605 Mobile

- Fire Watch
- Modifications to correct existing code/building violations or upgrade of systems to comply with State or City codes.

CLARIFICATIONS:

- This proposal is based upon all work being performed during normal working hours. M-F 8-5
- Installation of the system will be subsequent to design approval by the local Authority having Jurisdiction.
- If the Authority having Jurisdiction requires any additional devices, they will be negotiated separately.
- This price does not reflect completing work in multiple phases other than de-install and re-install. If schedule is based on the phasing approach addition time will be added for the completion of the project. The added time will be negotiated separately.
- In the event of our representatives being dispatched to the work site under an agreed schedule, are unable to perform the work, inspection, or test, through no fault of our own (area not ready, etc.), additional charges will be applied to compensate for lost time.
- In the event of contract cancellation by the purchaser, the purchaser agrees to be responsible for actual time lost and material re-stocking fees (re-stocking fees are 25% of the material), but not less than 15% of the contract amount.
- The above scope of work is Johnson Controls Fire Protection understanding of the work to be performed. Any additions or subtractions will be negotiated separately.
- This proposal shall be void if not accepted in writing within thirty (30) days from the date of the proposal.
- In addition, attached Terms and Conditions apply.

DELAYS, COSTS AND EXTENSIONS OF TIME:

- JCI's time for performance of the Work shall be extended for such reasonable time as JCI is delayed due to causes reasonably beyond JCI's control, whether such causes are foreseeable or unforeseeable, including pandemics such as coronavirus (provisionally named SARS-CoV-2, with its disease being named COVID-19) including, without limitation, labor, parts or equipment shortages. To the extent JCI or its subcontractors expend additional time or costs related to conditions or events set forth in this provision, including without limitation, expedited shipping, hazard pay associated with site conditions, additional PPE requirements, additional time associated with complying with social distancing or hygiene requirements, or additional access restrictions, the Contract Sum shall be equitably adjusted.

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Payment Options:

Johnson Controls Capital Funding Solutions

Equipment Finance Agreement: Allows for payment over time for products and installation costs, while maintaining ownership of assets. No down payment required.

As a Service Subscription: Covers costs of installation and services over time without ownership of assets. No upfront costs.

Final pricing subject to change based on credit approval, any applicable state/local taxes

For more information on Johnson Controls Capital funding solutions, please forward this proposal along with any questions to your sales representative and JCCapitalNA@jci.com.

DRAFT

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TERMS AND CONDITIONS (Rev. 11/21)

1.Payment. All payments are due net thirty (30) days from the date of invoice. Invoicing disputes must be identified in writing within 21 days of the invoice date. Payments of any disputed amounts are due and payable upon resolution. All other amounts remain due within thirty (30) days from the date of the invoice. Work performed on a time and material basis shall be at Company's then-prevailing rate for material, labor, and related items, in effect at the time supplied under this Agreement. Company shall invoice Customer for progress payments to 100% percent based upon equipment delivered or stored, and services performed. In the event project duration exceeds one month, Company reserves the right to submit partial invoices for progress payments for work completed at the project site. Customer agrees to pay any progress invoices in accordance with the payment terms set forth herein. In exchange for close-out documents to be provided by Company, Customer agrees to pay Company the remaining project balance when on-site labor is completed and prior to any final inspections. Customers without established satisfactory credit and Customers who fail to pay amounts when due may be required to make payments of cash in advance, upon delivery or as otherwise specified by Company. Company reserves the right to revoke or modify Customer's credit in its sole discretion. Customer's failure to make payment when due is a material breach of this Agreement and will give Company, without prejudice to any other right or remedy, the right to (a) stop performing any Services and/or withhold further deliveries of Equipment and other materials; terminate or suspend any unpaid software licenses; and/or terminate this Agreement; and (b) charge Customer interest on the amounts unpaid at a rate equal to the lesser of 1.5% per month or the maximum rate permitted under applicable law, until payment is made in full. Customer agrees to pay all of Company's reasonable collection costs, including legal fees and expenses.

2.Deposit. Unless prohibited by law, Customer agrees to pay a deposit equal to 30% of the project sell price (pre-tax) prior to Company providing any labor or materials on the project. Company will generate an invoice for the 30% deposit after Company's receipt of a written agreement or order from Customer. Company will not commence work until receipt of the deposit.

3.Pricing. The pricing set forth in this Agreement is based on the number of devices to be installed and services to be performed as set forth in the Scope of Work ("Equipment" and "Services"). If the actual number of devices installed or services to be performed is greater than that set forth in the Scope of Work, the price will be increased accordingly. If this Agreement extends beyond one year, Company may increase prices upon notice to the Customer.

All stated prices are exclusive of and Customer agrees to pay any taxes, fees, duties, tariffs, false alarm assessments, installation or alarm permits, and levies or other similar charges imposed and/or enacted by a government, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under this Agreement.

Prices in any quotation or proposal from Company are subject to change upon notice sent to Customer at any time before the quotation or proposal has been accepted. Prices for products covered by this Agreement may be adjusted by Company, upon notice to Customer at any time prior to shipment and regardless of Customer's acceptance of the Company's proposal or quotation, to reflect any increase in Company's cost of raw materials (e.g., steel, aluminum) inability to secure Products, changes or increases in law, labor, taxes, duties, tariffs or quotas, acts of government, any similar charges, or to cover any extra, unforeseen and unusual cost elements.

4.Alarm Monitoring Services. Any reference to alarm monitoring services in this Agreement is included for pricing purposes only. Alarm monitoring services are performed pursuant to the terms and conditions of Company's standard alarm monitoring services agreement.

5. Code Compliance. Company does not undertake an obligation to inspect for compliance with laws or regulations unless specifically stated in the Scope of Work. Customer acknowledges that the Authority Having Jurisdiction (e.g. Fire Marshal) may establish additional requirements for compliance with federal, state/provincial and local codes. Any additional services or equipment required will be provided at an additional cost to Customer.

6. Limitation of Liability; Limitations of Remedy. It is understood and agreed by the Customer that Company is not an insurer and that insurance coverage shall be obtained by the Customer and that amounts payable to company hereunder are based upon the value of the services and the scope of liability set forth in this Agreement and are unrelated to the value of the Customer's property and the property of others located on the premises. Customer agrees to look exclusively to the Customer's insurer to recover for injuries or damage in the event of any loss or injury and that Customer releases and waives all right of recovery against Company arising by way of subrogation. Company makes no guaranty or Warranty, including any implied warranty of merchantability or fitness for a particular purpose that equipment or services supplied by Company will detect or avert occurrences or the consequences therefrom that the equipment or service was designed to detect or avert. It is impractical and extremely difficult to fix the actual damages, if any, which may proximately result from failure on the part of Company to perform any of its obligations under this Agreement. Accordingly, Customer agrees that, Company shall be exempt from liability for any loss, damage or injury arising directly or indirectly from occurrences, or the consequences therefrom, which the equipment or service was designed to detect or avert. Should Company be found liable for any loss, damage or injury arising from a failure of the equipment or service in any respect, Company's liability shall be limited to an amount equal to the Agreement price (as increased by the price for any additional work) or where the time and material payment term is selected, Customer's time and material payments to Company to be calculated with reference to payments made at the time the loss is sustained. Where this Agreement covers multiple sites, liability shall be limited to the amount of the payments allocable to the site where the incident occurred. Such sum shall be complete and exclusive. In no event shall Company be liable for any damage, loss, injury, or any other claim arising from any servicing, alterations, modifications, changes, or movements of the Covered System(s) or any of its component parts by Customer or any third party. To the maximum extent permitted by law, in no event shall Company and its affiliates and their respective personnel, suppliers and vendors be liable to Customer or any third party under any cause of action or theory of liability, even if advised of the possibility of such damages, for any (a) special, incidental, consequential, punitive or indirect damages of any kind; (b) loss of profits, revenues, data, customer opportunities, business, anticipated savings or goodwill; (c) business interruption; or (d) data loss or other losses arising from viruses, ransomware, cyber-attacks or failures or interruptions to network systems. The limitations of liability set forth in this Agreement shall inure to the benefit of all parents, subsidiaries and affiliates of Company, whether direct or indirect, Company's employees, agents, officers and directors.

7. Reciprocal Waiver of Claims (SAFETY Act). Certain of Company's systems and services have received Certification and/or Designation as Qualified Anti-Terrorism Technologies ("QATT") under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, 6 U.S.C. §§ 441-444 (the "SAFETY Act"). As required under 6 C.F.R. 25.5 (e), to the maximum extent permitted by law, Company and Customer hereby agree to waive their right to make any claims against the other for any losses, including business interruption losses, sustained by either party or their respective employees, resulting from an activity resulting from an "Act of Terrorism" as defined in 6 C.F.R. 25.2, when QATT have been deployed in defense against, response to, or recovery from such Act of Terrorism.

8. General Provisions. Customer has selected the service level desired after considering and balancing various levels of protection afforded, and their related costs. All work to be performed by Company will be performed during normal working hours of normal working days (8:00 a.m. – 5:00 p.m., Monday through Friday, excluding Company holidays), as defined by Company, unless additional times are specifically described in this Agreement. Company will perform the services described in the Scope of Work section ("Services") for one or more system(s) or equipment as described in the Scope of Work section or the listed attachments ("Covered System(s)"). The Customer shall promptly notify Company of any malfunction in the Covered System(s) which comes to Customer's attention. This Agreement assumes the Covered System(s) are in operational and maintainable condition as of the Agreement date. If, upon initial inspection, Company determines that repairs are recommended, repair charges will be submitted for approval prior to any work. Should such repair work be declined Company shall be relieved from any and all liability arising therefrom. UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT, ANY INSPECTION (AND, IF SPECIFIED, TESTING) PROVIDED UNDER THIS AGREEMENT DOES NOT INCLUDE ANY MAINTENANCE, REPAIRS, ALTERATIONS, REPLACEMENT OF PARTS, OR ANY FIELD ADJUSTMENTS WHATSOEVER, NOR DOES IT INCLUDE THE CORRECTION OF ANY DEFICIENCIES IDENTIFIED BY COMPANY TO CUSTOMER. COMPANY SHALL NOT BE RESPONSIBLE FOR EQUIPMENT FAILURE OCCURRING WHILE COMPANY IS IN THE PROCESS OF FOLLOWING ITS INSPECTION TECHNIQUES, WHERE THE FAILURE ALSO RESULTS FROM THE AGE OR OBSOLESCENCE OF THE ITEM OR DUE TO NORMAL WEAR AND TEAR. THIS AGREEMENT DOES NOT COVER SYSTEMS, EQUIPMENT, COMPONENTS OR PARTS THAT ARE BELOW GRADE, BEHIND WALLS OR OTHER OBSTRUCTIONS OR EXTERIOR TO THE BUILDING, ELECTRICAL WIRING, AND PIPING.

9. Customer Responsibilities. Customer shall furnish all necessary facilities for performance of its work by Company, adequate space for storage and handling of materials, light, water, heat, heat tracing, electrical service, local telephone, watchman, and crane and elevator service and necessary permits. Where wet pipe system is installed, Customer shall supply and maintain sufficient heat to prevent freezing of the system. Customer shall promptly notify Company of any malfunction in the Covered System(s) which comes to Customer's attention. This Agreement assumes any existing system(s) are in operational and maintainable condition as of the Agreement date. If, upon initial inspection, Company determines that repairs are recommended, repair charges will be submitted for approval prior to any work. Should such repair work be declined Company shall be relieved from any and all liability arising therefrom. Customer shall further:

- supply required schematics and drawings unless they are to be supplied by Company in accordance with this Agreement;
- Provide a safe work environment, in the event of an emergency or Covered System(s) failure, take reasonable safety precautions to protect against personal injury, death, and property damage, continue such measures until the Covered System(s) are operational, and notify Company as soon as possible under the circumstances.
- Provide Company access to any system(s) to be serviced,
- Comply with all laws, codes, and regulations pertaining to the equipment and/or services provided under this Agreement.

Customer is solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network") and shall supply Company secure Network access for providing its services. Products networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Customer and/or end user against unauthorized access. Customer is responsible to take appropriate measures, including performing back-ups, to protect information, including without limit data, software, or files (collectively "Data") prior to receiving the service or products.

10. Excavation. In the event the Work includes excavation, Customer shall pay, as an extra to the contract price, the cost of any additional work performed by Company dues to water, quicksand, rock or other unforeseen condition or obstruction encountered or shoring required.

11. Structure and Site Conditions. While employees of Company will exercise reasonable care in this respect, Company shall be under not responsibility for loss or damage due to the character, condition or use of foundations, walls, or other structures not erected by Company or resulting from the excavation in proximity thereto, or for damage resulting from concealed piping, wiring, fixtures, or other equipment or condition of water pressure. All shoring or protection of foundation, walls or other structures subject to being disturbed by any excavation required hereunder shall be the responsibility of Customer. Customer shall have all things in readiness for installation including, without limitation, structure to support the sprinkler system and related equipment (including tanks), other materials, floor or suitable working base, connections and facilities for erection at the time the materials are delivered. In the event Customer fails to have all things in readiness at the time scheduled for receipt of materials, Customer shall reimburse Company for all expenses caused by such failure. Failure to make areas available to

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Company during performance in accordance with schedules that are the basis for Company's proposal shall be considered a failure to have things in readiness in accordance with the terms of this Agreement.

12. Confined Space. If access to confined space by Company is required for the performance of Services, Services shall be scheduled and performed in accordance with Company's then-current hourly rate.

13. Hazardous Materials. Customer represents that, except to the extent that Company has been given written notice of the following hazards prior to the execution of this Agreement, to the best of Customer's knowledge there is no:

- Space in which work must be performed that, because of its construction, location, contents or work activity therein, accumulation of a hazardous gas, vapor, dust or fume or the creation of an oxygen-deficient atmosphere may occur,
- "permit confined space," as defined by OSHA for work performed by Company in the United States,
- risk of infectious disease,
- need for air monitoring, respiratory protection, or other medical risk,
- asbestos, asbestos-containing material, formaldehyde or other potentially toxic or otherwise hazardous material contained in or on the surface of the floors, walls, ceilings, insulation or other structural components of the area of any building where work is required to be performed under this Agreement.

All of the above are hereinafter referred to as "Hazardous Conditions". Company shall have the right to rely on the representations listed above. If hazardous conditions are encountered by Company during the course of Company's work, the discovery of such materials shall constitute an event beyond Company's control and Company shall have no obligation to further perform in the area where the hazardous conditions exist until the area has been made safe by Customer as certified in writing by an independent testing agency, and Customer shall pay disruption expenses and re-mobilization expenses as determined by Company. This Agreement does not provide for the cost of capture, containment or disposal of any hazardous waste materials, or hazardous materials, encountered in any of the Covered System(s) and/or during performance of the Services. Said materials shall at all times remain the responsibility and property of Customer. Company shall not be responsible for the testing, removal or disposal of such hazardous materials.

14. COVID-19 Vaccination. Company expressly disclaims any requirement, understanding or agreement, express or implied, included directly or incorporated by reference, in any Customer purchase order, solicitation, notice or otherwise, that any of Company's personnel be vaccinated against Covid-19 under any federal, state/provincial or local law, regulation or order applicable to government contracts or subcontracts, including, without limitation, Presidential Executive Order 14042 ("Ensuring Adequate COVID Safety Protocols for Federal Contractors") and Federal Acquisition Regulation (FAR) 52.223-99 ("Ensuring Adequate COVID Safety Protocols for Federal Contractors"). Any such requirement shall only apply to Company's personnel if and only to the extent contained in a written agreement physically signed by an authorized officer of Company.

15. Occupational Health and Safety/OSHA Compliance. Customer shall indemnify and hold Company harmless from and against any and all claims, demands and/or damages arising in whole or in part from the enforcement of applicable laws regarding occupational health and safety for work performed in Canada or the Occupational Safety Health Act for work performed by Company in the United States (and any amendments or changes thereto) unless said claims, demands or damages are a direct result of causes within the exclusive control of Company.

16. Interferences. Customer shall be responsible to coordinate the work of other trades (including but not limited to ducting, piping, and electrical) and for and additional costs incurred by Company arising out of interferences to Company's work caused by other trades.

17. Modifications and Substitutions. Company reserves the right to modify materials, including substituting materials of later design, providing that such modifications or substitutions will not materially affect the performance of the Covered System(s).

18. Changes, Alterations, Additions. Changes, alterations and additions to the Scope of Work, plans, specifications or construction schedule shall be invalid unless approved in writing by Company. Should changes be approved by Company, that increase or decrease the cost of the work to Company, the parties shall agree, in writing, to the change in price prior to performance of any work. However, if no agreement is reached prior to the time for performance of said work, and Company elects to perform said work so as to avoid delays, then Company's estimate as to the value of said work shall be deemed accepted by Customer. In addition, Customer shall pay for all extra work requested by Customer or made necessary because of incompleteness or inaccuracy of plans or other information submitted by Customer with respect to the location, type of occupancy, or other details of the work to be performed. In the event the layout of Customer's facilities has been altered, or is altered by Customer prior to the completion of the Work, Customer shall advise Company, and prices, delivery and completion dates shall be changed by Company as may be required.

19. Commodities Availability. Company shall not be responsible for failure to provide services, deliver products, or otherwise perform work required by this Agreement due to lack of available steel products or products made from plastics or other commodities. In the event Company is unable, after reasonable commercial efforts, to acquire and provide steel products, or products made from plastics or other commodities, if required to perform work required by this Agreement, Customer hereby agrees that Company may terminate the Agreement, or the relevant portion of the Agreement, at no additional cost and without penalty. Customer agrees to pay Company in full for all work performed up to the time of any such termination.

20. Project Claims. Any claim of failure to perform against Company arising hereunder shall be deemed waived unless received by Company, in writing specifically setting forth the basis for such claim, within ten (10) days after such claims arises.

21. Back charges. No charges shall be levied against Company unless seventy-two (72) hours prior written notice is given to Company to correct any alleged deficiencies which are alleged to necessitate such charges and unless such alleged deficiencies are solely and directly caused by Company.

22. System Equipment. The purchase of equipment or peripheral devices (including but not limited to smoke detectors, passive infrared detectors, card readers, sprinkler system components, extinguishers and hoses) from Company shall be subject to the terms and conditions of this Agreement. If, in Company's sole judgment, any peripheral device or other system equipment, which is attached to the Covered System(s), whether provided by Company or a third party, interferes with the proper operation of the Covered System(s), Customer shall remove or replace such device or equipment promptly upon notice from Company. Failure of Customer to remove or replace the device shall constitute a material breach of this Agreement. If Customer adds any third party device or equipment to the Covered System(s), Company shall not be responsible for any damage to or failure of the Covered System(s) caused in whole or in part by such device or equipment.

23. Reports. Where inspection and/or test services are selected, such inspection and/or test shall be completed on Company's then current Report form, which shall be given to Customer, and, where applicable, Company may submit a copy thereof to the local authority having jurisdiction. The Report and recommendations by Company are only advisory in nature and are intended to assist Customer in reducing the risk of loss to property by indicating obvious defects or impairments noted to the system and equipment inspected and/or tested. They are not intended to imply that no other defects or hazards exist or that all aspects of the Covered System(s), equipment, and components are under control at the time of inspection. Final responsibility for the condition and operation of the Covered System(s) and equipment and components lies with Customer.

24. Limited Warranty. Subject to the limitations below, Company warrants any equipment (as distinguished from the Software) installed pursuant to this Agreement to be free from defects in material and workmanship under normal use for a period of one (1) year from the date of first beneficial us or all or any part of the Covered System(s) or 18 months after Equipment shipments, whichever is earlier, provided however, that Company's sole liability, and Customer's sole remedy, under this limited warranty shall be limited to the repair or replacement of the Equipment or any part thereof, which Company determines is defective, at Company's sole option and subject to the availability of service personnel and parts, as determined by Company. Company warrants expendable items, including, but not limited to, video and print heads, television camera tubes, video monitor displays tubes, batteries and certain other products in accordance with the applicable manufacturer's warranty. Company does not warrant devices designed to fail in protecting the System, such as, but not limited to, fuses and circuit breakers. Company warrants that any Company software described in this Agreement, as well as software contained in or sold as part of any Equipment described in this Agreement, will reasonably conform to its published specifications in effect at the time of delivery and for ninety (90) days after delivery. However, Customer agrees and acknowledges that the software may have inherent defects because of its complexity. Company's sole obligation with respect to software, and Customer's sole remedy, shall be to make available published modifications, designed to correct inherent defects, which become available during the warranty period. If Repair Services are included in this Agreement, Company warrants that its workmanship and material for repairs made pursuant to this Agreement will be free from defects for a period of ninety (90) days from the date of furnishing.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PERFORMED OR THE PRODUCTS, SYSTEMS OR EQUIPMENT, IF ANY, SUPPORTED HEREUNDER.

Warranty service will be performed during Company's normal working hours. If Customer requests warranty service at other than normal working hours, service will be performed at Company's then current rates for after ours services. All repairs or adjustments that are or may become necessary shall be performed by and authorized representative of Company. Any repairs, adjustments or interconnections performed by Customer or any third party shall void all warranties.

Company makes no and specifically disclaims all representations or warranties that the services, products, software or third party product or software will be secure from cyber threats, hacking or other similar malicious activity, or will detect the presence of, or eliminate, treat, or mitigate the spread transmission, or outbreak of any pathogen, disease, virus or other contagion, including but not limited to COVID-19.

25.Indemnity. Customer agrees to indemnify, hold harmless and defend Company against any and all losses, damages, costs, including expert fees and costs, and expenses including reasonable defense costs, arising from any and all third party claims for personal injury, death, property damage or economic loss, including specifically any damages resulting from the exposure of workers to Hazardous Conditions whether or not Customer pre-notifies Company of the existence of said hazardous conditions, arising in any way from any act or omission of Customer or Company relating in any way to this Agreement, including but not limited to the Services under this Agreement, whether such claims are based upon contract, warranty, tort (including but not limited to active or passive negligence), strict liability or otherwise. Company reserves the right to select counsel to represent it in any such action.

26. Insurance. Customer shall name Company, its officers, employees, agents, subcontractors, suppliers, and representatives as additional insureds on Customer's general liability and auto liability policies.

27.Termination. Any termination under the terms of this Agreement shall be made in writing. In the event Customer terminates this Agreement prior to completion for any reason not arising solely from Company's performance or failure to perform, Customer understands and agrees that Company will incur costs of administration and preparation that are difficult to estimate or determine. Accordingly, should Customer terminate this Agreement as described above, Customer agrees to pay all charges incurred for products and equipment installed and services performed, and in addition pay an amount equal to twenty (20%) percent of the price of products and equipment not yet delivered and Services not yet performed, return all products and equipment delivered and pay a restocking fee of twenty (20%) percent the price of products or equipment returned. Company may terminate this Agreement immediately at its sole discretion upon the occurrence of any Event of Default as hereinafter defined. Company may also terminate this Agreement at its sole discretion upon notice to Customer if Company's performance of its obligations under this Agreement becomes impracticable due to obsolescence of equipment at Customer's premises or unavailability of parts.

28. Default. An Event of Default shall be (a) failure of Customer to pay any amount when due and payable, (b) abuse of the System or the Equipment, (c)

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dissolution, termination, discontinuance, insolvency or business failure of Customer. Upon the occurrence of an Event of Default, Company may pursue one or more of the following remedies: (i) discontinue furnishing Services and delivering Equipment, (ii) by written notice to Customer declare the balance of unpaid amounts due and to become due under this Agreement to be immediately due and payable; (iii) receive immediate possession of any Equipment for which Customer has not paid; (iv) proceed at law or equity to enforce performance by Customer or recover damages for breach of this Agreement, and (v) recover all costs and expenses, including without limitation reasonable attorneys' fees, in connection with enforcing or attempting to enforce this Agreement.

29. Exclusions. Unless expressly included in the Scope of Work, this Agreement expressly excludes, without limitation, testing inspection and repair of duct detectors, beam detectors, and UV/IR equipment; provision of fire watches; clearing of ice blockage; draining of improperly pitched piping, replacement of batteries; recharging of chemical suppression systems; reloading of, upgrading, and maintaining computer software; system upgrades and the replacement of obsolete systems, equipment, components or parts; making repairs or replacements necessitated by reason of negligence or misuse of components or equipment or changes to Customer's premises, vandalism, corrosion (including but not limited to micro-bacterially induced corrosion ("MIC")), power failure, current fluctuation, failure due to non-Company installation, lightning, electrical storm, or other severe weather, water, accident, fire, acts of God or any other cause external to the Covered System(s). Repair Services provided pursuant to this Agreement do not cover and specifically excludes system upgrades and the replacement of obsolete systems, equipment, components or parts. All such services may be provided by Company at Company's sole discretion at an additional charge. If Emergency Services are expressly included in the scope of work section, the Agreement price does not include travel expenses.

30. No Option to Solicit. Customer shall not, directly or indirectly, on its own behalf or on behalf of any other person, business, corporation or entity, solicit or employ any Company employee, or induce any Company employee to leave his or her employment, for a period of two years after termination of this Agreement.

31. Force Majeure; Delays. Company shall not be liable, nor in breach or default of its obligations under this Agreement, for delays, interruption, failure to render services, or any other failure by Company to perform an obligation under this Agreement, where such delay, interruption or failure is caused, in whole or in part, directly or indirectly, by a Force Majeure Event. A "Force Majeure Event" is a condition or event that is beyond the reasonable control of Company, whether foreseeable or unforeseeable, including, without limitation, acts of God, severe weather (including but not limited to hurricanes, tornados, severe snowstorms or severe rainstorms), wildfires, floods, earthquakes, seismic disturbances, or other natural disasters, acts or omissions of any governmental authority (including change of any applicable law or regulation), epidemics, pandemics, disease, viruses, quarantines, or other public health risks and/or responses thereto, condemnation, strikes, lock-outs, labor disputes, an increase of 5% or more in tariffs or other excise taxes for materials to be used on the project, fires, explosions or other casualties, thefts, vandalism, civil disturbances, insurrection, mob violence, riots, war or other armed conflict (or the serious threat of same), acts of terrorism, electrical power outages, interruptions or degradations in telecommunications, computer, network, or electronic communications systems, data breach, cyber-attacks, ransomware, unavailability or shortage of parts, materials, supplies, or transportation, or any other cause or casualty beyond the reasonable control of Company. If Company's performance of the work is delayed, impacted, or prevented by a Force Majeure Event or its continued effects, Company shall be excused from performance under the Agreement. Without limiting the generality of the foregoing, if Company is delayed in achieving one or more of the scheduled milestones set forth in the Agreement due to a Force Majeure Event, Company will be entitled to extend the relevant completion date by the amount of time that Company was delayed as a result of the Force Majeure Event, plus such additional time as may be reasonably necessary to overcome the effect of the delay. To the extent that the Force Majeure Event directly or indirectly increases Company's cost to perform the services, Customer is obligated to reimburse Company for such increased costs, including, without limitation, costs incurred by Company for additional labor, inventory storage, expedited shipping fees, trailer and equipment rental fees, subcontractor fees or other costs and expenses incurred by Company in connection with the Force Majeure Event.

32. One-Year Claims Limitation; Choice of Law. For Customers located in the United States, the laws of Wisconsin shall govern the validity, enforceability, and interpretation of this Agreement, without regard to conflicts of law. For customers located in Canada, this agreement shall be governed by and be construed in accordance with the laws of Ontario. The parties agree that any disputes arising under this Agreement shall be determined exclusively by the Ontario courts and that no action or legal proceedings of any nature shall be filed or commenced in any other court pertaining to any dispute arising out of or in relation to this Agreement. The parties also hereby waive any objection to the exclusive jurisdiction of the Ontario courts, including any objection based on forum non conveniens. No claim or cause of action, whether known or unknown, shall be brought against Company more than one year after the claim first arose. Except as provided for herein, Company's claims must also be brought within one year. Claims not subject to the one-year limitation include claims for unpaid: (a) contract amounts, (b) change order amounts (approved or requested) and (c) delays and/or work inefficiencies.

33.Assignment. Customer may not assign this Agreement without Company's prior written consent. Company may assign this Agreement to an affiliate without obtaining Customer's consent.

34.Entire Agreement. The parties intend this Agreement, together with any attachments or Riders (collectively the "Agreement) to be the final, complete and exclusive expression of their Agreement and the terms and conditions thereof. This Agreement supersedes all prior representations, understandings or agreements between the parties, written or oral, and shall constitute the sole terms and conditions of sale for all equipment and services. No waiver, change, or modification of any terms or conditions of this Agreement shall be binding on Company unless made in writing and signed by an Authorized Representative of Company.

35.Severability. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement will continue to be valid as to the other provisions and the remainder of the affected provision.

36.Legal Fees. Company shall be entitled to recover from the customer all reasonable legal fees incurred in connection with Company enforcing the terms and conditions of this Agreement.

37.Software and Digital Services. Use, implementation, and deployment of the software and hosted software products ("Software") offered under these terms shall be subject to, and governed by, Company's standard terms for such Software and Software related professional services in effect from time to time at https://www.johnsoncontrols.com/techterms (collectively, the "Software Terms"). Applicable Software Terms are incorporated herein by this reference. Other than the right to use the Software as set forth in the Software Terms, Company and its licensors reserve all right, title, and interest (including all intellectual property rights) in and to the Software and improvements to the Software. The Software that is licensed hereunder is licensed subject to the Software Terms and not sold. If there is a conflict between the other terms herein and the Software Terms, the Software Terms shall take precedence and govern with respect to rights and responsibilities relating to the Software, its implementation and deployment and any improvements thereto. Notwithstanding any other provisions of this Agreement and unless otherwise agreed to by the parties in writing, the following terms apply to Software that is provided to Customer on a subscription basis (i.e., a time limited license or use right), (each a "Software Subscription"): Each Software Subscription provided hereunder will commence on the date the initial credentials for the Software are made available (the "Subscription Start Date") and will continue in effect until the expiration of the subscription term noted herein. At the expiration of the Software Subscription, such Software Subscription will automatically renew for consecutive one (1) year terms (each a "Renewal Subscription Term"), unless either party provides the other party with a notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term. To the extent permitted by applicable law, Software Subscriptions purchases are non-cancelable and the sums paid nonrefundable. Fees for Software Subscriptions shall be paid annually in advance, invoiced on the Subscription Start Date and each subsequent anniversary thereof. Unless otherwise agreed by the parties in writing, the subscription fee for each Renewal Subscription Term will be priced at JCI's then-applicable list price for that Software offering. Any use of Software that exceeds the scope, metrics or volume set forth in this Agreement will be subject to additional fees based on the date such excess use began.

38. Electronic Media. Electronic Media. Either party may scan, fax, email, image, or otherwise convert this Agreement into an electronic format of any type or form, now known or developed in the future. Any unaltered or unadulterated copy of this Agreement produced from such an electronic format will be legally binding upon the parties and equivalent to the original for all purposes, including litigation. JCI may rely upon Customer's assent to the terms and conditions of this Agreement, if Customer has signed this Agreement or demonstrated its intent to be bound whether by electronic signature or otherwise.

39. Lien Legislation. Notwithstanding anything to the contrary contained herein, the terms of this Agreement shall be subject to the lien legislation applicable to the location where the work will be performed, and, in the event of conflict, the applicable lien legislation shall prevail.

40. Privacy. Company as Processor: Where Company factually acts as Processor of Personal Data on behalf of Customer (as such terms are defined in the DPA) the terms at www.johnsoncontrols.com/dpa ("DPA") shall apply. Company as Controller: Company will collect, process and transfer certain personal data of Customer and its personnel related to the business relationship between it and Customer (for example names, email addresses, telephone numbers) as controller and in accordance with Company's Privacy Notice at https://www.johnsoncontrols.com/privacy. Customer acknowledges Company's Privacy Notice and strictly to the extent consent is mandatorily required under applicable law, Customer consents to such collection, processing and transfer. To the extent consent to such collection, processing and transfer by Company is mandatorily required from Customer's personnel under applicable law, Customer warrants and represents that it has obtained such consent.

41. License Information (Security System Customers): AL Alabama Electronic Security Board of Licensure 7956 Vaughn Road, Pmb 392, Montgomery, Alabama 36116 (334) 264-9388; AR Regulated by Arkansas Board of Private Investigators And Private Security Agencies, #1 State Police Plaza Drive, Little Rock 72209 (501)618-8600; CA Alarm company operators are licensed and regulated by the Bureau of Security and Investigative Services, Department of Consumer Affairs, Sacramento, CA, 95814. Upon completion of the installation of the alarm system, the alarm company shall thoroughly instruct the purchaser in the proper use of the alarm system. Failure by the licensee, without legal excuse, to substantially commence work within 20 days from the approximate date specified in the agreement when the work will begin is a violation of the Alarm Company Act: NY Licensed by N.Y.S. Department of the State; TX Texas Commission on Private Security, 5805 N. Lamar Blvd., Austin, 78752-4422, 512-424-7710.License numbers available at www.johnsoncontrols.com or contact your local Johnson Controls office.

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EXHIBIT A

IMPORTANT NOTICE TO CUSTOMER

This Agreement is contingent on credit approval, which may be checked at JCI's discretion and requires final approval of a JCI authorized manager before any equipment/ services may be provided. Should credit and/or approval be declined, this Agreement will be terminated and JCI's only obligation to customer will be to notify Customer of such termination and refund any amounts paid in advance. In accepting this Proposal, Customer agrees to the terms and conditions contained herein and any attachments or riders attached hereto that contain additional terms and conditions. It is understood that these terms and conditions shall prevail over any variation in terms and conditions on any purchase order or other document that the Customer may issue. Any changes in the system requested by the Customer after the execution of this Agreement shall be paid for by Customer and such changes shall be authorized in writing. **ATTENTION IS DIRECTED TO THE LIMITATION OF LIABILITY, WARRANTY, INDEMNITY AND OTHER CONDITIONS ON THE PRECEDING PAGES. This proposal shall be void if not accepted in writing within 30 days from the date of the Proposal.**

For Customers located in Canada, this Fire Domain Sale and Installation Agreement has been drawn up and executed in English at the request of and with the full concurrence of Customer. Ce contrat a été rédigé en anglais à la demande et avec l'assentiment du client.

Offered By:	Accepted By: (Customer)
Johnson Controls Fire Protection LP	Company: _____
5500 Midway Park Place NE	Address: _____
Albuquerque , NM 87109	Signature: _____
Telephone: 505-401-2605 Mobile	Title: _____
Representative: _____	P.O.#: _____ Date: _____
Email: oliver.rotzoll@jci.com	

DRAFT

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ID	Task Name	Duration	Start	Finish
1	**Sante Fe Library-Preliminary Schedule**	159.75 days	Tue 7/19/22	Mon 3/6/23
2	**Pre-Modernization**	**23.2 wks**	**Tue 7/19/22**	**Tue 12/27/22**
3	Santa Fe Contract Execution	2 wks	Tue 7/19/22	Mon 8/1/22
4	Approved Submittals Receieved	2 wks	Mon 8/1/22	Mon 8/15/22
5	Material Release to Manufacturing	1 wk	Mon 8/15/22	Mon 8/22/22
6	Manufacturing	16 wks	Mon 8/22/22	Mon 12/12/22
7	Shipping	2 wks	Mon 12/12/22	Mon 12/26/22
8	**Modernization Staff Elv (10 Hour-4 Day Weeks)**	**19 days**	**Tue 1/3/23**	**Mon 1/30/23**
9	Mobilize/Stage	1 day	Tue 1/3/23	Tue 1/3/23
10	Machine Room (Controller/Power Unit/Machine Room Wiring)	5 days	Tue 1/3/23	Tue 1/10/23
11	Hoistway (Hoistway Wiring/Top of Car/Misc. Pit Equipment)	3 days	Tue 1/10/23	Mon 1/16/23
12	Car Door Equipment(Door Operator/Door Sensor)	4 days	Mon 1/16/23	Thu 1/19/23
13	Hoistway Door Equipment Restrictors/Misc.)	2 days	Thu 1/19/23	Tue 1/24/23
14	Fixtures (Car and Hall Fixtures)	2 days	Tue 1/24/23	Wed 1/25/23
15	Adjusting/Testing	2 days	Wed 1/25/23	Mon 1/30/23
16	**Modernization Public Elv (10 Hour-4 Day Weeks)**	**20 days**	**Mon 1/30/23**	**Mon 2/27/23**
17	Mobilize/Stage	1 day	Mon 1/30/23	Tue 1/31/23
18	Machine Room (Controller/Power Unit/Machine Room Wiring)	5 days	Tue 1/31/23	Tue 2/7/23
19	Hoistway (Hoistway Wiring/Top of Car/Misc. Pit Equipment)	3 days	Tue 2/7/23	Thu 2/9/23
20	Car Door Equipment(Door Operator/Door Sensor)	4 days	Thu 2/9/23	Wed 2/15/23
21	Hoistway Door Equipment Restrictors/Misc.)	2 days	Wed 2/15/23	Mon 2/20/23
22	Fixtures (Car and Hall Fixtures)	2 days	Mon 2/20/23	Tue 2/21/23
23	Adjusting/Testing	3 days	Tue 2/21/23	Mon 2/27/23
24	**Final Closeouts/Project Completion**	**1 wk**	**Mon 2/27/23**	**Mon 3/6/23**



Project: Sante Fe Library-Elevat
Date: Tue 7/19/22

Task
Split
Milestone
Summary
Project Summary
Inactive Task
Inactive Milestone
Inactive Summary
Manual Task
Duration-only
Manual Summary Ro
Manual Summary

City of Santa Fe, New Mexico
Memorandum

DATE: July 25, 2022

TO: Governing Body

VIA: Regina Wheeler, Public Works Department Director RW
Sam Burnett, Facilities Division Director JSB

FROM: Therese Martinez, Facilities Project Administrator

ACTION:
Request for Approval of Services Agreement with Modernization/TK Elevator Corporation in the Total Amount of $243,864.15 including NMGRT, for Elevator Rehabilitation of the Elevators at the Main Branch of the Santa Fe Public Library. Therese Martinez, tmartinez@santafenm.gov, 505-955-5937.

BACKGROUND AND SUMMARY:
The elevators at the City's Main Library fail frequently and are in dire need of an upgrade. The existing system does not meet fire code and is not linked to the fire suppression or warning system. This project will address all of these needs.

This project will address the elevators' electrical and mechanical components with either replacement or refurbishment as required. In addition, the communication connections to the fire notification system will be updated.

The anticipated start date is September 2022 and the anticipated completion date is May 2023.

PROCUREMENT METHOD:
NM Statewide Price Agreement (SWPA) Number 70-00000-17-00054 which expires on January 30, 2023.

CONTRACT NUMBER:
The FY21 Munis contract number is 3203181.

FUNDING SOURCE:
Receiving: $250,000.00 from Main Library Elevators and Drinking Fountains-2018 GRT Bond

Fund Name/Number: BONDACQU/335
Munis Org Name/Number: BondAcq/3359980
Munis Object Name/Number: Remodeling & Replacement/572500

ATTACHMENTS:
TKE Contract
TKE Proposal
TKE Project Schedule
TKE Statewide Price Agreement
TKE Certificate of Insurance
TKE Business License
Summary of Contracts
Procurement Checklist
Other Supporting Documentation

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **3203181**

Contractor: **Thyssenkrupp/TK Elevator**

Description: **Santa Fe Public Library Main Branch Elevators Modernization and Rehabilitation**

Contract ☉ Agreement ○ Lease / Rent ○ Amendment ○

Term Start Date: upon approval Term End Date: **June 2023**

☐ Approved by Council Date: TBD

Contract / Lease: Original

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:** SPA-through NM GSD Procurement No. 70-00000-17-00054

Purchasing Officer Review: Aug 9, 2022 Date:

Comment & Exceptions: Procured via SWPA.

4. **Funding Source:** Main Library Elevators and Drinking Fountains-GRT18PKG **Org / Object:** 3359980/572500

Andy Hopkins (Aug 9, 2022 12:29 MDT)

Budget Officer Approval: Aug 9, 2022 Date:

Comment & Exceptions: _____

Staff Contact who completed this form: Therese Martinez Phone # **505-955-5937**

Email: **tmartinez@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: TK Elevator Corporation/Modernization

Procurement Title: Santa Fe Public Library-Main Branch-Elevators

Procurement Method: State Price Agreement ☒ *Cooperative* ☐ *Sole Source* ☐ *Other* ☐ _____

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

Department Requesting Public Works Dept/Facilities Division Staff Name Therese Martinez

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

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

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

Therese Martinez	Project Administrator	07/19/22
Department Rep Printed Name (attesting that all information included)	Title	Date
	Contracts Supervisor	Aug 9, 2022
Purchasing Officer (attesting that all information is reviewed)	Title	Date

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

DocuSign Envelope ID: 4BB08735-CEE8-4AEC-88FA-991A567DA367

GSD/PD (Rev. 5/20)

State of New Mexico
General Services Department

Statewide Price Agreement

Awarded Vendor:
0000042145
TK Elevator Corporation
PO Box 3796
Carol Stream, IL 60132-3796

Email: Liesje.Gebler@TKElevator.com; Daniel.Lingerfelt
Telephone No.: 1-505-858-2168

Price Agreement Number: **20-00000-22-00064**

Payment Terms: **Net 30**

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

Delivery: **As Requested**

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

Invoice:
As Requested

Procurement Specialist: **Clarke J. Fountain**

Telephone No.: **505 629-2964**

Email: **ClarkeJ.Fountain@state.nm.us**

Title: **Elevator & Escalator Preventive Maintenance and Repair**

Term: **June 28, 2022 - Aug 27, 2024**

This Price Agreement is made subject to the "terms and conditions" shown on subsequent pages, and as indicated in this Price Agreement.

Accepted for the State of New Mexico

Valerie Paulk

Mark Hayden, New Mexico State Purchasing Agent

Date: 6/28/2022

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

MS CF

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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 quote, 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 contract or procurement 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. **Inspection:**

a. Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for nonconformance with the terms and conditions of the agreement shall be removed at the Vendor's risk and expense, promptly after notice of rejection.

b. Final inspection and acceptance will be made at the destination. Services rejected for nonconformance with the terms and conditions of the agreement and/or requirements shall be corrected by the Vendor promptly after notice of rejection. Those services not corrected after notice shall not be paid for.

6. **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.**

7. **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 to the State Purchasing Agent.

8. **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 the subcontractor

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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.

9. **Non-Collusion:** In accepting these terms and conditions the Vendor certifies that the Vendor has not, either directly or indirectly, entered into action in restraint of free competitive procurement in connection with this offer submitted to the State Purchasing Agent or his/her designee.

10. **Nondiscrimination:** Vendors 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).

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

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

13. **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.

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

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

16. **Records and Audit:** The Vendor 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 six (6) 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.

17. **Subcontracts:** The foregoing requirements shall be inserted into all subcontracts from the prime Vendor to the subcontractor, if such subcontracting has been approved in writing by the Procuring Agency.

New Mexico Employees Health Coverage

A. If Vendor 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, Vendor 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 Vendor and the State exceeds $250,000 dollars.

B. Vendor 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. Vendor 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://www.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 Vendor who

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performs the majority of the employee's work for Vendor within the State of New Mexico, regardless of the location of Vendor'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 and pursuant to the approval of the State Purchasing Agent (as can be found on the cover page of this agreement) either a particular entity or 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 herein. 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 Vendor 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 Price Agreement.

Article III – Conformance With Terms and Conditions
Items and/or services furnished hereunder shall conform to the requirements, terms and conditions of the agreement and/or drawings applicable to items listed herein. 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
Vendor shall ship in accordance with the following instructions: Shipment shall be made only against specific orders which the user may place with the Vendor during the term; The Vendor 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 Vendor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement. Vendor 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. Vendor'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 Vendor 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 Vendor 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, request for proposals and/or price agreement terms and conditions.

Article VII – Indemnity Clause

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Vendor 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 Vendor's, and/or its employees, own negligent act or omission while Vendor, and/or its employees, perform or fails to perform its obligations and duties under the Terms and Conditions of this agreement. This save harmless and indemnification clause is subject to the immunities, provisions, and limitations of the Tort Claims Act (Section 41-4-1, et seq., N.M.S.A. 1978 comp. and Section 57-7-1 N.M.S.A. 1878 comp. and any amendments thereto.

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

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

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

Article X – Price Schedule
Prices as listed in the agreements cannot be exceeded. Vendors and end users may negotiate lower prices where in agreement to do so.

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Establish a Statewide Price Agreement based on GSA Contract # **47QSHA19D005H** for **Elevator & Escalator Preventive Maintenance and Repair**.

This Statewide 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:

Period End	Report Due
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.

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

Item	Approx. Qty.	Unit	Article and Description	Unit Price
1	EA		Whole GSA	

*** 1 Item Total ***

DocuSign

Certificate Of Completion

Envelope Id: 4BB08735CEE84AEC88FA991A567DA367 Status: Completed

Subject: Please DocuSign: 20-00000-22-00064 GSA Elevator and Escalator Preventive Maintenance and Repair.docx

Source Envelope:

Document Pages: 6	Signatures: 1	Envelope Originator:
Certificate Pages: 5	Initials: 2	Clarke Fountain
AutoNav: Enabled		13 Bataan Blvd
EnvelopeId Stamping: Enabled		Santa Fe, NM 87508
Time Zone: (UTC-07:00) Mountain Time (US & Canada)		ClarkeJ.Fountain@state.nm.us
		IP Address: 164.64.62.10

Record Tracking

Status: Original 6/27/2022 4:03:11 PM	Holder: Clarke Fountain ClarkeJ.Fountain@state.nm.us	Location: DocuSign
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: GSD	Location: DocuSign

Signer Events	Signature	Timestamp
Michael Saavedra michael.saavedra@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None), Login with SSO	MS Signature Adoption: Pre-selected Style Signed by link sent to michael.saavedra@state.nm.us Using IP Address: 67.131.78.31	Sent: 6/27/2022 4:07:34 PM Viewed: 6/28/2022 7:30:39 AM Signed: 6/28/2022 7:31:08 AM
Electronic Record and Signature Disclosure: Accepted: 6/4/2020 11:04:51 AM ID: 9cac1b3e-4279-4c8f-b2b4-c607ea9821d8		
Clarke Fountain clarkej.fountain@state.nm.us Procurement Specialist New Mexico General Services Security Level: Email, Account Authentication (None)	CF Signature Adoption: Pre-selected Style Signed by link sent to clarkej.fountain@state.nm.us Using IP Address: 164.64.62.10	Sent: 6/28/2022 7:31:09 AM Viewed: 6/28/2022 8:18:06 AM Signed: 6/28/2022 8:18:18 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Valerie Paulk Valerie.Paulk@state.nm.us Signed of Behalf of State Purchasing Agent New Mexico General Services Security Level: Email, Account Authentication (None)	Valerie Paulk Signature Adoption: Pre-selected Style Signed by link sent to Valerie.Paulk@state.nm.us Using IP Address: 164.64.62.10	Sent: 6/28/2022 8:18:20 AM Viewed: 6/28/2022 8:25:18 AM Signed: 6/28/2022 8:25:28 AM
Electronic Record and Signature Disclosure: Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	**Status**	**Timestamp**
Certified Delivery Events	**Status**	**Timestamp**
Carbon Copy Events	**Status**	**Timestamp**
Witness Events	**Signature**	**Timestamp**
Notary Events	**Signature**	**Timestamp**
Envelope Summary Events	**Status**	**Timestamps**
Envelope Sent	Hashed/Encrypted	6/27/2022 4:07:34 PM
Certified Delivered	Security Checked	6/28/2022 8:25:18 AM
Signing Complete	Security Checked	6/28/2022 8:25:28 AM
Completed	Security Checked	6/28/2022 8:25:28 AM
Payment Events	**Status**	**Timestamps**
Electronic Record and Signature Disclosure		

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/20/2022

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 Central, Inc.
200 East Randolph
CHICAGO, IL 60601

CONTACT NAME: Aon Risk Services Central, Inc.
PHONE (A/C No.Ext): (866) 283-7122 **FAX (A/C No.Ext):** (800) 363-0105
E-MAIL ADDRESS: acs.chicago@aon.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: HDI Global Insurance Company	41343
INSURER B: ACE American Insurance Company	22667
INSURER C: Indemnity Insurance Company of NA	43575
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
TK Elevator Corporation f/k/a ThyssenKrupp Elevator Corporation

COVERAGES **CERTIFICATE NUMBER: 2246251** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PROJECT [ ] LOC [ ] OTHER:			GLD5668802 / GLD5668902	10/01/2022	10/01/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS -COMP/OP AGG	$ 2,000,000 $ 100,000 $ 5,000 $ 2,000,000 $ 2,000,000 $ 2,000,000
B	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY			ISA H10757599	10/01/2022	10/01/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY(Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 4,000,000
	[ ] UMBRELLA LIAB [ ] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $						EACH OCCURRENCE AGGREGATE	
C B C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [N] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WLR C50730736 (AOS) WLR C50726836 (CA, MA) WLR C50726897 (TK Airport)	10/01/2022 10/01/2022 10/01/2022	10/01/2023 10/01/2023 10/01/2023	[X] PER STATUTE [ ] OTHER E.L. EACH ACCIDENT E.L. DISEASE -EA EMPLOYEE E.L. DISEASE -POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
	Limits shown as requested:							

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Division Number: 106050 - Named Insured Includes: TK Elevator Corporation - Address: 8920 Adams Street N.E. Suite B Albuquerque, NM 87113
Project Number: 167993 - Project Name: Santa Fe Public Library - Address: 145 Washington Ave Santa Fe, NM - Project Type (s): Elevator Modernization

CERTIFICATE HOLDER
City of Santa Fe
PO Box 909
SANTA FE, NM 87504-0909
United States

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
AUTHORIZED REPRESENTATIVE
Aon Risk Services Central, Inc.

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City of Santa Fe

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

BUSINESS REGISTRATION

Business Name: TK ELEVATOR CORPORATION
DBA: TK ELEVATOR CORPORATION

Business Location: 8500 WASHINGTON ST NE STE A4
ALBUQUERQUE, NM 87113

CRS Number: 02017456000

Owner: TK ELEVATOR CORPORATION

License Number: 224922

License Type: Business License - Renewable

Issued Date: June 10, 2022

Classification: Out of Jurisdiction Contractor - Specialty

Expiration Date: June 10, 2023

Fees Paid: $10.00

TK ELEVATOR CORPORATION
8500 Washington ST A4
ALBUQUERQUE, NM 87113

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



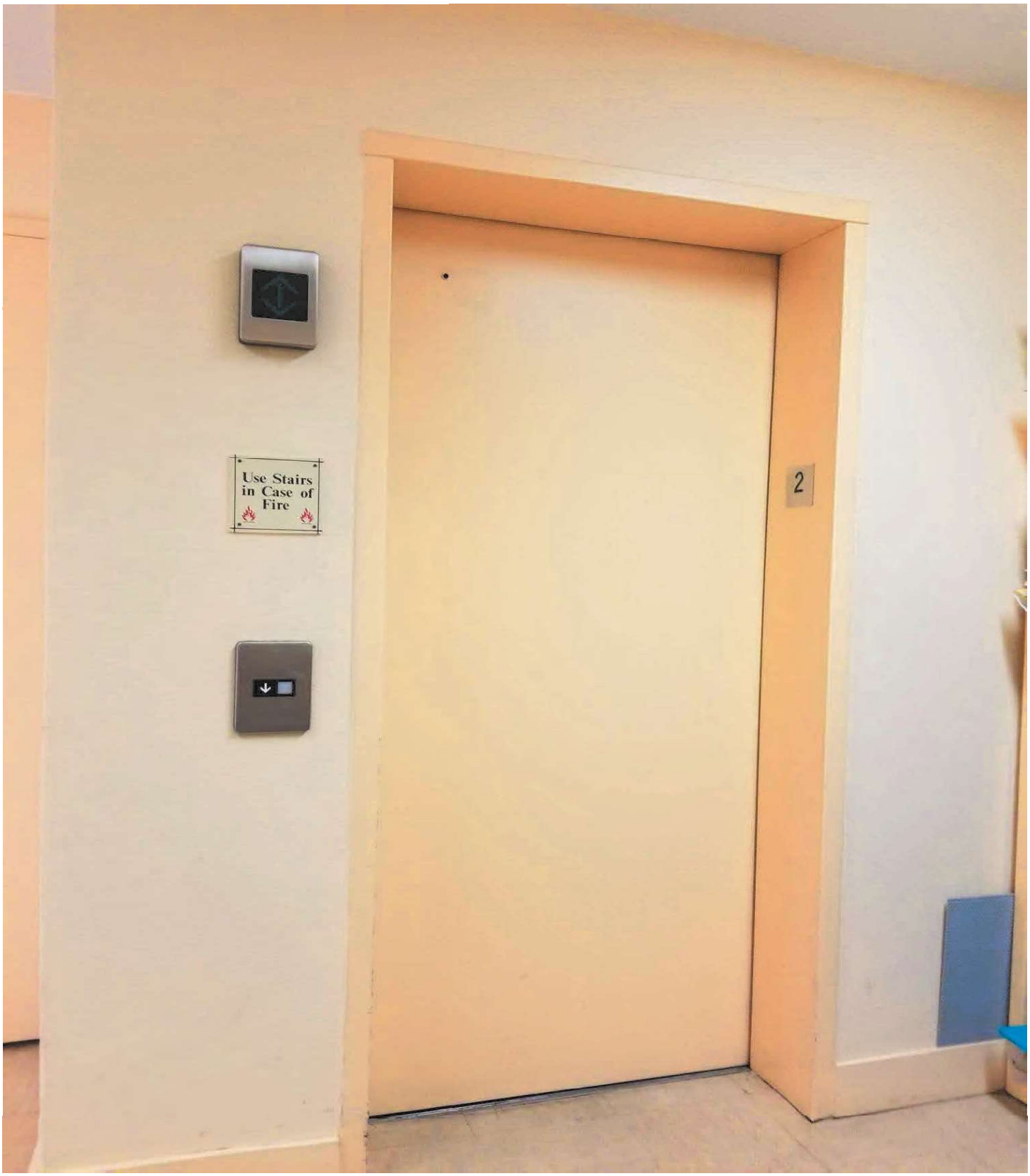
Santa Fe Public Library
Main Branch



Current Public Elevator-Exterior



Current Public Elevator-Interior



Current Staff Elevator-Exterior



Current Staff Elevator-Interior

Signature: J Samuel Burnett
J Samuel Burnett (Aug 4, 2022 15:48 MDT)

Email: jsburnett@santafenm.gov

City of Santa Fe, New Mexico
Memorandum

DATE: February 2, 2023

TO: Public Works and Utilities/Finance/Governing Body

VIA: _____
Regina Wheeler, Public Works Department Director

FROM: David A. Chapman, Grant Administrator, Public Works Department

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ACTIONS:
Request for approval of a Severance Tax Bond (STB) Agreement with NMDOT to reconstruct Governor Miles Road from Richards Avenue to Nizhoni Drive in the amount of $300,000 including New Mexico Gross Receipts Tax. (David A. Chapman, Grant Administrator, dachapman@santafenm.gov 505-660-2619)

- Request for Approval of Budget Amendment Resolution (BAR) to allocate $300,000 from NMDOT to the Govern Miles Road Project Number #F3057.

Request for approval of a Severance Tax Bond (STB) Agreement with NMDOT to install new asphalt and roadway markings on Paseo de Las Vistas in the amount of $275,000 including New Mexico Gross Receipts Tax. (David A. Chapman, Grant Administrator, dachapman@santafenm.gov 505-660-2619)

- Request for Approval of Budget Amendment Resolution (BAR) to allocate $275,000 from NMDOT to the Paseo de Las Vistas Project Number F3058.

Request for approval of a Severance Tax Bond (STB) Agreement with NMDOT to reconstruct St. Michael's Drive and Siringo Road in the amount of $350,000 including New Mexico Gross Receipts Tax. (David A. Chapman, Grant Administrator, dachapman@santafenm.gov 505-660-2619)

- Request for Approval of Budget Amendment Resolution (BAR) to allocate $350,000 from NMDOT to the St. Michael's Drive and Siringo Road Project Number F3059.

SUMMARY: These Agreements from NMDOT are pursuant to 2021 Legislative appropriations toward district priority requests. Public Works Department staff will manage each project and submit all required reporting to the State of New Mexico. Matching funds are not required. These grants provide partial funding for these projects.

Control # C5213057, DFA# F3057, ($300,000.00) Appropriation Reversion Date: 6/30/2025
Laws of 2021 Chapter 138, Section 33, Subsection 98, $300,000 to acquire rights of way and to plan, design, construct and improve pedestrian, bicycle, and drainage infrastructure on Governor Miles Road. This project, when fully funded, will reconstruct Governor Miles Road from Richards Avenue to Nizhoni Drive (0.9 miles) to include the addition of dedicated bicycle lanes, ADA compliant sidewalks, lighting, street landscaping, and stormwater drainage improvements. Total estimated cost of the project is $2,500,000.

Control # C5213058, DFA# F3058, ($275,000.00) Appropriation Reversion Date: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 99, $275,000 to plan, design, construct and improve Paseo de Las Vistas. Reconstruction of 1.2 miles of Paseo de las Vistas is planned including process and compact existing material and install new asphalt and roadway markings. Estimated total cost of this work

is $975,000. Remaining funds from 2021 pavement rehabilitation BAR for $2.9M will be used toward this project. Planning for construction in Summer 2023.

Control #C5213059, DFA# F3059, ($350,000.00) Appropriation Reversion Date: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 100, ($350,000.00) to acquire rights of way and to plan, design, construct and improve pedestrian and bicycle infrastructure on St. Michael's Drive. These funds will be used to begin planning for St. Michael's Drive reconfiguration to provide wider sidewalks, bicycle lanes, pedestrian facilities, traffic calming elements and bus stops from St. Francis Drive to Cerrillos Rd. (1.25 miles). Total estimated project cost is $23,000,000.

Funding Source: NMDOT
Fund Name/Fund Number: Streets and Roadways CIP / 330
Munis Org / Obj Number: 3309980/572970 | Streets and Roadways CIP / WIP Construction

Attachments: State Severance Tax Bond Agreements C5213057, C5213058 and C5213059
BAR(S)
Summary of Contracts

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

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

DEPARTMENT / DIVISION NAME	DATE
Public Works Department / Complete Streets	1/27/2023

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WIP Construction	3309980	572970	Project Id. ENG2333001 Grant Id. S2312	300,000	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
NM Department of Transportation	3309980	490150	Project Id. ENG2333001 Grant Id. S2312	(300,000)	
					$ -

JUSTIFICATION: *(use additional page if needed)*
--Attach supporting documentation/memo
This funding is from a State of New Mexico Severance Tax Bond (STB) Appropriation, Project: Governor Miles Road DOT Control # C5213057 Project F3057.

{Complete section below if BAR results in a net change to ANY Fund}	
Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	0

David A.Chapman
David A.Chapman (Feb 2, 2023 17:01 MST)
David A. Chapman, PW Grant Administrator — 1/27/2023
Prepared By *{print name}* — Date

Division Director Signature *{optional}* — Date

Regina Wheeler
Regina Wheeler (Feb 3, 2023 06:58 MST)
Regina A. Wheeler
Department Director Signature — Date

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins
Andy Hopkins (Feb 3, 2023 14:00 MST)
Budget Officer — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

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

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

DEPARTMENT / DIVISION NAME	DATE
Public Works Department / Complete Streets	1/27/2023

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WIP Construction	3309980	572970	Project Id. ENG2333003 Grant Id. S2314	275,000	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
NM Department of Transportation	3309980	490150	Project Id. ENG2333003 Grant Id. S2314	(275,000)	
					$ -

JUSTIFICATION: *(use additional page if needed)*
–Attach supporting documentation/memo
This funding is from a State of New Mexico Severance Tax Bond (STB) Appropriation, Project: Paseo de Las Vistas Road DOT Control # C5213058 Project F3058.

{Complete section below if BAR results in a net change to ANY Fund}	
Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	0

David A.Chapman (Feb 2, 2023 17:01 MST)
David A. Chapman, PW Grant Administrator — 1/27/2023
Prepared By *{print name}* — Date

Division Director Signature *{optional}* — Date

Regina Wheeler (Feb 3, 2023 06:58 MST)
Regina A. Wheeler
Department Director Signature — Date

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins (Feb 3, 2023 14:00 MST)
Budget Officer — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

Log # *(Finance use only)*:	
Journal # *(Finance use only)*:	

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

DEPARTMENT / DIVISION NAME	DATE
Public Works Department / Complete Streets	1/27/2023

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*(enter as positive #)*	*(enter as negative #)*
WIP Construction	3309980	572970	Project Id. ENG2333002 Grant Id. S2313	350,000	
REVENUES				*(enter as negative #)*	*(enter as positive #)*
NM Department of Transportation	3309980	490150	Project Id. ENG2333002 Grant Id. S2313	(350,000)	
					$ -

JUSTIFICATION: *(use additional page if needed)*
–Attach supporting documentation/memo
This funding is from a State of New Mexico Severance Tax Bond (STB) Appropriation, Project: St. Michael's Dr. and Siringo Rd. DOT Control # C5213059 Project F3059.

(Complete section below if BAR results in a net change to ANY Fund)	
Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	0

David A.Chapman (Feb 2, 2023 17:01 MST)
David A. Chapman, PW Grant Administrator — 1/27/2023
Prepared By *(print name)* — Date

Division Director Signature *(optional)* — Date

Regina Wheeler (Feb 3, 2023 06:58 MST)
Regina A. Wheeler
Department Director Signature — Date

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins (Feb 3, 2023 14:00 MST)
Budget Officer — Date

Finance Director *(≤ $5,000)* — Date

City Manager *(≤ $60,000)* — Date

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **TBD**

Contractor: **NMDOT**

Description: **Grant Agreement Acceptance Severance Tax Bond (STB) Agreement between NMDOT and City of SF for Governor Miles Rd Project # C5213057 DFA Appropriation ID F3057**

Contract ☐ Agreement ☉ Lease / Rent ☐ Amendment ☐

Term Start Date: **When approved by GE** Term End Date: **6/30/23**

☑ Approved by Council Date: **Pending**

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)

New Agreement

3. **Procurement History:** _____

Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: _____

4. **Funding Source:** **NMDOT** **Org / Object:** **3309980.490150**

Andy Hopkins (Feb 3, 2023 14:00 MST) Feb 3, 2023

Budget Officer Approval: Date:

Comment & Exceptions: _____

Staff Contact who completed this form: **David A. Chapman** Phone # **505-660-2619**

Email: **dachapman@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **TBD**

Contractor: **NMDOT**

Description: **Grant Agreement Acceptance Severance Tax Bond (STB) Agreement between NMDOT and City of SF for Paseo de Las Vistas Project # C5213058 DFA Appro ID F3058**

Contract ☐ Agreement ☉ Lease / Rent ☐ Amendment ☐

Term Start Date: **When appr'd by GB** Term End Date: **6/30/23**

☑ Approved by Council Date: **Pending**

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)

New Agreement

3. **Procurement History:** _____

Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: _____

4. **Funding Source:** **NMDOT** **Org / Object:** **3309980.490150**

Andy Hopkins (Feb 3, 2023 14:00 MST) Feb 3, 2023

Budget Officer Approval: Date:

Comment & Exceptions: _____

Staff Contact who completed this form: **David A. Chapman** Phone # **505-660-2619**

Email: **dachapman@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **TBD**

Contractor: **NMDOT**

Description: **Grant Agreement Acceptance Severance Tax Bond (STB) Agreement between NMDOT and City of SF for St. Michaels & Siringo Project # C5213059 DFA Appro. ID F3059**

Contract ☐ Agreement ☉ Lease / Rent ☐ Amendment ☐

Term Start Date: **When appr'd by GB** Term End Date: **6/30/23**

☑ Approved by Council Date: **Pending**

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)

New Agreement

3. **Procurement History:** _____

Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: _____

4. **Funding Source:** **NMDOT** **Org / Object:** **3309980.490150**

Andy Hopkins (Feb 3, 2023 14:00 MST) Feb 3, 2023

Budget Officer Approval: Date:

Comment & Exceptions: _____

Staff Contact who completed this form: **David A. Chapman** Phone # **505-660-2619**

Email: **dachapman@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

Contract Number: _____
Vendor Number: 0000054360
Control Number: C5213057

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 20 __, by and between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Santa Fe, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2021, Chapter 138, Section 33, Subsection 98, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID F3057 NMDOT Control Number C5213057 **$300,000**
APPROPRIATION REVERSION DATE: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 98, Three Hundred Thousand Dollars and No Cents ($300,000), to acquire rights of way and to plan, design, construct and improve pedestrian, bicycle and drainage infrastructure on Governor Miles road in Santa Fe in Santa Fe county; .

The Grantee's total reimbursements shall not exceed Three Hundred Thousand Dollars and No Cents $300,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

applicable, Zero Dollars and Zero Cents ($ 0.00), which equals Three Hundred Thousand Dollars and No Cents (**$300,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Santa Fe

Name: David Chapman
Title: Grants Administrator
Address: P.O. Box 909, Santa Fe, New Mexico 87504
Email: dachapman@ci.santa-fe.nm.us
Telephone: 505-955-2012

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 5 Office
Name: Stephanie Medina
Title: Local Government Road Fund Coordinator
Address: P.O. Box 4127, Santa Fe, NM 87502
Email: Stephanie.Medina@state.nm.us
Telephone: 505-660-6357

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **6/30/2025** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date

particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or

(iii) Twenty (20) days from date of Early Termination; or

(iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement,

including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

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 immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"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, the City of Santa Fe may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Santa Fe's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Santa Fe or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Santa Fe or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Santa Fe may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Santa Fe only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the

SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Santa Fe
Entity Name

By: Alan Webber
(Type or Print Name)

Its: Mayor
(Type or Print Title)

Date

DEPARTMENT OF TRANSPORTATION

By:

Its: Cabinet Secretary or Designee

Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

Craig C Kling
Craig C Kling (Jan 27, 2022 09:18 MST)

By: Craig Kling

Its: Assistant General Counsel

Jan 27, 2022
Date

CITY OF SANTA FE

_____

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

_____

KRISTINE BUSTOS-MIHELCIC,
CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jan 26, 2023 11:05 MST)

_____

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

_____

EMILY K. OSTER, FINANCE DIRECTOR

3309980-490150 / 3309980-572970

Governor Miles Road [illegible]

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (If *Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer	Date	Division Project Manager	Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____, _____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Attachment A

The City of Santa Fe shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Santa Fe shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.

10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

Contract Number: _____
Vendor Number: 0000054360
Control Number: C5213058

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 20 __, by and between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Santa Fe, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2021, Chapter 138, Section 33, Subsection 99, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID F3058 NMDOT Control Number C5213058 **$275,000**
APPROPRIATION REVERSION DATE: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 99, Two Hundred Seventy Five Thousand Dollars and No Cents ($275,000), to plan, design, construct and improve paseo de Las Vistas in Santa Fe in Santa Fe county; .

The Grantee's total reimbursements shall not exceed Two Hundred Seventy Five Thousand Dollars and No Cents $275,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1],

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

if applicable, Zero Dollars and Zero Cents ($ 0.00), which equals Two Hundred Seventy Five Thousand Dollars and No Cents (**$275,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Santa Fe

Name: David Chapman
Title: Grants Administrator
Address: P.O. Box 909, Santa Fe, New Mexico 87504
Email: dachapman@ci.santa-fe.nm.us
Telephone: 505-955-2012

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 5 Office
Name: Stephanie Medina
Title: Local Government Road Fund Coordinator
Address: P.O. Box 4127, Santa Fe, NM 87502
Email: Stephanie.Medina@state.nm.us
Telephone: 505-660-6357

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **6/30/2025** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date

particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or

(iii) Twenty (20) days from date of Early Termination; or

(iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement,

including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

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 immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"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, the City of Santa Fe may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Santa Fe's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Santa Fe or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Santa Fe or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Santa Fe may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Santa Fe only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the

SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Santa Fe
Entity Name

By: Alan Webber
(Type or Print Name)

Its: Mayor
(Type or Print Title)

Date

DEPARTMENT OF TRANSPORTATION

By:

Its: Cabinet Secretary or Designee

Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

Craig C Kling
Craig C Kling (Jan 27, 2022 09:22 MST)

By: Craig Kling

Its: Assistant General Counsel

Jan 27, 2022

Date

CITY OF SANTA FE

_____

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

_____

KRISTINE BUSTOS-MIHELCIC,
CITY CLERK

CITY ATTORNEY'S OFFICE

Marcos Martinez
Marcos Martinez (Jan 26, 2023 11:06 MST)

_____

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

_____

EMILY K. OSTER, FINANCE DIRECTOR

3309980-490150 / 3309980-490150

Parcel Id: Tax Year: YEAR - 0058 dat

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer	Date	Division Project Manager	Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____, _____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Attachment A

The City of Santa Fe shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Santa Fe shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.

10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

Contract Number: _____
Vendor Number: 0000054360
Control Number: C5213059

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 20 __, by and between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Santa Fe, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2021, Chapter 138, Section 33, Subsection 100, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID F3059 NMDOT Control Number C5213059 **$350,000**
APPROPRIATION REVERSION DATE: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 100, Three Hundred Fifty Thousand Dollars and No Cents ($350,000), to acquire rights of way and to plan, design, construct and improve pedestrian and bicycle infrastructure on key streets, including St. Michael's drive and Siringo road, in Santa Fe in Santa Fe county; .

The Grantee's total reimbursements shall not exceed Three Hundred Fifty Thousand Dollars and No Cents $350,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

applicable, Zero Dollars and Zero Cents ($ 0.00), which equals Three Hundred Fifty Thousand Dollars and No Cents (**$350,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Santa Fe

Name: David Chapman
Title: Grants Administrator
Address: P.O. Box 909, Santa Fe, New Mexico 87504
Email: dachapman@ci.santa-fe.nm.us
Telephone: 505-955-2012

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 5 Office
Name: Stephanie Medina
Title: Local Government Road Fund Coordinator
Address: P.O. Box 4127, Santa Fe, NM 87502
Email: Stephanie.Medina@state.nm.us
Telephone: 505-660-6357

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **6/30/2025** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date

particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or

(iii) Twenty (20) days from date of Early Termination; or

(iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement,

including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

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 immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"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, the City of Santa Fe may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Santa Fe's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Santa Fe or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Santa Fe or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Santa Fe may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Santa Fe only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the

SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department:

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

_____
Signature of Official with Authority to Bind Grantee

City of Santa Fe
Entity Name

By: Alan Webber
(Type or Print Name)

Its: Mayor
(Type or Print Title)

_____
Date

DEPARTMENT OF TRANSPORTATION

_____
By:

Its: Cabinet Secretary or Designee

_____
Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

Craig C Kling
Craig C Kling (Jan 27, 2022 09:24 MST)

By: Craig Kling

Its: Assistant General Counsel

Jan 27, 2022
Date

CITY OF SANTA FE

_____

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

_____

KRISTINE BUSTOS-MIHELCIC,
CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jan 26, 2023 11:05 MST)

_____

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

_____

EMILY K. OSTER, FINANCE DIRECTOR

3309980-490150 / 3309980-572970

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date	Division Project Manager Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____, _____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Attachment A

The City of Santa Fe shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Santa Fe shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.

10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

Memo Package for PW&U F3057 F3058 F3059 2-2-23

Interim Agreement Report 2023-02-03

Created:	2023-02-02
By:	David Chapman (dachapman@ci.santa-fe.nm.us)
Status:	Out for Signature
Transaction ID:	CBJCHBCAABAAxo2RAh17vxTBNy_yGUYhZAQakkFMtToy

Agreement History

Agreement history is the list of the events that have impacted the status of the agreement prior to the final signature. A final audit report will be generated when the agreement is complete.

"Memo Package for PW&U F3057 F3058 F3059 2-2-23" History

Document created by David Chapman (dachapman@ci.santa-fe.nm.us)
2023-02-02 - 11:43:38 PM GMT- IP address: 63.232.20.2

Document emailed to David Chapman (dachapman@santafenm.gov) for signature
2023-02-02 - 11:59:52 PM GMT

Email viewed by David Chapman (dachapman@santafenm.gov)
2023-02-03 - 0:00:28 AM GMT- IP address: 104.47.64.254

Signer David Chapman (dachapman@santafenm.gov) entered name at signing as David A.Chapman
2023-02-03 - 0:01:01 AM GMT- IP address: 63.232.20.2

Document e-signed by David A.Chapman (dachapman@santafenm.gov)
Signature Date: 2023-02-03 - 0:01:03 AM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to rawheeler@santafenm.gov for signature
2023-02-03 - 0:01:05 AM GMT

Email viewed by rawheeler@santafenm.gov
2023-02-03 - 0:16:47 AM GMT- IP address: 104.47.64.254

Signer rawheeler@santafenm.gov entered name at signing as Regina Wheeler
2023-02-03 - 1:58:26 PM GMT- IP address: 63.232.20.2

Document e-signed by Regina Wheeler (rawheeler@santafenm.gov)
Signature Date: 2023-02-03 - 1:58:28 PM GMT - Time Source: server- IP address: 63.232.20.2

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Document emailed to Andy Hopkins (ajhopkins@santafenm.gov) for signature

2023-02-03 - 1:58:30 PM GMT

Email viewed by Andy Hopkins (ajhopkins@santafenm.gov)

2023-02-03 - 8:59:22 PM GMT- IP address: 104.47.65.254

Document e-signed by Andy Hopkins (ajhopkins@santafenm.gov)

Signature Date: 2023-02-03 - 9:00:34 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to JoAnn Lovato (jdlovato@santafenm.gov) for signature

2023-02-03 - 9:00:36 PM GMT

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Acrobat Sign

City of Santa Fe, New Mexico
Memorandum

DATE: February 2, 2023

TO: Public Works and Utilities/Finance/Governing Body

VIA: _____
Regina Wheeler, Public Works Department Director

FROM: David A. Chapman, Grant Administrator, Public Works Department

---

ACTIONS:
Request for approval of a Severance Tax Bond (STB) Agreement with NMDOT to reconstruct Governor Miles Road from Richards Avenue to Nizhoni Drive in the amount of $300,000 including New Mexico Gross Receipts Tax. (David A. Chapman, Grant Administrator, dachapman@santafenm.gov 505-660-2619)

- Request for Approval of Budget Amendment Resolution (BAR) to allocate $300,000 from NMDOT to the Govern Miles Road Project Number #F3057.

Request for approval of a Severance Tax Bond (STB) Agreement with NMDOT to install new asphalt and roadway markings on Paseo de Las Vistas in the amount of $275,000 including New Mexico Gross Receipts Tax. (David A. Chapman, Grant Administrator, dachapman@santafenm.gov 505-660-2619)

- Request for Approval of Budget Amendment Resolution (BAR) to allocate $275,000 from NMDOT to the Paseo de Las Vistas Project Number F3058.

Request for approval of a Severance Tax Bond (STB) Agreement with NMDOT to reconstruct St. Michael's Drive and Siringo Road in the amount of $350,000 including New Mexico Gross Receipts Tax. (David A. Chapman, Grant Administrator, dachapman@santafenm.gov 505-660-2619)

- Request for Approval of Budget Amendment Resolution (BAR) to allocate $350,000 from NMDOT to the St. Michael's Drive and Siringo Road Project Number F3059.

SUMMARY: These Agreements from NMDOT are pursuant to 2021 Legislative appropriations toward district priority requests. Public Works Department staff will manage each project and submit all required reporting to the State of New Mexico. Matching funds are not required. These grants provide partial funding for these projects.

Control # C5213057, DFA# F3057, ($300,000.00) Appropriation Reversion Date: 6/30/2025
Laws of 2021 Chapter 138, Section 33, Subsection 98, $300,000 to acquire rights of way and to plan, design, construct and improve pedestrian, bicycle, and drainage infrastructure on Governor Miles Road. This project, when fully funded, will reconstruct Governor Miles Road from Richards Avenue to Nizhoni Drive (0.9 miles) to include the addition of dedicated bicycle lanes, ADA compliant sidewalks, lighting, street landscaping, and stormwater drainage improvements. Total estimated cost of the project is $2,500,000.

Control # C5213058, DFA# F3058, ($275,000.00) Appropriation Reversion Date: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 99, $275,000 to plan, design, construct and improve Paseo de Las Vistas. Reconstruction of 1.2 miles of Paseo de las Vistas is planned including process and compact existing material and install new asphalt and roadway markings. Estimated total cost of this work

is $975,000. Remaining funds from 2021 pavement rehabilitation BAR for $2.9M will be used toward this project. Planning for construction in Summer 2023.

Control #C5213059, DFA# F3059, ($350,000.00) Appropriation Reversion Date: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 100, ($350,000.00) to acquire rights of way and to plan, design, construct and improve pedestrian and bicycle infrastructure on St. Michael's Drive. These funds will be used to begin planning for St. Michael's Drive reconfiguration to provide wider sidewalks, bicycle lanes, pedestrian facilities, traffic calming elements and bus stops from St. Francis Drive to Cerrillos Rd. (1.25 miles). Total estimated project cost is $23,000,000.

Funding Source: NMDOT
Fund Name/Fund Number: Streets and Roadways CIP / 330
Munis Org / Obj Number: 3309980/572970 | Streets and Roadways CIP / WIP Construction

Attachments: State Severance Tax Bond Agreements C5213057, C5213058 and C5213059
BAR(S)
Summary of Contracts

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

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

DEPARTMENT / DIVISION NAME	DATE
Public Works Department / Complete Streets	1/27/2023

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WIP Construction	3309980	572970	Project Id. ENG2333001 Grant Id. S2312	300,000	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
NM Department of Transportation	3309980	490150	Project Id. ENG2333001 Grant Id. S2312	(300,000)	
					$ -

JUSTIFICATION: *(use additional page if needed)*
--Attach supporting documentation/memo
This funding is from a State of New Mexico Severance Tax Bond (STB) Appropriation, Project: Governor Miles Road DOT Control # C5213057 Project F3057.

{Complete section below if BAR results in a net change to ANY Fund}	
Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	0

David A.Chapman
David A.Chapman (Feb 2, 2023 17:01 MST)
David A. Chapman, PW Grant Administrator — 1/27/2023
Prepared By *{print name}* — Date

Division Director Signature *{optional}* — Date

Regina Wheeler
Regina Wheeler (Feb 3, 2023 06:58 MST)
Regina A. Wheeler
Department Director Signature — Date

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins
Andy Hopkins (Feb 3, 2023 14:00 MST)
Budget Officer — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

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

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

DEPARTMENT / DIVISION NAME	DATE
Public Works Department / Complete Streets	1/27/2023

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WIP Construction	3309980	572970	Project Id. ENG2333003 Grant Id. S2314	275,000	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
NM Department of Transportation	3309980	490150	Project Id. ENG2333003 Grant Id. S2314	(275,000)	
					$ -

JUSTIFICATION: *(use additional page if needed)*
–Attach supporting documentation/memo
This funding is from a State of New Mexico Severance Tax Bond (STB) Appropriation, Project: Paseo de Las Vistas Road DOT Control # C5213058 Project F3058.

{Complete section below if BAR results in a net change to ANY Fund}	
Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	0

David A.Chapman (Feb 2, 2023 17:01 MST)
David A. Chapman, PW Grant Administrator — 1/27/2023
Prepared By *{print name}* — Date

Division Director Signature *{optional}* — Date

Regina Wheeler (Feb 3, 2023 06:58 MST)
Regina A. Wheeler
Department Director Signature — Date

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins (Feb 3, 2023 14:00 MST)
Budget Officer — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

Log # *(Finance use only)*:	
Journal # *(Finance use only)*:	

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

DEPARTMENT / DIVISION NAME	DATE
Public Works Department / Complete Streets	1/27/2023

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*(enter as positive #)*	*(enter as negative #)*
WIP Construction	3309980	572970	Project Id. ENG2333002 Grant Id. S2313	350,000	
REVENUES				*(enter as negative #)*	*(enter as positive #)*
NM Department of Transportation	3309980	490150	Project Id. ENG2333002 Grant Id. S2313	(350,000)	
					$ -

JUSTIFICATION: *(use additional page if needed)*
–Attach supporting documentation/memo
This funding is from a State of New Mexico Severance Tax Bond (STB) Appropriation, Project: St. Michael's Dr. and Siringo Rd. DOT Control # C5213059 Project F3059.

(Complete section below if BAR results in a net change to ANY Fund)	
Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	0

David A.Chapman (Feb 2, 2023 17:01 MST)
David A. Chapman, PW Grant Administrator — 1/27/2023
Prepared By *(print name)* — Date

Division Director Signature *(optional)* — Date

Regina Wheeler (Feb 3, 2023 06:58 MST)
Regina A. Wheeler
Department Director Signature — Date

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins (Feb 3, 2023 14:00 MST)
Budget Officer — Date

Finance Director *(≤ $5,000)* — Date

City Manager *(≤ $60,000)* — Date

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **TBD**

Contractor: **NMDOT**

Description: **Grant Agreement Acceptance Severance Tax Bond (STB) Agreement between NMDOT and City of SF for Governor Miles Rd Project # C5213057 DFA Appropriation ID F3057**

Contract ☐ Agreement ☉ Lease / Rent ☐ Amendment ☐

Term Start Date: **When approved by GE** Term End Date: **6/30/23**

☑ Approved by Council Date: **Pending**

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)

New Agreement

3. **Procurement History:** _____

Purchasing Officer Review: Feb 6, 2023 Date:

Comment & Exceptions: _____

4. **Funding Source:** **NMDOT** **Org / Object:** **3309980.490150**

Andy Hopkins Andy Hopkins (Feb 3, 2023 14:00 MST) Feb 3, 2023

Budget Officer Approval: Date:

Comment & Exceptions: _____

Staff Contact who completed this form: **David A. Chapman** Phone # **505-660-2619**

Email: **dachapman@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **TBD**

Contractor: **NMDOT**

Description: **Grant Agreement Acceptance Severance Tax Bond (STB) Agreement between NMDOT and City of SF for Paseo de Las Vistas Project # C5213058 DFA Appro ID F3058**

Contract ☐ Agreement ☉ Lease / Rent ☐ Amendment ☐

Term Start Date: **When appr'd by GB** Term End Date: **6/30/23**

☑ Approved by Council Date: **Pending**

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)

New Agreement

3. **Procurement History:** _____

Purchasing Officer Review: Feb 6, 2023 Date:

Comment & Exceptions: _____

4. **Funding Source:** **NMDOT** **Org / Object:** **3309980.490150**

Andy Hopkins (Feb 3, 2023 14:00 MST)

Budget Officer Approval: Feb 3, 2023 Date:

Comment & Exceptions: _____

Staff Contact who completed this form: **David A. Chapman** Phone # **505-660-2619**

Email: **dachapman@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **TBD**

Contractor: **NMDOT**

Description: **Grant Agreement Acceptance Severance Tax Bond (STB) Agreement between NMDOT and City of SF for St. Michaels & Siringo Project # C5213059 DFA Appro. ID F3059**

Contract ☐ Agreement ☉ Lease / Rent ☐ Amendment ☐

Term Start Date: **When appr'd by GB** Term End Date: **6/30/23**

☑ Approved by Council Date: **Pending**

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)

New Agreement

3. **Procurement History:** _____

Purchasing Officer Review: Feb 6, 2023 Date:

Comment & Exceptions: _____

4. **Funding Source:** **NMDOT** **Org / Object:** **3309980.490150**

Andy Hopkins (Feb 3, 2023 14:00 MST) Feb 3, 2023

Budget Officer Approval: Date:

Comment & Exceptions: _____

Staff Contact who completed this form: **David A. Chapman** Phone # **505-660-2619**

Email: **dachapman@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

Contract Number: _____
Vendor Number: 0000054360
Control Number: C5213057

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 20 __, by and between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Santa Fe, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2021, Chapter 138, Section 33, Subsection 98, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID F3057 NMDOT Control Number C5213057 **$300,000**
APPROPRIATION REVERSION DATE: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 98, Three Hundred Thousand Dollars and No Cents ($300,000), to acquire rights of way and to plan, design, construct and improve pedestrian, bicycle and drainage infrastructure on Governor Miles road in Santa Fe in Santa Fe county; .

The Grantee's total reimbursements shall not exceed Three Hundred Thousand Dollars and No Cents $300,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

applicable, Zero Dollars and Zero Cents ($ 0.00), which equals Three Hundred Thousand Dollars and No Cents (**$300,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Santa Fe

Name: David Chapman
Title: Grants Administrator
Address: P.O. Box 909, Santa Fe, New Mexico 87504
Email: dachapman@ci.santa-fe.nm.us
Telephone: 505-955-2012

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 5 Office
Name: Stephanie Medina
Title: Local Government Road Fund Coordinator
Address: P.O. Box 4127, Santa Fe, NM 87502
Email: Stephanie.Medina@state.nm.us
Telephone: 505-660-6357

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **6/30/2025** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date

particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or

(iii) Twenty (20) days from date of Early Termination; or

(iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement,

including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

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 immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"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, the City of Santa Fe may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Santa Fe's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Santa Fe or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Santa Fe or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Santa Fe may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Santa Fe only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the

SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Santa Fe
Entity Name

By: Alan Webber
(Type or Print Name)

Its: Mayor
(Type or Print Title)

Date

DEPARTMENT OF TRANSPORTATION

By:

Its: Cabinet Secretary or Designee

Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

Craig C Kling
Craig C Kling (Jan 27, 2022 09:18 MST)

By: Craig Kling

Its: Assistant General Counsel

Jan 27, 2022
Date

CITY OF SANTA FE

_____

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

_____

KRISTINE BUSTOS-MIHELCIC,
CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jan 26, 2023 11:05 MST)

_____

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
Emily K. Oster (Feb 6, 2023 09:35 MST)

_____

EMILY K. OSTER, FINANCE DIRECTOR

3309980-490150 / 3309980-572970

Governor Miles Road [illegible]

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (If *Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer	Date	Division Project Manager	Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____, _____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Attachment A

The City of Santa Fe shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Santa Fe shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.

10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

Contract Number: _____
Vendor Number: 0000054360
Control Number: C5213058

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 20 __, by and between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Santa Fe, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2021, Chapter 138, Section 33, Subsection 99, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID F3058 NMDOT Control Number C5213058 **$275,000**
APPROPRIATION REVERSION DATE: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 99, Two Hundred Seventy Five Thousand Dollars and No Cents ($275,000), to plan, design, construct and improve paseo de Las Vistas in Santa Fe in Santa Fe county; .

The Grantee's total reimbursements shall not exceed Two Hundred Seventy Five Thousand Dollars and No Cents $275,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1],

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

if applicable, Zero Dollars and Zero Cents ($ 0.00), which equals Two Hundred Seventy Five Thousand Dollars and No Cents (**$275,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Santa Fe

Name: David Chapman
Title: Grants Administrator
Address: P.O. Box 909, Santa Fe, New Mexico 87504
Email: dachapman@ci.santa-fe.nm.us
Telephone: 505-955-2012

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 5 Office
Name: Stephanie Medina
Title: Local Government Road Fund Coordinator
Address: P.O. Box 4127, Santa Fe, NM 87502
Email: Stephanie.Medina@state.nm.us
Telephone: 505-660-6357

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **6/30/2025** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date

particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or

(iii) Twenty (20) days from date of Early Termination; or

(iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement,

including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

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 immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"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, the City of Santa Fe may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Santa Fe's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Santa Fe or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Santa Fe or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Santa Fe may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Santa Fe only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the

SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Santa Fe
Entity Name

By: Alan Webber
(Type or Print Name)

Its: Mayor
(Type or Print Title)

Date

DEPARTMENT OF TRANSPORTATION

By:

Its: Cabinet Secretary or Designee

Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

Craig C Kling
Craig C Kling (Jan 27, 2022 09:22 MST)

By: Craig Kling

Its: Assistant General Counsel

Jan 27, 2022

Date

CITY OF SANTA FE

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

KRISTINE BUSTOS-MIHELCIC,
CITY CLERK

CITY ATTORNEY'S OFFICE

Marcos Martinez
Marcos Martinez (Jan 26, 2023 11:06 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
Emily K. Oster (Feb 6, 2023 09:35 MST)

EMILY K. OSTER, FINANCE DIRECTOR

3309980-490150 / 3309980-490150

Professional Services MHT-3058.doc

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer	Date	Division Project Manager	Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____, _____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Attachment A

The City of Santa Fe shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Santa Fe shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.

10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

Contract Number: _____
Vendor Number: 0000054360
Control Number: C5213059

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 20 __, by and between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Santa Fe, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2021, Chapter 138, Section 33, Subsection 100, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID F3059 NMDOT Control Number C5213059 **$350,000**
APPROPRIATION REVERSION DATE: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 100, Three Hundred Fifty Thousand Dollars and No Cents ($350,000), to acquire rights of way and to plan, design, construct and improve pedestrian and bicycle infrastructure on key streets, including St. Michael's drive and Siringo road, in Santa Fe in Santa Fe county; .

The Grantee's total reimbursements shall not exceed Three Hundred Fifty Thousand Dollars and No Cents $350,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

applicable, Zero Dollars and Zero Cents ($ 0.00), which equals Three Hundred Fifty Thousand Dollars and No Cents (**$350,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Santa Fe

Name: David Chapman
Title: Grants Administrator
Address: P.O. Box 909, Santa Fe, New Mexico 87504
Email: dachapman@ci.santa-fe.nm.us
Telephone: 505-955-2012

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 5 Office
Name: Stephanie Medina
Title: Local Government Road Fund Coordinator
Address: P.O. Box 4127, Santa Fe, NM 87502
Email: Stephanie.Medina@state.nm.us
Telephone: 505-660-6357

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **6/30/2025** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date

particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or

(iii) Twenty (20) days from date of Early Termination; or

(iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement,

including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

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 immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"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, the City of Santa Fe may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Santa Fe's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Santa Fe or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Santa Fe or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Santa Fe may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Santa Fe only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the

SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department:

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

_____
Signature of Official with Authority to Bind Grantee

City of Santa Fe
Entity Name

By: Alan Webber
(Type or Print Name)

Its: Mayor
(Type or Print Title)

_____
Date

DEPARTMENT OF TRANSPORTATION

_____
By:

Its: Cabinet Secretary or Designee

_____
Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

Craig C Kling
Craig C Kling (Jan 27, 2022 09:24 MST)

By: Craig Kling

Its: Assistant General Counsel

Jan 27, 2022
Date

CITY OF SANTA FE

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

KRISTINE BUSTOS-MIHELCIC,
CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jan 26, 2023 11:05 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
Emily K. Oster (Feb 6, 2023 09:35 MST)

EMILY K. OSTER, FINANCE DIRECTOR

3309980-490150 / 3309980-572970

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date	Division Project Manager Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____, _____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Attachment A

The City of Santa Fe shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Santa Fe shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.

10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

City of Santa Fe, New Mexico
Memorandum

DATE: February 2, 2023

TO: Public Works and Utilities/Finance/Governing Body

VIA: _____
Regina Wheeler, Public Works Department Director

FROM: David A. Chapman, Grant Administrator, Public Works Department

---

ACTIONS:
Request for approval of a Severance Tax Bond (STB) Agreement with NMDOT to reconstruct Governor Miles Road from Richards Avenue to Nizhoni Drive in the amount of $300,000 including New Mexico Gross Receipts Tax. (David A. Chapman, Grant Administrator, dachapman@santafenm.gov 505-660-2619)

- Request for Approval of Budget Amendment Resolution (BAR) to allocate $300,000 from NMDOT to the Govern Miles Road Project Number #F3057.

Request for approval of a Severance Tax Bond (STB) Agreement with NMDOT to install new asphalt and roadway markings on Paseo de Las Vistas in the amount of $275,000 including New Mexico Gross Receipts Tax. (David A. Chapman, Grant Administrator, dachapman@santafenm.gov 505-660-2619)

- Request for Approval of Budget Amendment Resolution (BAR) to allocate $275,000 from NMDOT to the Paseo de Las Vistas Project Number F3058.

Request for approval of a Severance Tax Bond (STB) Agreement with NMDOT to reconstruct St. Michael's Drive and Siringo Road in the amount of $350,000 including New Mexico Gross Receipts Tax. (David A. Chapman, Grant Administrator, dachapman@santafenm.gov 505-660-2619)

- Request for Approval of Budget Amendment Resolution (BAR) to allocate $350,000 from NMDOT to the St. Michael's Drive and Siringo Road Project Number F3059.

SUMMARY: These Agreements from NMDOT are pursuant to 2021 Legislative appropriations toward district priority requests. Public Works Department staff will manage each project and submit all required reporting to the State of New Mexico. Matching funds are not required. These grants provide partial funding for these projects.

Control # C5213057, DFA# F3057, ($300,000.00) Appropriation Reversion Date: 6/30/2025
Laws of 2021 Chapter 138, Section 33, Subsection 98, $300,000 to acquire rights of way and to plan, design, construct and improve pedestrian, bicycle, and drainage infrastructure on Governor Miles Road. This project, when fully funded, will reconstruct Governor Miles Road from Richards Avenue to Nizhoni Drive (0.9 miles) to include the addition of dedicated bicycle lanes, ADA compliant sidewalks, lighting, street landscaping, and stormwater drainage improvements. Total estimated cost of the project is $2,500,000.

Control # C5213058, DFA# F3058, ($275,000.00) Appropriation Reversion Date: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 99, $275,000 to plan, design, construct and improve Paseo de Las Vistas. Reconstruction of 1.2 miles of Paseo de las Vistas is planned including process and compact existing material and install new asphalt and roadway markings. Estimated total cost of this work

is $975,000. Remaining funds from 2021 pavement rehabilitation BAR for $2.9M will be used toward this project. Planning for construction in Summer 2023.

Control #C5213059, DFA# F3059, ($350,000.00) Appropriation Reversion Date: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 100, ($350,000.00) to acquire rights of way and to plan, design, construct and improve pedestrian and bicycle infrastructure on St. Michael's Drive. These funds will be used to begin planning for St. Michael's Drive reconfiguration to provide wider sidewalks, bicycle lanes, pedestrian facilities, traffic calming elements and bus stops from St. Francis Drive to Cerrillos Rd. (1.25 miles). Total estimated project cost is $23,000,000.

Funding Source: NMDOT
Fund Name/Fund Number: Streets and Roadways CIP / 330
Munis Org / Obj Number: 3309980/572970 | Streets and Roadways CIP / WIP Construction

Attachments: State Severance Tax Bond Agreements C5213057, C5213058 and C5213059
BAR(S)
Summary of Contracts

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

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

DEPARTMENT / DIVISION NAME	DATE
Public Works Department / Complete Streets	1/27/2023

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WIP Construction	3309980	572970	Project Id. ENG2333001 Grant Id. S2312	300,000	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
NM Department of Transportation	3309980	490150	Project Id. ENG2333001 Grant Id. S2312	(300,000)	
					$ -

JUSTIFICATION: *(use additional page if needed)*
--Attach supporting documentation/memo
This funding is from a State of New Mexico Severance Tax Bond (STB) Appropriation, Project: Governor Miles Road DOT Control # C5213057 Project F3057.

{Complete section below if BAR results in a net change to ANY Fund}	
Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	0

David A.Chapman
David A.Chapman (Feb 2, 2023 17:01 MST)
David A. Chapman, PW Grant Administrator — 1/27/2023
Prepared By *{print name}* — Date

Division Director Signature *{optional}* — Date

Regina Wheeler
Regina Wheeler (Feb 3, 2023 06:58 MST)
Regina A. Wheeler
Department Director Signature — Date

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins
Andy Hopkins (Feb 3, 2023 14:00 MST)
Budget Officer — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

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

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

DEPARTMENT / DIVISION NAME	DATE
Public Works Department / Complete Streets	1/27/2023

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WIP Construction	3309980	572970	Project Id. ENG2333003 Grant Id. S2314	275,000	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
NM Department of Transportation	3309980	490150	Project Id. ENG2333003 Grant Id. S2314	(275,000)	
					$ -

JUSTIFICATION: *(use additional page if needed)*
–Attach supporting documentation/memo
This funding is from a State of New Mexico Severance Tax Bond (STB) Appropriation, Project: Paseo de Las Vistas Road DOT Control # C5213058 Project F3058.

{Complete section below if BAR results in a net change to ANY Fund}	
Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	0

David A.Chapman (Feb 2, 2023 17:01 MST)
David A. Chapman, PW Grant Administrator — 1/27/2023
Prepared By *{print name}* — Date

Division Director Signature *{optional}* — Date

Regina Wheeler (Feb 3, 2023 06:58 MST)
Regina A. Wheeler
Department Director Signature — Date

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins (Feb 3, 2023 14:00 MST)
Budget Officer — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

Log # *(Finance use only)*:	
Journal # *(Finance use only)*:	

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

DEPARTMENT / DIVISION NAME	DATE
Public Works Department / Complete Streets	1/27/2023

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*(enter as positive #)*	*(enter as negative #)*
WIP Construction	3309980	572970	Project Id. ENG2333002 Grant Id. S2313	350,000	
REVENUES				*(enter as negative #)*	*(enter as positive #)*
NM Department of Transportation	3309980	490150	Project Id. ENG2333002 Grant Id. S2313	(350,000)	
					$ -

JUSTIFICATION: *(use additional page if needed)*
–Attach supporting documentation/memo
This funding is from a State of New Mexico Severance Tax Bond (STB) Appropriation, Project: St. Michael's Dr. and Siringo Rd. DOT Control # C5213059 Project F3059.

(Complete section below if BAR results in a net change to ANY Fund)	
Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	0

David A.Chapman (Feb 2, 2023 17:01 MST)
David A. Chapman, PW Grant Administrator — 1/27/2023
Prepared By *(print name)* — Date

Division Director Signature *(optional)* — Date

Regina Wheeler (Feb 3, 2023 06:58 MST)
Regina A. Wheeler
Department Director Signature — Date

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins (Feb 3, 2023 14:00 MST)
Budget Officer — Date

Finance Director *(≤ $5,000)* — Date

City Manager *(≤ $60,000)* — Date

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **TBD**

Contractor: **NMDOT**

Description: **Grant Agreement Acceptance Severance Tax Bond (STB) Agreement between NMDOT and City of SF for Governor Miles Rd Project # C5213057 DFA Appropriation ID F3057**

Contract ☐ Agreement ☉ Lease / Rent ☐ Amendment ☐

Term Start Date: **When approved by GE** Term End Date: **6/30/23**

☑ Approved by Council Date: **Pending**

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)

New Agreement

3. **Procurement History:** _____

Purchasing Officer Review: Feb 6, 2023 Date:

Comment & Exceptions: _____

4. **Funding Source:** **NMDOT** **Org / Object:** **3309980.490150**

Andy Hopkins Andy Hopkins (Feb 3, 2023 14:00 MST) Feb 3, 2023

Budget Officer Approval: Date:

Comment & Exceptions: _____

Staff Contact who completed this form: **David A. Chapman** Phone # **505-660-2619**

Email: **dachapman@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **TBD**

Contractor: **NMDOT**

Description: **Grant Agreement Acceptance Severance Tax Bond (STB) Agreement between NMDOT and City of SF for Paseo de Las Vistas Project # C5213058 DFA Appro ID F3058**

Contract ☐ Agreement ☉ Lease / Rent ☐ Amendment ☐

Term Start Date: **When appr'd by GB** Term End Date: **6/30/23**

☑ Approved by Council Date: **Pending**

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)

New Agreement

3. **Procurement History:** _____

Purchasing Officer Review: Feb 6, 2023 Date:

Comment & Exceptions: _____

4. **Funding Source:** **NMDOT** **Org / Object:** **3309980.490150**

Andy Hopkins (Feb 3, 2023 14:00 MST)

Budget Officer Approval: Feb 3, 2023 Date:

Comment & Exceptions: _____

Staff Contact who completed this form: **David A. Chapman** Phone # **505-660-2619**

Email: **dachapman@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **TBD**

Contractor: **NMDOT**

Description: **Grant Agreement Acceptance Severance Tax Bond (STB) Agreement between NMDOT and City of SF for St. Michaels & Siringo Project # C5213059 DFA Appro. ID F3059**

Contract ☐ Agreement ☉ Lease / Rent ☐ Amendment ☐

Term Start Date: **When appr'd by GB** Term End Date: **6/30/23**

☑ Approved by Council Date: **Pending**

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)

New Agreement

3. **Procurement History:** _____

Purchasing Officer Review: Feb 6, 2023 Date:

Comment & Exceptions: _____

4. **Funding Source:** **NMDOT** **Org / Object:** **3309980.490150**

Andy Hopkins (Feb 3, 2023 14:00 MST) Feb 3, 2023

Budget Officer Approval: Date:

Comment & Exceptions: _____

Staff Contact who completed this form: **David A. Chapman** Phone # **505-660-2619**

Email: **dachapman@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

Contract Number: _____
Vendor Number: 0000054360
Control Number: C5213057

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 20 __, by and between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Santa Fe, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2021, Chapter 138, Section 33, Subsection 98, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID F3057 NMDOT Control Number C5213057 **$300,000**
APPROPRIATION REVERSION DATE: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 98, Three Hundred Thousand Dollars and No Cents ($300,000), to acquire rights of way and to plan, design, construct and improve pedestrian, bicycle and drainage infrastructure on Governor Miles road in Santa Fe in Santa Fe county; .

The Grantee's total reimbursements shall not exceed Three Hundred Thousand Dollars and No Cents $300,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

applicable, Zero Dollars and Zero Cents ($ 0.00), which equals Three Hundred Thousand Dollars and No Cents (**$300,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Santa Fe

Name: David Chapman
Title: Grants Administrator
Address: P.O. Box 909, Santa Fe, New Mexico 87504
Email: dachapman@ci.santa-fe.nm.us
Telephone: 505-955-2012

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 5 Office
Name: Stephanie Medina
Title: Local Government Road Fund Coordinator
Address: P.O. Box 4127, Santa Fe, NM 87502
Email: Stephanie.Medina@state.nm.us
Telephone: 505-660-6357

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **6/30/2025** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date

particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or

(iii) Twenty (20) days from date of Early Termination; or

(iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement,

including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

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 immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"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, the City of Santa Fe may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Santa Fe's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Santa Fe or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Santa Fe or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Santa Fe may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Santa Fe only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the

SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Santa Fe
Entity Name

By: Alan Webber
(Type or Print Name)

Its: Mayor
(Type or Print Title)

Date

DEPARTMENT OF TRANSPORTATION

By:

Its: Cabinet Secretary or Designee

Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

Craig C Kling
Craig C Kling (Jan 27, 2022 09:18 MST)

By: Craig Kling

Its: Assistant General Counsel

Jan 27, 2022
Date

CITY OF SANTA FE

_____

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

_____

KRISTINE BUSTOS-MIHELCIC,
CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jan 26, 2023 11:05 MST)

_____

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
Emily K. Oster (Feb 6, 2023 09:35 MST)

_____

EMILY K. OSTER, FINANCE DIRECTOR

3309980-490150 / 3309980-572970

Governor Miles Road [illegible]

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (If *Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer	Date	Division Project Manager	Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____, _____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Attachment A

The City of Santa Fe shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Santa Fe shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.

10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

Contract Number: _____
Vendor Number: 0000054360
Control Number: C5213058

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 20 __, by and between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Santa Fe, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2021, Chapter 138, Section 33, Subsection 99, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID F3058 NMDOT Control Number C5213058 **$275,000**
APPROPRIATION REVERSION DATE: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 99, Two Hundred Seventy Five Thousand Dollars and No Cents ($275,000), to plan, design, construct and improve paseo de Las Vistas in Santa Fe in Santa Fe county; .

The Grantee's total reimbursements shall not exceed Two Hundred Seventy Five Thousand Dollars and No Cents $275,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1],

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

if applicable, Zero Dollars and Zero Cents ($ 0.00), which equals Two Hundred Seventy Five Thousand Dollars and No Cents (**$275,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Santa Fe

Name: David Chapman
Title: Grants Administrator
Address: P.O. Box 909, Santa Fe, New Mexico 87504
Email: dachapman@ci.santa-fe.nm.us
Telephone: 505-955-2012

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 5 Office
Name: Stephanie Medina
Title: Local Government Road Fund Coordinator
Address: P.O. Box 4127, Santa Fe, NM 87502
Email: Stephanie.Medina@state.nm.us
Telephone: 505-660-6357

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **6/30/2025** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date

particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or

(iii) Twenty (20) days from date of Early Termination; or

(iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement,

including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

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 immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"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, the City of Santa Fe may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Santa Fe's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Santa Fe or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Santa Fe or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Santa Fe may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Santa Fe only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the

SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Santa Fe
Entity Name

By: Alan Webber
(Type or Print Name)

Its: Mayor
(Type or Print Title)

Date

DEPARTMENT OF TRANSPORTATION

By:

Its: Cabinet Secretary or Designee

Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

Craig C Kling
Craig C Kling (Jan 27, 2022 09:22 MST)

By: Craig Kling

Its: Assistant General Counsel

Jan 27, 2022

Date

CITY OF SANTA FE

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

KRISTINE BUSTOS-MIHELCIC,
CITY CLERK

CITY ATTORNEY'S OFFICE

Marcos Martinez
Marcos Martinez (Jan 26, 2023 11:06 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
Emily K. Oster (Feb 6, 2023 09:35 MST)

EMILY K. OSTER, FINANCE DIRECTOR

3309980-490150 / 3309980-490150

Professional Services MHT-3058.doc

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer	Date	Division Project Manager	Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____, _____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Attachment A

The City of Santa Fe shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Santa Fe shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.

10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

Contract Number: _____
Vendor Number: 0000054360
Control Number: C5213059

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 20 __, by and between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Santa Fe, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2021, Chapter 138, Section 33, Subsection 100, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID F3059 NMDOT Control Number C5213059 **$350,000**
APPROPRIATION REVERSION DATE: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 100, Three Hundred Fifty Thousand Dollars and No Cents ($350,000), to acquire rights of way and to plan, design, construct and improve pedestrian and bicycle infrastructure on key streets, including St. Michael's drive and Siringo road, in Santa Fe in Santa Fe county; .

The Grantee's total reimbursements shall not exceed Three Hundred Fifty Thousand Dollars and No Cents $350,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

applicable, Zero Dollars and Zero Cents ($ 0.00), which equals Three Hundred Fifty Thousand Dollars and No Cents (**$350,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Santa Fe

Name: David Chapman
Title: Grants Administrator
Address: P.O. Box 909, Santa Fe, New Mexico 87504
Email: dachapman@ci.santa-fe.nm.us
Telephone: 505-955-2012

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 5 Office
Name: Stephanie Medina
Title: Local Government Road Fund Coordinator
Address: P.O. Box 4127, Santa Fe, NM 87502
Email: Stephanie.Medina@state.nm.us
Telephone: 505-660-6357

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **6/30/2025** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date

particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or

(iii) Twenty (20) days from date of Early Termination; or

(iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement,

including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

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 immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"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, the City of Santa Fe may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Santa Fe's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Santa Fe or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Santa Fe or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Santa Fe may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Santa Fe only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the

SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department:

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

_____
Signature of Official with Authority to Bind Grantee

City of Santa Fe
Entity Name

By: Alan Webber
(Type or Print Name)

Its: Mayor
(Type or Print Title)

_____
Date

DEPARTMENT OF TRANSPORTATION

_____
By:

Its: Cabinet Secretary or Designee

_____
Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

Craig C Kling
Craig C Kling (Jan 27, 2022 09:24 MST)

By: Craig Kling

Its: Assistant General Counsel

Jan 27, 2022
Date

CITY OF SANTA FE

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

KRISTINE BUSTOS-MIHELCIC,
CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jan 26, 2023 11:05 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
Emily K. Oster (Feb 6, 2023 09:35 MST)

EMILY K. OSTER, FINANCE DIRECTOR

3309980-490150 / 3309980-572970

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date	Division Project Manager Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____, _____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Attachment A

The City of Santa Fe shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Santa Fe shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.

10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

City of Santa Fe, New Mexico
Memorandum

DATE: January 25, 2023

TO: Governing Body

VIA:
Regina Wheeler, Public Works Department Director
Melissa McDonald, Parks & Open Space Division Director MM

FROM: Skyler Nielsen, Parks Operations Manager

ACTION: Request for approval of a contract in the amount of $197,821.54 by Exerplay, INC. to upgrade the trash/recycle cans in Franklin Miles, Las Acequias, SWAN, and Ragle Parks from the current 44-gallon split stream can to a 64-gallon, dual can setup. (Skyler Nielsen, smnielsen@santafenm.gov, 505-469-6688)

BACKGROUND AND SUMMARY: The current trash/recycle receptacles at Franklin Miles, Las Acequias, SWAN and Ragle Parks are a mixture of designs that do not match and hinder efficient collection by Parks Division staff. Currently, the most common type is a split design that holds a 22-gallon trash insert on one side, and a 22-gallon recycle insert on the other for a combined 44 gallons of collection per location. These reach capacity quickly and the small inserts get clogged with large pieces of trash giving the appearance of an overflowing receptacle that is largely empty. This requires more frequent collections, forcing Parks workers to disrupt their workflow to service cans that do not meet City needs.

Upgrading the current split design to a single stream trash receptacle paired with single stream recycling receptacle would increase each collection point in the Franklin Miles, Las Acequias and SWAN parks from 44 gallons of trash/recycle to 64 gallons, reducing collection frequency. The upgrade to larger inserts should also lower the occurrence of cans appearing full when they are only clogged at the insert opening. This would decrease drive time while reducing breaks in workflow to service receptacles thus decreasing complaints of overflowing cans. The standardizing of our refuse and recycling receptacles across City Parks would have added efficiency benefits regarding the ordering and stocking or parts/supplies/etc. The anticipated completion is June 30th, 2023.

TENTATIVE COMMITTEE SCHEDULE:
Finance Committee: 02/13/2023
Public Works & Utility Committee: 02/20/2023
Governing Body: 02/22/2023

PROCUREMENT METHOD: SPA-Exerplay, INC #90-000-19-00062

FUNDING SOURCE:
Fund Name/Number: General Fund/Fund 100
Munis Org Name/Number: PTW Admin/1004150
Munis Object Name/Number: Remodel & Replacement/572500

ATTACHMENTS:
Contract
Proposal(s)
Procurement Documents (SPA)
Certificate of Insurance
Business License
Summary of Contracts
Procurement Checklist

Reviewed by:
Halona Crowe
Halona Crowe
Business Operations Manager

Item#_____
Munis Contract#3203866

CITY OF SANTA FE

CONSTRUCTION CONTRACT

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

RECITALS

WHEREAS, the City, through its Governing Body, is authorized to enter into a construction Contract for the project; and

WHEREAS, the City has let this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount let; and

WHEREAS, construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of _____, 2022.

The CITY and the CONTRACTOR agree:

1. **Scope of Work.**

A. The Contractor shall perform the following work and as described in Exhibit "A" attached hereto and incorporated herein:

Trash and recycle can installations and modifications at Las Acequias Park, SWAN Park, and Franklin Miles Park. The Contractor will also deliver materials for future modifications to the receptacles at Ragle Park.

The Contractor shall be responsible for verifications of all conditions, measurements, and dimensions for bidding.

The Contractor shall be responsible for all permits, fees, and State inspections associated with the construction.

2. **Compensation.**

A. The City shall pay to the Contractor in full payment for services satisfactorily performed, with such compensation not to exceed ($182,639.62), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the City to the Contractor, as follows:

The Unit Bid Contract Total is determined as follows:

Base Bid (OR BID ALTERNATE A)	$182,639.62
Gross Receipts Tax (8.3125%)	$15,181.92
Base Bid plus NMGRT	$197,821.54

The total amount payable to the Contractor under this Agreement, including Alternates (if needed) gross receipts tax and expenses, shall not exceed $197,821.54. **This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than thirty 30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30, 2023** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). The City reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of four (4) years in accordance with NMSA 1978, §§ 13-1-150 through 152.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole

liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

B. Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. Appropriations.

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

6. Status of Contractor.

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

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

A. When a construction contract is awarded in excess of twenty-five thousand dollars ($25,000), the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's bid shall be rejected, its bid security shall be enforced to the extent of actual damages. Award of the contract shall be made pursuant to the Procurement Code in the following manner:

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

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

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

8. **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.

9. **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.

10. **Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

11. **Confidentiality.**

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

12. **Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become

the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of Cityship by or on behalf of the Contractor.

13. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

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

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

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

14. Amendment.

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

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

15. Change Orders.

A. Changes. The Contractor may only make changes or revisions within the Scope of Work as defined by Article 1 and/or Exhibit 1 after receipt of written approval by the City Manager or his/her designee. Such change may only be made to Tasks or Sub-Task as defined in the Scope of Work. Under no circumstance shall such change affect the:

1) Deliverable requirements, as outlined in the Scope of Work;

2) Due date of any Deliverable, as outlined in the Scope of Work;
3) Compensation of any Deliverable, as outlined in the Scope of Work;
4) Agreement compensation, as outlined in Article 2; or
5) Agreement termination, as outlined in Article 4.

B. Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:

1) The Project Manager shall draft a written Change Request for review and approval by the City Manager to include:
(a) the name of the person requesting the change;
(b) a summary of the required change;
(c) the start date for the change;
(d) the reason and necessity for change;
(e) the elements to be altered; and
(f) the impact of the change.

2. The City Manager shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the City Manager are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

16. 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.

17. 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.

18. Equal Opportunity Compliance.

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

19. **Applicable Law.**

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

20. **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.

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

22. **Other Insurance**

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

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

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

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

D. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically

state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

23. Records and Financial Audit.

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

24. Indemnification.

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

25. New Mexico Tort Claims Act

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

26. Invalid Term or Condition.

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

27. Enforcement of Agreement.

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

28. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified,

return receipt requested, postage prepaid, as follows:

To the City: Melissa A. McDonald, Parks and Open Space Division Director
PO Box 909
Santa Fe, NM 87504-0909

To the Contractor: Andrea Neal
Exerplay, Inc.
PO Box 1160, Cedar Crest, NM 87008

29. 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.

30. Progress Payments.

Based upon Application for Payment submitted to the City by the Contractor and Certificates for Payment issued by the City, the City shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the City; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract sum, less such amounts as the City shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

31. Liquidated Damages.

Should the Contractor neglect, refuse, or otherwise fail to complete the work within the Contract Time for Physical Completion or any extension in the Contract thereof, the Contractor agrees to pay the City the amount specified in section 108.8 Liquidated Damages in the 2014 Edition (NMDOT SSHBC), per consecutive calendar day that passes until Physical Completion and acceptance or until voided pursuant to the provisions of the General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

32. Final Payment.

Final payment, constituting the entire unpaid balance of the Contract sum, unless it is a disputed payment, shall be paid by the City to the Contractor within twenty-one (21) calendar days, after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion

have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the City. In addition, the Contractor shall provide to the City a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

33. Schedule.

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit a progress schedule covering project operations for the 30 day Contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor, and are part of their Contract.

34. General and Special Provisions

A. Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

B. An enumeration of the Contractor's General Comprehensive Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts, which the City could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.

C. This Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Agreement.

D. The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration and the State Auditor. 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 illegal payments.

E. The Contractor warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.

F. The Contractor hereby warrants that the Contractor complies with the Americans with Disabilities Act, 29 CFR 1630.

G. Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and

construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

H. Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

I. Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

J. Separability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

K. Interchangeable Terms. For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

L. Words and Phrases. Words, phrases, and abbreviations, which have well-known technical or trade meanings used in the Contract documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.

M. Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.

N. Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

O. Pursuant to Section 13-4-11. NMSA 1978, Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

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

CITY OF SANTA FE:

ALAN WEBBER, CITY MAYOR

DATE:

CONTRACTOR:
EXERPLAY, INC.

NAME Sarah Love

Contract Administrator
TITLE

DATE: 01/20/2023
CRS# 02159406006

Registration #

ATTEST:

KRISTINE BUSTOS MIHELCIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jan 13, 2023 10:16 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

EMILY OSTER, FINANCE DIRECTOR
Org. Name/Org# 1001450/572500 AH

PO Box 1160
Cedar Crest NM 87008-1160
Fax 505. 281.0155
Toll Free 800.457.5444
www.exerplay.com

DATE	NUMBER
1/10/2023	ST011023-2

QUOTATION prepared for:

City of Santa Fe
Parks Department

Please Issue Purchase Order to:

Exerplay, Inc
PO Box 1160, Cedar Crest, NM 87008
fax to 505-281-0155 or
email to: Susanne@exerplay.com

ITEM	DESCRIPTION	QTY	COST	TOTAL
Project	SITE FURNISHINGS AND INSTALLATION			
49-32	32-Gallon Plastic Replacement Liner	69	42.00	2,898.00T
Dumor	CVR-30-RC-0017 • 25 3/8" Steel Flat Cover, 10" Hole, Decal	69	175.00	12,075.00T
84-32	32-Gallon All-Steel Receptacle	63	1,133.00	71,379.00T
DuMor	CVR-30-RC-0075 • 25 3/8" Steel Flat Cover, 4" Hole, Decal	63	91.00	5,733.00T
	Sub-Total			92,085.00
NM DISC	NM State Contract Discount for PA# 90-000-19-00062		-5.00%	-4,604.25
Freight	Freight/shipping charges (753-138635-22C) -NOTE- Order Lift Gate on Truck	1	18,264.00	18,264.00T
	INSTALLATION • SWAN PARK •			
Demolition	Remove (13) Existing Trash Receptacles and Transport to Park Department Siler Road location	1	6,484.00	6,484.00T
Install	Transport New Receptacles From Parks Department Siler Road Location and Install in Park. (7) Trash Receptacles, (7) Recycling Receptacles, and (7) New Liners/Lids.	1	8,857.00	8,857.00T
Install	Purchase & Deliver (4) Precast Concrete Bases	1	1,403.00	1,403.00T
	• LAS ACEQUIAS PARK •			
Demolition	Remove (16) Existing Trash Receptacles and Transport to Parks Department Siler Road location	1	8,857.00	8,857.00T
Install	Transport New Receptacles From Parks Department Siler Road Location and Install in Park. (5)Trash Receptacles, (9) Recycling Receptacles, and (11) New Liners/Lids	1	8,857.00	8,857.00T
	• FRANKLIN MILES PARK •			
Demolition	Remove (25) Existing Trash Receptacles and Transport to Parks Department Siler Road Location	1	11,123.00	11,123.00T
Install	Transport New Receptacles From Parks Department Siler Road Location and Install in Park (11) Trash Receptacles, (18) Recycling Receptacles, and (16) New Liners/Lids	1	17,924.00	17,924.00T
Install	Purchase & Deliver (4) Precast Concrete Bases	1	1,077.00	1,077.00T
	-NOTE- Price EXCLUDES Offloading Deliveries of All New Receptacles, Replacement Lids and Liners at Siler Road Location, Disposal of Old Receptacles & Inserts			

• CONTINUE ON PAGE 2 •

REP
AN

Quote prepared by Susanne Turner
Susanne@exerplay.com

TOTAL

PO Box 1160
Cedar Crest NM 87008-1160
Fax 505. 281.0155
Toll Free 800.457.5444
www.exerplay.com

DATE	NUMBER
1/10/2023	ST011023-2

QUOTATION prepared for:

City of Santa Fe
Parks Department

Please Issue Purchase Order to:

Exerplay, Inc
PO Box 1160, Cedar Crest, NM 87008
fax to 505-281-0155 or
email to: Susanne@exerplay.com

ITEM	DESCRIPTION	QTY	COST	TOTAL
	• RAGLE PARK •			
Concrete	Purchase & Deliver (20) Precast Concrete Bases -NOTE- Price EXCLUDES Demo and Installation at This Site -NOTE- Trash Will be Emptied by the City Prior to Handling or Removal of Receptacles. All Installation Prices Include NM Wage Rates.	1	5,642.00	5,642.00T
Bond	Performance/Payment Bond	1	6,670.87	6,670.87T
Msg I	Pricing is for the above listed material and installation only and does not include offloading of material at the time of delivery, storage, security, site preparation, fencing, or permitting. Any necessary permits or special inspections are the responsibility of the End Owner. - NOTE - ExerPlay reserves the right to revise pricing if any portion of this quote is changed or removed and may result in a delay in ordering materials for this project.			
Terms	Billing and Payment Terms: Unless otherwise negotiated and agreed upon, ExerPlay's billing terms are Net 30 from the date of the invoice, with approved credit. ExerPlay's process is to bill the customer when their equipment ships. Installation is billed upon completion. Bonds are billed when ordered.			
AN	For more information please contact Andrea Neal at 505.999.8031, or andrea@exerplay.com - PRICING IS GOOD FOR 14 DAYS -			
	NMGRT - Santa Fe (01-123)		8.3125%	15,181.92

REP
AN

Quote prepared by Susanne Turner
Susanne@exerplay.com

TOTAL $197,821.54

DocuSign Envelope ID: 9B19054B-3A13-4986-88B7-8511E80F3C15

State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
5 Vendors

Number: **90-000-19-00062**

Amendment No.: **Three**

Term: **October 10, 2019 – October 9, 2023**

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

Invoice:
As requested.

Procurement Specialist: **Kimberly A Hunt-Brown**

Telephone No.: **505-490-3152** KAHB

Email: Kimberly.Hunt-Brown@state.nm.us

Title: **Park Site Furnishings**

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 October 10, 2022, to October 9, 2023, at the same price, terms and conditions for Vendors (AA) Champlin Tire Recycling, Inc.; (AB) Exerplay, Inc.; (AD) RJ Thomas Manufacturing Company, Inc.; and (AF) SiteScapes, Inc.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended for Vendor (AE) School Equipment Inc., from October 10, 2022, to October 9, 2023, at the same terms and conditions but with a discount rate reduction effective immediately as shown on the following page.

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 Pauk

Date: 8/5/2022

Mark Hayden, New Mexico State Purchasing Agent

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

JDL

DocuSign Envelope ID: 9B19054B-3A13-4986-88B7-8511E80F3C15

Discount Reduction for Vendor (AE) School Equipment Inc.

Item #	Description of Item	Current Discount	New Discount
001	Park Site Furnishings	12%	5%
004	Replacement Parts	12%	5%

Awarded Vendors:

(AA) 0000142884
Champlin Tire Recycling, Inc
PO Box 445
301 Cedar
Concordia, KS 66901
785-243-3345
ctri@nckcn.com

Delivery: Commercial carriers 3 to 4 week lead time ARO

(AB) 0000050184
Exerplay, Inc
PO Box 1160
Cedar Crest, NM 87008
505-281-0151
info@exerplay.com

Delivery: 3-8 weeks, varies by manufacturer

(AC) 0000105636
Jamestown Advanced Products, Corp.
2855 Girts Rd.
Jamestown, NY 14701
800-452-0639
shallenbeck@jamestownadvanced.com

Delivery: 30-45 days ARO

(AD) 0000015218
R.J. Thomas Mfg. Co. Inc.
PO Box 946
Cherokee, IA 51012-0946
800-762-5002
pilotrock@rjthomas.com

Delivery: (14-45) days ARO to ship date. Delivery time varies with different products and with quantity per order. Our Customer Service Dept. can quote the delivery time to the customer based on desired products and quantities.

(AE) 0000047972
School Equipment, Inc.
7800 Phoenix Ave. NE
Albuquerque, NM 87110
505-888-5959
support@seinm.com

Delivery: 3-4 weeks ARO

(AF) 0000142903
SiteScapes, Inc.
PO Box 22326
Lincoln, NE 68542
531-333-0140
britny@sitescapesonline.com

Delivery: Production lead times are 55-70 days. Expect 4-5 days Delivery Transit. Lead times may increase due to high volume orders.

Item	Approx. Qty.	Unit	Article and Description	Unit Price
001		%	Discount offered on all Park Site Furnishings i.e. tables, benches, bike racks, waste receptacles, etc. Price Basis: List price less discount. Please provide discount. Manufacturer: _____ Bidder is required to indicate type of furnishing, i.e. vinyl coated, steel furnishing etc. Furnishing type: _____	
			(AA) Manufacturer: **Champlin Tire Recycling, Inc** Furnishing type: **Park Benches & Picnic Tables made from recycled rubber & recycled plastic**	**0%**
			(AB) Manufacturer: **Anova Furnishings, Dog on it, Dumor, Kay Park, Landscape Structures, Inc, Superior Recreation (SII)** Furnishing type: **Site furnishings to include but not limited to: Vinyl Coated, Powder Coated, Recycled Plastic, Wood and Steel Furnishings** Manufacturer: **Dero, SportWorks** Furnishing type: **Bike Rack** Manufacturer: **Gared Sports, PW Atletic** Furnishing type: **Misc. Seating i.e. player benches etc** Manufacturer: **Bravado, Most Dependable Fountain (MDF)** Furnishing type: **N/A**	**5%** **5%** **5%** **N/A**
			(AC) Manufacturer: **Jamestown Advanced Products, Corp.** Furnishing type: **Picnic Tables, Benches, Dog Park Equipment, Charcoal Grills & Fire Rings, RV Power Outlets, Bike Racks, Trash & Recycling Receptacles, Food Storage Lockers, Steel Furnishings - thermoplastic, powder coat & galvanized finishes available**	**10%**
			(AD) Manufacturer: **R.J. Thomas Mfg.Co./Pilot Rock brand** Furnishing type: **Steel benches & picnic tables w/ wood/plastic/coated steel or aluminum seats/tops, recycled plastic benches & tables, trash receptacles of steel/wood/or plastic, steel grills and campfire rings and bike racks.**	**20.0% Discount off current price list.**
			(AE) Manufacturer: **MyTCoat** Furnishing type: **proprietary coated and premium polyethylene coated steel furniture**	**12%**
			(AF) Benches, Trash Receptacles, Tables, Bike Racks, Planters Manufacturer: **SiteScapes, Inc.** Furnishing type: **Steel Furnishings**	**20%**

Item	Approx. Qty.	Unit	Article and Description	Unit Price
002		%	Discount offered on all pre-cast Park Site Furnishings to include special architectural designs by the manufacturer i.e. concrete tables, benches, and waste receptacle, etc. Pre-cast concrete, cast-stone, glass fiber reinforced concrete and glascrete, acceptable. Price Basis: List price less discount. Please provide discount. Manufacturer : _____	
			(AB) Manufacturer: **Kay Park, Landscape Structures, Bravado**	**5%**
003		%	Discount offered on all park drinking fountains, park hydrants, and pet waste disposal system to include special architectural designs by the manufacturer. Price Basis: List price less discount. Please provide discount. Manufacturer : _____	
			(AB) Manufacturer: **Dog on it, Kay Park, Most Dependable Fountains (MDF)**	**5%**
			(AC) Jamestown Advanced Products, Corp. **Offer Pet Waste Stations Only**	**10%**
004		%	Discount offered off vendor's most current catalog price list for replacement parts & related accessories for items 001-003 Price Basis: List price less discount. Please provide discount. Manufacturer: _____	
			(AB) Manufacturer: **Anova Furnishings, Dero, Dog on it, Dumor, Gared Sports, , Kay Park, Landscape Structures, PW Athletics, Superior Recreation (SII), SportWorks, Bravado, Most Dependable Fountains (MDF)** **No price list available, part prices are provided by Manufacturer as requested.**	**5%**
			(AD) Manufacturer: **R.J. Thomas Mfg.Co. /Pilot Rock brand**	**20.0% Discount off current price list.**
			(AE) Manufacturer: **MyTCoat**	**12%**
			(AF) Manufacturer: **SiteScapes, Inc.**	**20%**

Item	Approx. Qty.	Unit	Article and Description	Unit Price
005			Website Address for Price List: _____	
			(AC) www.JamestownAdvanced.com & Upon Request	
			(AD) https://www.pilotrock.com	
			(AE) www.mytcoat.com	
			(AF) https://sitescapesonline.com/	

***** 5 Items Total *****

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/31/2022

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 Daniels Insurance, Inc.-Albq. 320 Gold Avenue SW, Ste 700 Albuquerque NM 87102	CONTACT NAME: Ed Risley PHONE (A/C, No, Ext): (505) 766-9676 FAX (A/C, No): (505) 766-9679 E-MAIL ADDRESS: tspence@danielsinsuranceinc.com
INSURED (505) 281-0151 Exerplay, Inc PO Box 1160 Cedar Crest NM 87008	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A: Travelers Casualty Insurance C — 19046 INSURER B: Travelers Casualty and Surety — 19038 INSURER C: Great American E & S Insurance — 37532 INSURER D: INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER:** Cert ID 33920 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
C	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [ ] OCCUR [X] GEN'L AGGREGATE LIMIT APPLIES PER: POLICY [X] PRO-JECT [ ] LOC OTHER:			PL225986404	04/15/2022	04/15/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG Empl Benefits Liab	$ 1,000,000 $ 500,000 $ 20,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $ 1,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY			BA-9L093946-22-42-G	04/15/2022	04/15/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
C	UMBRELLA LIAB [X] OCCUR X EXCESS LIAB [ ] CLAIMS-MADE DED [ ] RETENTION $			XS225986504	04/15/2022	04/15/2023	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000 $
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [ ] N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			UB-8K006500-22-42-G	04/15/2022	04/15/2023	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
								$ $

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

General and Auto liability policies contain a Blanket Additional Insured provision that establishes the scope of Additional Insured coverage granted to the Certificate Holder. Where permitted by state law, and per a Blanket Waiver of Subrogation Endorsement, the Insurer waives its right to subrogate against the Certificate Holder by reason of payments made under the General and Auto liability and Workers' Compensation policies but only under the circumstances stated in the policies. General Liability policy contains a Blanket Additional Insured-Including Completed Operations provision that establishes the scope of Additional Insured coverage granted to the Certificate Holder. Policies contain a 30 Day Notice of Cancellation 10 days for non-payment of premium provision that establishes the scope of Notice granted to the Certificate Holder. General

CERTIFICATE HOLDER

City of Santa Fe

2651 W. Siringo Rd. Building E
PO Box 909
Santa Fe NM 87504

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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DESCRIPTION OF OPERATIONS SECTION CONTINUED

DATE
03/31/2022

CERTIFICATE HOLDER:	INSURED:
City of Santa Fe 2651 W. Siringo Rd. Building E PO Box 909 Santa Fe NM 87504	Exerplay, Inc PO Box 1160 Cedar Crest NM 87008

DESCRIPTION OF OPERATIONS CONTINUED:

Liability policy will pay for a covered loss on a primary basis and the Company will not seek contribution from the Certificate Holder for such loss until the Company's primary limits of liability have been exhausted when required by written contract. Umbrella/Excess Liability follows form.Project: Ragle Park, 2530 West Zia St., Santa Fe, NM 87505
The City of Santa Fe, their officials, officers, employees, and agents are included as certificate holder.

DOC (10/2003)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO COVERAGE PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

A. BLANKET ADDITIONAL INSURED

B. EMPLOYEE HIRED AUTO

C. EMPLOYEES AS INSURED

D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

E. TRAILERS – INCREASED LOAD CAPACITY

F. HIRED AUTO PHYSICAL DAMAGE

G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT

I. WAIVER OF DEDUCTIBLE – GLASS

J. PERSONAL PROPERTY

K. AIRBAGS

L. AUTO LOAN LEASE GAP

M. BLANKET WAIVER OF SUBROGATION

A. BLANKET ADDITIONAL INSURED

The following is added to Paragraph **A.1.**, **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

B. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph **A.1.**, **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

   An "employee" of yours is an "insured" while operating a covered "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph **b.** in **B.5.**, **Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

   b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

   (1) Any covered "auto" you lease, hire, rent or borrow; and

   (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

   However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

C. EMPLOYEES AS INSURED

The following is added to Paragraph **A.1.**, **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

© 2015 The Travelers Indemnity Company. All rights reserved.
Includes copyrighted material of Insurance Services Office, Inc. with its permission.

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph **A.2.a.(2)** of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

   (2) Up to $3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph **A.2.a.(4)** of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

   (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

E. TRAILERS – INCREASED LOAD CAPACITY

The following replaces Paragraph **C.1.** of **SECTION I – COVERED AUTOS**:

1. "Trailers" with a load capacity of 3,000 pounds or less designed primarily for travel on public roads.

F. HIRED AUTO PHYSICAL DAMAGE

The following is added to Paragraph **A.4., Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Hired Auto Physical Damage Coverage

If hired "autos" are covered "autos" for Covered Autos Liability Coverage but not covered "autos" for Physical Damage Coverage, and this policy also provides Physical Damage Coverage for an owned "auto", then the Physical Damage Coverage is extended to "autos" that you hire, rent or borrow subject to the following:

(1) The most we will pay for "loss" to any one "auto" that you hire, rent or borrow is the lesser of:

(a) $50,000;

(b) The actual cash value of the damaged or stolen property as of the time of the "loss"; or

(c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

(2) An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".

(3) If a repair or replacement results in better than like kind or quality, we will not pay for the amount of betterment.

(4) A deductible equal to the highest Physical Damage deductible applicable to any owned covered "auto".

(5) This Coverage Extension does not apply to:

(a) Any "auto" that is hired, rented or borrowed with a driver; or

(b) Any "auto" that is hired, rented or borrowed from your "employee".

G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph **A.4.a., Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to $50 per day to a maximum of $1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT

Paragraph **C.1.b.** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted.

I. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph **D., Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

J. PERSONAL PROPERTY

The following is added to Paragraph **A.4., Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Personal Property Coverage

We will pay up to $400 for "loss" to wearing apparel and other personal property which is:

(1) Owned by an "insured"; and

(2) In or on your covered "auto".

This coverage only applies in the event of a total theft of your covered "auto".

No deductibles apply to Personal Property coverage.

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K. AIRBAGS

The following is added to Paragraph **B.3., Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;

b. The airbags are not covered under any warranty; and

c. The airbags were not intentionally inflated.

We will pay up to a maximum of $1,000 for any one "loss".

L. AUTO LOAN LEASE GAP

The following is added to Paragraph **A.4., Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Auto Loan Lease Gap Coverage for Private Passenger Type Vehicles

In the event of a total "loss" to a covered "auto" of the private passenger type shown in the Schedule or Declarations for which Physical Damage Coverage is provided, we will pay any unpaid amount due on the lease or loan for such covered "auto" less the following:

(1) The amount paid under the Physical Damage Coverage Section of the policy for that "auto"; and

(2) Any:

(a) Overdue lease or loan payments at the time of the "loss";

(b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;

(c) Security deposits not returned by the lessor;

(d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and

(e) Carry-over balances from previous loans or leases.

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph **A.5., Transfer Of Rights Of Recovery Against Others To Us,** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

PROVISIONS

1. The following is added to Paragraph **A.1.c., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

   This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

   Regardless of the provisions of paragraph a. and paragraph **d.** of this part **5. Other Insurance,** this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO DESIGNATED ENTITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE FORM
EXCESS LIABILITY COVERAGE FORM
COMMERCIAL UMBRELLA LIABILITY COVERAGE FORM
PROFESSIONAL LIABILITY COVERAGE FORM

Schedule

Name of Entity and Address:
As required by Written Contract Signed by Both Parties Prior to Loss. The retail agent is responsible for maintaining the list of certificate holders.

Number of Days Notice of Cancellation: 30

A. If we cancel this Policy for any reason other than for nonpayment of premium we will mail or deliver notice of the cancellation to the entity named in the above schedule at the address shown for that entity in the above schedule.

B. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

C. If notice is mailed, proof of mailing will be sufficient proof of notice.

ESG 3206 (Ed. 01/16)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIALTY PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. For complete details on specific coverages, consult the Policy wording.

Coverage	Limit of Insurance	Page
Non-Owned Aircraft	Included	2
Non-Owned Watercraft	Included	2
Medical Payments Increased Limits	$20,000	3
Who Is An Insured: Broadened Named Insured	Included	3
Who Is An Insured: Fellow Employee	Included	3
Who Is An Insured: Newly Formed or Acquired Organizations	Included	4
Knowledge of Occurrence, Claim or Suit	Included	4
Unintentional Errors Or Omissions	Included	4
Personal & Advertising Injury Amendment of Discrimination or Humiliation	Included	4
Incidental Malpractice Liability	Included	5
Additional Insured: Owners, Lessees, and Contractors	Included	5
Additional Insured: Vendors	Included	6
Primary and Non-Contributory Extension	Included	8
Damage to Premises Rented to You (Fire, Lightning, and "Explosion")	$500,000	8
Waiver of Subrogation	Included	9
Property Damage - Elevators	Included	9

Coverage	Limit of Insurance	Page
Contractual Liability for Railroad Exposures	Included	10
Supplementary Payments: Bail Bonds	$2,500	10
Supplementary Payments: Loss of Earnings	$500	10
Amended Bodily Injury Definition	Included	10

A. Non-Owned Aircraft

Under paragraph **2. Exclusions** of **SECTION I - COVERAGES - Coverage A - Bodily Injury and Property Damage Liability**, exclusion **g. Aircraft, Auto or Watercraft** does not apply to an aircraft provided:

1. it is not owned by any insured;
2. it is hired, chartered or loaned with a trained paid crew;
3. the pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating him or her a commercial or airline pilot; and
4. it is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the Insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this Policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. Non-Owned Watercraft

Under paragraph **2. Exclusions** of **SECTION I - COVERAGES - Coverage A - Bodily Injury and Property Damage Liability**, subparagraph **(2)** of exclusion **g. Aircraft, Auto or Watercraft** is replaced by the following:

This exclusion does not apply to:

(2) A watercraft you do not own that is:

(a) less than 55 feet long; and

(b) not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply to watercraft 27 to 55 feet long if there is available to the Insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this Policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

C. Medical Payments Increased Limits

Unless **Coverage C - Medical Payments,** or the Product-Completed Operations Hazard has been excluded from this Policy, the following applies:

Under paragraph **2. Exclusions** of **SECTION I - COVERAGES, Coverage C - Medical Payments,** exclusion **f. Products-Completed Operations Hazard** is replaced by the following:

f. Product-Completed Operations Hazard

Included within the "products-completed operations hazard."

However, this exclusion does not apply to expenses for dental services.

The Medical Expense Limit in paragraph **7.** of **SECTION III - LIMITS OF INSURANCE** is replaced by the following Medical Expense Limit:

The Medical Expense Limit provided by this Policy shall be the greater of:

a. $20,000; or

b. the amount shown in the Declarations for Medical Expense Limit

This provision **7.** is subject to all the terms of **SECTION III - LIMITS OF INSURANCE**

D. Who Is An Insured: Broadened Named Insured

Under **SECTION II - WHO IS AN INSURED**, the following item **2.e.** is added:

e. Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of voting stock on the effective date of this Coverage Part. The insurance afforded herein for any subsidiary not named in this Coverage Part as a Named Insured does not apply to injury or damage with respect to which an insured under this Coverage Part is also an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its Limits of Insurance.

E. Who Is An Insured: Fellow Employee

1. The following is added to paragraph **2.a.(1)** of **SECTION II - WHO IS AN INSURED**

Paragraph **(a)** and **(b)** above do not apply to "bodily injury" or "personal and advertising injury" caused by a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business. However, none of these co-"employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury," caused in whole or in part by their intoxication by liquor or controlled substances.

Paragraph **(a)** and **(b)** above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, including the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury," caused in whole or in part by their intoxication by liquor or controlled substances.

This coverage is excess over any other valid and collectible insurance available to your "employee" or "volunteer worker."

F. Who Is An Insured: Newly Formed or Acquired Organizations

Paragraph **3.** of **SECTION II - WHO IS AN INSURED** is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. coverage under this provision is afforded only until the next occurring annual anniversary of the beginning of the policy period shown in the Declarations, or the end of the policy period, whichever is earlier; and

b. coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization; and

d. records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

G. Knowledge of Occurrence, Claim or Suit

Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, the following is added to Condition **2. Duties in the Event of Occurrence, Offense, Claim or Suit:**

Knowledge of any "occurrence", claim, or "suit" by any agent, servant or "employee" of the Named Insured does not in itself constitute knowledge by the Insured unless notice of such "occurrence", claim or "suit" shall have been received by:

a. you, if you are an individual;

b. a partner, if you are a partnership; or

c. an executive officer or insurance manager, if you are a corporation.

H. Unintentional Errors or Omissions

Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, the following is added to Condition **6. Representations:**

If you unintentionally fail to disclose any hazards existing at the inception date of this Policy, we will not deny coverage under this Coverage Form because of such failure.

However, this does not affect our right to collect additional premium, exercise our right of cancellation or non-renewal, or enforce other legal rights based upon a material misrepresentation in response to a specific question in the application for this Policy.

I. Personal and Advertising Injury Amendment of Discrimination or Humiliation

Unless **Coverage B - Personal and Advertising Injury Liability** is excluded from this Policy or does not apply, the following applies:

Under **SECTION V - DEFINITIONS**, paragraph **14. Personal and Advertising Injury**, subparagraph **h.** is added:

h. discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:

(1) not done intentionally by or at the direction of;

(a) an insured; or

(b) any "executive officer," director, stockholder, partner or member of the Insured; and

(2) not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.

J. Incidental Malpractice Liability

1. **SECTION II - WHO IS AN INSURED** is amended by deleting item **2.a.(1)(d)** in its entirety and replacing it with the following:

(d) Arising out of his or her providing or failing to provide professional health care services. However, this exclusion does not apply to nurses, emergency medical technicians or paramedics who are employed by you to provide medical or paramedical services.

2. Under **SECTION V - DEFINITIONS**, paragraph **3. Bodily Injury** is replaced by the following:

3. **"Bodily injury"** means injury, sickness, disease or "incidental medical malpractice" sustained by a person, including death of a person. "Bodily injury" also means mental anguish, mental injury, or shock if directly resulting from physical injury, sickness, or disease to that person.

3. The following is added to **SECTION V - DEFINITIONS**:

"Incidental medical malpractice" means "bodily injury" arising out of the negligent rendering or failure to render medical or paramedical services to persons by any physician, dentist, nurse, emergency medical technician or paramedic who is employed by you to provide such services provided you are not engaged in the business or occupation of providing any services referred to in this definition.

K. Additional Insured

1. **Owners, Lessees, or Contractors**

a. **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured:

(1) Any person or organization, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

(a.) premises or equipment you own, rent, lease or occupy; or

(b.) your acts or omissions; or

(c.) the acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional insured.

However;

(a.) the insurance afforded to such additional insured only applies to the extent permitted by law; and

(b.) if coverage provided to the Additional Insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

(1) This insurance does not apply to "bodily injury" or "property damage" occurring after:

(a.) all work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured at the location of the covered operations has been completed; or

(b.) that portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project.

(2) The insurance provided to any additional insured does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including:

(a.) The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; or

(b.) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that Insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering or the failure to render any professional services by or for you.

c. With respect to the insurance afforded to these Additional Insureds, the following is added to **SECTION III - LIMITS OF INSURANCE:**

If coverage provided to the Additional Insured is required by a contract or agreement, the most we will pay on behalf of the Additional Insured is the amount of insurance:

(1) Required by the contract or agreement; or

(2) Available under the applicable Limits of Insurance shown in the Declarations;

Whichever is less.

2. Vendors

a. SECTION II - WHO IS AN INSURED, is amended to include as an additional insured:

(1.) Any person or organization (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

However:

(a.) the insurance afforded to such vendor only applies to the extent permitted by law; and

(b.) if coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.

b. With respect to the insurance afforded to these vendors, the following additional exclusions apply:

(1.) The insurance afforded the vendor does not apply to:

(a.) "bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b.) any express warranty unauthorized by you;

(c.) any physical or chemical change in the product made intentionally by the vendor;

(d.) repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e.) any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f.) demonstration, installation, servicing or repair operations, except such operations performed by the vendor in full compliance with the manufacturer's written instructions at the vendor's premises in connection with the sale of the product;

(g.) products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor;

(h.) "bodily injury" or "property damage" arising out of the sole negligence of the vendors for its own acts or omission of those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) the exceptions contained in subparagraphs **(d.)** or **(f.)**; or

(ii) such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2.) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

c. With respect to the insurance afforded to these vendors, the following is added to **SECTION III - LIMITS OF INSURANCE:**

If coverage provided to the vendor is required by a contract or agreement, the most we will pay on behalf of the vendor is the most amount of insurance:

(1.) Required by the contract or agreement; or

(2.) Available under the applicable Limits of Insurance shown in the Declarations;

Whichever is less.

3. Primary and Non-Contributory Extension

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this Policy.

Condition **4. Other Insurance** of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

a. The following is added to paragraph **a. Primary Insurance:**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1.) The Additional Insured is a Named Insured under such other insurance; and

(2.) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

b. The following is added to paragraph **b. Excess Insurance:**

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an Additional Insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the Additional Insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an Additional Insured on other policies.

L. Damage to Premises Rented to You

If Damage to Premises Rented to You is not otherwise excluded from this Coverage Part:

1. Under paragraph **2. Exclusions** of **SECTION I - COVERAGE A - Bodily Injury and Property Damage Liability:**

3. The last paragraph of paragraph **2. Exclusions** is deleted in its entirety and replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, or "explosion," to premises while rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in **SECTION III - LIMITS OF INSURANCE**.

2. Paragraph **6.** Under **SECTION III - LIMITS OF INSURANCE** is deleted in its entirety and replaced by the following:

6. Subject to paragraph **5.** Above, the most we will pay under **Coverage A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage caused by fire, lightning, or "explosion," while rented to you or temporarily

occupied by you with the permission of the owner, for all such damage caused by fire, lightning, or "explosion," proximately caused by the same event, whether such damage results from fire, lightning, or "explosion," or any combination of the three, is the higher of **$500,000** or the amount shown in the Declarations for the Damage to Premises Rented to You Limit.

3. Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS,** subsection **4. Other Insurance**, paragraph **b. Excess Insurance Item (ii) of the Occurrence Form** and **item (iii) of the Claims-Made Form** where the words, fire insurance, appear they are changed to, insurance for fire, lightning, or "explosion."

4. As regards coverage provided by this provision **L. Damage to Premises Rented to You**, **SECTION V - DEFINITIONS**, paragraph **9. Insured Contract**, subparagraph **a.** is replaced with the following:

   a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, or "explosion," to premises while rented to you or temporarily occupied by you with the permission of the owner is not an "insured contract."

5. As regards coverage provided by this provision **L. Damage to Premises Rented to You**, **SECTION V - DEFINITIONS** is amended by the addition of the following definition:

   "Explosion" means a sudden release of expanding pressure accompanied by a noise, a bursting forth of material and evidence of the scattering of debris to locations further than would have resulted by gravity alone.

   "Explosion" does not include any of the following:

   (a) artificially generated electrical current including electrical arcing, that disturbs electrical devices, appliances or wires;

   (b) rupture or bursting of water pipes;

   (c) explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control; or

   (d) rupture or bursting caused by centrifugal force.

M. Waiver of Subrogation

Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, subsection **8. Transfer or Rights of Recovery Against Others to Us**, the following paragraph is added:

b. If required by a written "insured contract" executed prior to the occurrence or offense, we waive our right of recovery we have against any person or organization named in such "insured contract," because of payments we make for injury or damage arising out of your ongoing operations or "your work" for that person or organization.

N. Property Damage - Elevators

1. Under paragraph **2. Exclusions** of **SECTION I - COVERAGE A - Bodily Injury and Property Damage Liability**, subparagraphs **(3)**, and **(4)** of exclusion **j. Damage to Property** do not apply if such "property damage" results from the use of elevators.

2. The following is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, Condition **4. Other Insurance**, paragraph **b. Excess Insurance**

   The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

O. Contractual Liability for Railroad Exposures

Under **SECTION V - DEFINITIONS**, paragraph **9. Insured Contract**, subparagraph **f.(1)**, is deleted in its entirety.

P. Supplementary Payments

1. In the **Supplementary Payments - Coverages A and B** provision, paragraph **1.b.** is replaced with:

   b. Up to **$2,500** for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. In the **Supplementary Payments - Coverages A and B** provision, paragraph **1.d.** is replaced by the following:

   d. All reasonable expenses incurred by the Insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to **$500** a day because of time off work.

Q. Amended Bodily Injury Definition

Under **SECTION V - DEFINITIONS**, definition **3. Bodily injury** is replaced by the following:

3. **"Bodily injury"** means bodily injury, sickness, or disease sustained by a person, including death of a person. "Bodily injury" also means mental anguish, mental injury, or shock, if directly resulting from physical injury, sickness, or disease to that person.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations:
Blanket as Required by Written Contract	All Locations, Any Locations, or Per Written Agreement/Contract The City of Las Cruces The City of El Paso The City of Wainwright
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION - PERMITS OR AUTHORIZATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:
Blanket as Required by Written Contract
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II - Who Is An Insured** is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

However:

a. The insurance afforded to such additional insured only applies to the extent permitted by law; and

b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

2. This insurance does not apply to:

a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or

b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

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This endorsement shall not increase the applicable limits of insurance.

© Insurance Services Office, Inc., 2018

TRAVELERS

ONE TOWER SQUARE
HARTFORD CT 06183

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 13 (00) - 001

POLICY NUMBER: UB-8K006500-22-42-G

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS WAIVER.
INCLUDING:
THE CITY OF EL PASO 300 N. CAMPBELL STREET, EL PASO, TX 79901

TRAVELERS

ONE TOWER SQUARE
HARTFORD CT 06183

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 42 03 04 (B) – 001

POLICY NUMBER: UB-8K006500-22-42-G

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

1. ☐ Specific Waiver

☒ Blanket Waiver
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.
INCLUDING: THE CITY OF EL PASO 300 N. CAMPBELL STREET, EL PASO, TX 79901

2. Operations:
ALL TEXAS OPERATIONS

3. Premium:
The premium charge for this endorsement shall be 2.00 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described..

4. Advance Premium: $ SEE SCHEDULE

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective | Policy No. | Endorsement No.
Insured | | Premium

Insurance Company | Countersigned by_____

DATE OF ISSUE: 02-25-22 ST ASSIGN:

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AES 3101
(Ed. 06 97)

EXCESS LIABILITY COVERAGE FORM

There are provisions in this policy that restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured. The words "we," "us" and "our" refer to the Company providing this insurance. The word Insured means any person or organization qualifying as such in the "first underlying insurance." Other words and phrases that appear in quotation marks have special meaning and can be found in the **Definitions** Section or the specific policy provision where they appear.

In consideration of the payment of the premium and in reliance upon the statements in the Declarations we agree with you to provide the coverage as follows:

INSURING AGREEMENT

I. Coverage

We will pay on behalf of the Insured the amount of "loss" covered by this insurance in excess of the "Underlying Limits of Insurance" shown in Item **5.** of the Declarations, subject to **Insuring Agreement** Section **II., Limits of Insurance.** Except for the terms, conditions, definitions and exclusions of this policy, the coverage provided by this policy will follow the "first underlying insurance."

II. Limits Of Insurance

A. The Limits of Insurance shown in the Declarations and the rules below describe the most we will pay under the terms of this insurance regardless of the number of:

1. Insureds;
2. claims made or suits brought;
3. persons or organizations making claims or bringing suits.

B. The Limits of Insurance of this policy will apply as follows:

1. This policy applies only in excess of the "Underlying Limits of Insurance" shown in Item **5.** of the Declarations.
2. The aggregate limit shown in Item **4.** of the Declarations is the most we will pay for all "loss" that is subject to an aggregate limit provided by the "first underlying insurance." The aggregate limit applies separately and in the same manner as the aggregate limits provided by the "first underlying insurance," provided that all "underlying insurance" applies their aggregate limit in the same manner as the "first underlying insurance."
3. Subject to **B.2.**, the occurrence limit stated in Item **4.** of the Declarations is the most we will pay for all "loss" arising out of any one occurrence to which this policy applies.
4. Subject to Paragraphs **B.2.** and **B.3.** above, if the "Underlying Limits of Insurance" described in Item **5.** of the Declarations are either reduced or exhausted solely by payment of "loss," such insurance provided by this policy will apply in excess of the reduced underlying limit or, if all underlying limits are exhausted, will apply as "underlying insurance" subject to the same terms, conditions, definitions and exclusions of the "first underlying insurance," except for the terms, conditions, definitions and exclusions of this policy.

City of Santa Fe

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

BUSINESS REGISTRATION

Business Name: EXERPLAY INC
DBA: EXERPLAY INC

Business Location: PO BOX 1160
cedar crest, NM 87008

Owner: EXERPLAY INC

License Number: 229673

Issued Date: April 19, 2022

Expiration Date: April 19, 2023

CRS Number: 02159406006

License Type: Business License - Renewable

Classification: Out of Jurisdiction Contractor - General

Fees Paid: $10.00

EXERPLAY INC
PO BOX 1160
CEDAR CREST, NM 87008

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

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **3203866**

Contractor: **Exerplay, Inc,**

Description: **Installation and modifications to trash and recycling cans at Las Acequias Park, SWAN Park and Franklin Miles Park. Contractor will also deliver materials for future modifications to receptacles at Ragle Park**

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

Term Start Date: **TBD** Term End Date: **6/30/2023**

[ ] 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:**

Purchasing Officer Review: Date: Feb 6, 2023

Comment & Exceptions: Procured via current SWPA.

4. **Funding Source:** **General Fund/100** **Org / Object:** **1001450/572500**

Andy Hopkins (Feb 6, 2023 09:57 MST)

Budget Officer Approval: Date: Feb 6, 2023

Comment & Exceptions: _____

Staff Contact who completed this form: **Skyler Nielsen** Phone # **505-460-6688**

Email: **smnielsen@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Exerplay, Inc.

Procurement Title: Trash/Recycle can upgrades at SWAN, Las Acequias and Franklin Miles Parks

Procurement Method: State Price Agreement [•] Cooperative [ ] Sole Source [ ] Other [ ]

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

Department Requesting Public Works Staff Name Skyler Nielsen

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:

Skyler Nielsen	Parks Operations Manager	1/25/2023
Department Rep Printed Name (attesting that all information included)	Title	Date
	Contracts Supervisor	Feb 6, 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.

Signature: Melissa McDonald

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

City of Santa Fe, New Mexico
Memorandum

DATE: **February 6, 2023**

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

VIA: **Halona Crowe, Public Works Business Operations Manager for** Halona Crowe
Regina Wheeler, Public Works Department Director

Sam Burnett, Facilities Division Director

FROM: **Caryn Grosse, PMP, Facilities Project Administrator Sr.**

ACTION:
Request for approval of Contract Amendment #2 with Associated Time Instruments extending the term, adding to the scope and increasing compensation by $76,118.25, excluding NMGRT, to a total amount of $1,576,118.25, excluding NMGRT, to install pedestrian door controls at Sandoval, Railyard and Convention Center parking garages (Caryn Grosse, clgrosse@santafenm.gov, 505-955-5938)

BACKGROUND AND SUMMARY:

Card reader door controls for after hours customer and staff access at Sandoval, Railyard and Convention Center parking garages are required to facilitate customers and security at these facilities. These card readers will allow customers and staff with parking tickets or passes to access the garage through the pedestrian doors after the garages are closed. This will serve customers that return to their vehicles late at night and will allow the garages to be secured to prevent vandalism and camping late at night. The gates and security doors open automatically when vehicles approach to exit the garage after it is closed. The readers will integrate with the existing Parking Access and Revenue Control System (PARCS).

The contract with ATI that is being amended is for the provision of equipment, installation and warranty maintenance of the PARCS system. ATI is knowledgeable about the system and will ensure installation and integration of the new equipment. The equipment is currently projected to have a 4-6 week lead time and installation is expected to take an additional 3-4 weeks. This amendment establishes a contract expiration date of October 18, 2023, to allow time for this work.

The pedestrian door controls will be funded out of the Parking Division
Total: $82,398.34 including NMGRT
Status: 0% Expended
To be used for purchase and installation of equipment.
Balance: $82,398.34

PROCUREMENT METHOD:
This is an amendment to an existing contract.

CONTRACT NUMBER:
The Munis contract number is 3202486.

FUNDING SOURCE:
Fund Name/Number: Parking/535
Munis Org Name/Number: Parking-Accounting/5350452
Munis Object Name/Number: Service Contracts/510310

ATTACHMENTS:
Contract Amendment #2 and Proposal
Summary of Contracts
Procurement Checklist
Business License
Certificate of Insurance
Contract Amendment #1 Packet, including Original Contract

Item# _____
Munis Contract# 3202486

CITY OF SANTA FE
AMENDMENT No. 2 TO
INFORMATION TECHNOLOGY AGREEMENT
ITEM# 19-0828

This AMENDMENT No. 2 (the "Amendment") amends the CITY OF SANTA FE INFORMATION TECHNOLOGY AGREEMENT, dated October 30, 2019 (the "Agreement"), between the City of Santa Fe (the "City") and Associated Time Instruments, (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:

WHEREAS, the City of Santa Fe entered into an agreement with Souder Corporation, d.b.a. Mountain Parking Equipment, dated October 18, 2019, which was subsequently assigned to Associated Time Instruments pursuant to AMENDMENT No. 1 to INFORMATION TECHNOLOGY AGREEMENT, dated March 10, 2021;

WHEREAS, the City of Santa Fe and Associated Time Instruments desire to amend the agreement as set forth below to include additional Scope of Work and Compensation, and to extend the Term;

NOW THEREFORE, pursuant to Article 23, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. SCOPE OF WORK.

Article 2 is amended to add the following services: Under the terms of the Agreement, Contractor has agreed to provide the City of Santa Fe with pedestrian door controls on two sets of

double doors at the Railyard Garage, three doors at Sandoval Garage and two doors at the Convention Center Garage, all located in downtown Santa Fe, NM, per the proposal dated December 16, 2022 (Exhibit B), attached hereto and incorporated herein by reference.

2. COMPENSATION.

Article 3, paragraph B of the Agreement is amended to increase the amount of compensation by a total of $76,118.25, excluding New Mexico gross receipts tax, so that Article 3, paragraph B reads as follows:

B. Payment. The total compensation under this Agreement shall not exceed ($1,576,118.25) excluding 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.
Payment for Implementation Services shall be made upon Acceptance of each Deliverable according to Article 4 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.

3. TERM:

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

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

end on October 18, 2023, in accordance with NMSA 1978, § 13-1-150 through 152.

4. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 to the Agreement as of the dates set forth below.

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

DATE:_____

CONTRACTOR: Associated Time Instruments

Brian Geiger
Brian Geiger (Jan 13, 2023 15:32 CST)

BRIAN GEIGER, HEAD OF BUSINESS OPERATIONS

DATE:_____

CRS# 03-537979-00-0
Registration # 228947

ATTEST:

KRISTINE BUSTOS MIHELCIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jan 17, 2023 08:29 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES

_____

EMILY OSTER, FINANCE DIRECTOR

535042/510310 AH
Org and Object



Pedestrian Access Doors

Quote # MK010224
Version 1

Prepared for:

City of Santa Fe

Leonard Romero
lxromero@santafenm.gov

Prepared by:

Associated Time Instruments - Houston

Michael Keeth
Michael.Keeth@associatedtime.com
https://www.associatedtime.com

Associated Time Instruments
TIBA GROUP

6699 Portwest Dr #160
Houston, TX. 77024
https://www.associatedtime.com
(713) 263-1366

Friday, December 16, 2022

City of Santa Fe
Leonard Romero
500 Market Street Suite 200
Santa Fe, NM 87501
lxromero@santafenm.gov

Dear Leonard,

This Proposal is to add pedestrian door controls to two sets of double doors at Railyard Garage, three doors at Sandoval Garage, and two doors at Convention Center Garage. Sandoval garage has existing card readers at two doors, but no electric lock hardware. All locations will require electrical conduit work, provided by our sub-contractor Alive Electric. Any new network cable runs will be provided by HEI per City of Santa Fe requirements.

Please do not hesitate to reach out with any questions, comments or concerns. We value your business and are here to help in any way.

Excludes:

- *Proper Door Hardware: working door handles, keys locks, door returns, door stops, etc.*
- *Any Electrical or data conduits outside of discussed scope*
- *Any cable pulls outside of discussed scope*
- *Fire alarm tie-in (provided by others, if needed)*
- *Fire inspection (provided by others, if needed)*

Michael Keeth

Michael Keeth
Account Representative
Associated Time Instruments - Houston

Associated Time Instruments
TIBA GROUP

6699 Portwest Dr #160
Houston, TX. 77024
https://www.associatedtime.com
(713) 263-1366

Railyard Garage

Description		Price	Qty	Ext. Price
	CT-20 Upgrade to MC-60 (Required)			
PM-MC6S-2001 	**[MC-60] Centralized PARCS Main Controller** [MC-60] Centralized PARCS Main Controller	$3,650.00	1	$3,650.00
	Pedestrian Door Card Readers and Lock Hardware			
PM-AU6S-2001 	**[AU-60] Entry or Exit Access Control Station - Includes 7" TFT Screen, HID Card Reader, VoIP Intercom with Speaker and Microphone, and Instructional Graphic Panel.**	$3,950.00	2	$7,900.00
IM-0206-1197 	**Zebra Scanner Kit for AU-60** Zebra scanner Kit for AU-60	$1,095.00	2	$2,190.00
0E-LZB12 	**W Box Mounting Bracket for 1,200lb. Magnetic Lock for In-Swinging Doors, Anodized Aluminum**	$99.98	4	$399.92
AC-1200D	**1200 LB Magnetic Lock for Double Door** 1200 LB Magnetic Lock for Double Door	$540.40	2	$1,080.80
DS-DS150I 	**Bosch Request To Exit Motion Sensor** Bosch Request To Exit Motion Sensor	$119.98	2	$239.96
	Sub-Contractor Scope			
Electrical 	**Data Conduit** • Railyard Gazebo: Rough-in and install conduit for access control, ¾“ EMT from the existing pay station to new access control card reader, ½” EMT from card reader to mag locks, including two core drills • Alcaldesa: Rough-in and install conduit for access control, ¾” EMT from the existing pay station to new access card reader, ½” EMT from the card reader to mag lock, including (2) core drills	$4,625.00	1	$4,625.00

Subtotal: $20,085.68

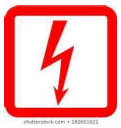
Sandoval Garage

Description		Price	Qty	Ext. Price
	CT-20 Upgrade to MC-60 (Required)			

Associated Time Instruments
TIBA GROUP

6699 Portwest Dr #160
Houston, TX. 77024
https://www.associatedtime.com
(713) 263-1366

Sandoval Garage

Description		Price	Qty	Ext. Price
PM-MC6S-2001 	**[MC-60] Centralized PARCS Main Controller** [MC-60] Centralized PARCS Main Controller	$3,650.00	1	$3,650.00
	Pedestrian Door Card Readers and Lock Hardware			
PM-AU6S-2001 	**[AU-60] Entry or Exit Access Control Station - Includes 7" TFT Screen, HID Card Reader, VoIP Intercom with Speaker and Microphone, and Instructional Graphic Panel.**	$3,950.00	1	$3,950.00
IM-0206-1197 	**Zebra Scanner Kit for AU-60** Zebra scanner Kit for AU-60	$1,095.00	1	$1,095.00
AC-1200S 	**1200LB Single Maglock** 1200LB Single Maglock	$268.32	2	$536.64
0E-LZB12 	**W Box Mounting Bracket for 1,200lb. Magnetic Lock for In-Swinging Doors, Anodized Aluminum**	$99.98	2	$199.96
DS-DS150I 	**Bosch Request To Exit Motion Sensor** Bosch Request To Exit Motion Sensor	$119.98	3	$359.94
HE-1500C630 	**HES 1500C-630 1500 Series Complete Pac Modular Uni** HES 1500C-630 1500 Series Complete Pac Modular Universal Electric Strike Kit	$473.82	1	$473.82
	Sub-Contractor Scope			
Electrical 	**Data Conduit** • Sandoval Garage (Water Street Entrance): Rough-in and install conduit for access control. Replace existing LB with single-gang bell box, ½" EMT from card reader to mag lock • Sandoval Garage (San Francisco Street): Rough-in and install conduit for access control, ¾" EMT from existing pay station to the new access control card reader on the steel gate, ½" EMT from the card reader to the maglock	$3,000.00	1	$3,000.00

Subtotal: $13,265.36

Associated Time Instruments
TIBA GROUP

6699 Portwest Dr #160
Houston, TX. 77024
https://www.associatedtime.com
(713) 263-1366

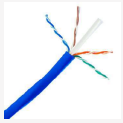
Convention Center Garage

Description		Price	Qty	Ext. Price
	CT-20 Upgrade to MC-60 (Required)			
PM-MC6S-2001 	**[MC-60] Centralized PARCS Main Controller** [MC-60] Centralized PARCS Main Controller	$3,650.00	1	$3,650.00
	Pedestrian Door Card Readers			
PM-AU6S-2001 	**[AU-60] Entry or Exit Access Control Station - Includes 7" TFT Screen, HID Card Reader, VoIP Intercom with Speaker and Microphone, and Instructional Graphic Panel.**	$3,950.00	2	$7,900.00
IM-0206-1197 	**Zebra Scanner Kit for AU-60** Zebra scanner Kit for AU-60	$1,095.00	2	$2,190.00
AC-1200S 	**1200LB Single Maglock** 1200LB Single Maglock	$268.32	2	$536.64
0E-LZB12 	**W Box Mounting Bracket for 1,200lb. Magnetic Lock for In-Swinging Doors, Anodized Aluminum**	$99.98	2	$199.96
DS-DS150I 	**Bosch Request To Exit Motion Sensor** Bosch Request To Exit Motion Sensor	$119.98	2	$239.96
TQ-TIM6024 	**TRENDnet TI-M6024 60W Single Output Industrial DIN** TRENDnet TI-M6024 60W Single Output Industrial DIN-Rail Power Supply for Equipment	$78.45	1	$78.45
	Sub-Contractor Scope			

Associated Time Instruments
TIBA GROUP

6699 Portwest Dr #160
Houston, TX. 77024
https://www.associatedtime.com
(713) 263-1366

Convention Center Garage

Description		Price	Qty	Ext. Price
Electrical 	**Data Conduit** • Convention Center (West Door): Rough-in and install conduit for access control from data room to west door (HEI to furnish and install Cat 6 cable to this location- excluded from our bid). Install ½" EMT from the card reader to maglock, ½" conduit for 120V to this location (to be fed from nearest circuit), and including two core drills • Convention Center (Stairwell #3): Rough-in and install conduit for access control on Stairwell #3, ¾" EMT from existing pay station to the new access control wall mount card reader, ½" EMT from the card reader to the maglock, including one core drill	$7,812.50	1	$7,812.50
Cable Pull 	**HEI cable pull - CAT6 to West Door**	$925.00	1	$925.00

Subtotal: $23,532.51

Misc

Description		Price	Qty	Ext. Price
Misc 	**Miscellaneous: anchors, connectors, bolts, wire, sealant, etc.**	$600.00	1	$600.00
SM-0801-1117	**TMS-SmartPark - TIBA Management Software license upgrade.** Upgrade to latest version from 2 major versions below" (e.g. 6.x to 8.x)	$5,135.00	1	$5,135.00

Subtotal: $5,735.00

Shipping

Description		Price	Qty	Ext. Price
Shipping 	**Shipping** Shipping	$1,600.00	1	$1,600.00

Subtotal: $1,600.00

Associated Time Instruments
TIBA GROUP

6699 Portwest Dr #160
Houston, TX. 77024
https://www.associatedtime.com
(713) 263-1366

Installation

Description		Price	Qty	Ext. Price
	Railyard Garage Installation			
Installation 	**Installation, configuration, testing**	$3,500.00	1	$3,500.00
Project Management 	**Project Management, sub-contractor coordination, meetings** Project Management	$800.00	1	$800.00
	Sandoval Garage Installation			
Installation 	**Installation, configuration, testing**	$3,500.00	1	$3,500.00
Project Management 	**Project Management, sub-contractor coordination, meetings** Project Management	$800.00	1	$800.00
	Convention Center Garage Installation			
Installation 	**Installation, configuration, testing**	$3,500.00	1	$3,500.00
Project Management 	**Project Management, sub-contractor coordination, meetings** Project Management	$800.00	1	$800.00
	Multi Garage Discount			
Discount 	**Installation discount if all 3 locations are approved together** Discount	($1,000.00)	1	($1,000.00)

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Installation

Description	Price	Qty	Ext. Price
		Subtotal:	$11,900.00

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Pedestrian Access Doors

Quote Information:

Quote #: MK010224

Version: 1
Delivery Date: 12/16/2022
Expiration Date: 01/31/2023

Prepared for:

City of Santa Fe

500 Market Street Suite 200
Santa Fe, NM 87501
Leonard Romero
(505) 469-6927
lxromero@santafenm.gov

Prepared by:



Associated Time Instruments - Houston

Michael Keeth
713-263-1366
Michael.Keeth@associatedtime.com

Quote Summary

Description	Amount
Railyard Garage	$20,085.68
Sandoval Garage	$13,265.36
Convention Center Garage	$23,532.51
Misc	$5,735.00
Installation	$11,900.00

Subtotal:	$74,518.55
Shipping:	$1,600.00
Estimated Tax:	$6,279.79
Total:	$82,398.34

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.

Associated Time Instruments - Houston

Signature: Michael Keeth

Name: Michael Keeth

Title: Account Representative

Date: 12/16/2022

City of Santa Fe

Signature: _____

Name: Leonard Romero

Date: _____

- Parking Controls - Access Control Systems - Time & Attendance - Fire Detection Systems

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Terms and Conditions

Parking

Parking System Terms & Conditions Disclaimers

Associated Time Instruments assumes that all existing conduit, power cabling, inductive loops, and data cable are serviceable and sufficient for a completely operational system. This quote does not include, supply, nor provide installation of the aforementioned items.
Provided by Others (unless specifically noted)

1. Power circuits and wiring provided to traffic islands in accordance with project drawings and specifications.
2. Electrical conduits for both power and low-voltage in accordance with project drawings.
3. Concrete traffic islands in accordance with project drawings.
4. Traffic safety bollards in accordance with project drawings.
5. High speed internet service with connection provided to the server system. (Per manufacturer recommended specs)
6. All IP networking hardware to properly configure the system. IP networking devices include but are not limited to modems, routers, switches, firewalls, and VPN devices.
7. Merchant account with a credit card processor (clearing house) required for credit card transactions.
8. Canopies / weather covers for outside payment devices.

General Provisions
All work shall be completed in a workman-like manner and in compliance with all building codes and other applicable laws.
This contract is based upon visually observed conditions. As a result of the nature of the services to be provided by Associated Time Instruments here-under, it is possible that unforeseen conditions will arise that could not be determined by visual inspection prior to starting work. In the event this occur additional work shall be performed on either a time and materials or fixed fee basis, after Buyer has been notified that such additional work is necessary and has approved said additional work in writing.
ATI may, at its discretion engage subcontractors to perform work here-under; provided ATI shall fully pay said subcontractor and in all instances remain responsible for the proper completion of this Contract.
Associated Time Instruments warrants it is adequately insured for injury to its employees and others incurring loss or injury as a result of the acts of ATI or its employees or subcontractors. Owner to carry fire, flood, and other necessary insurance. If any tax, public charge, tariff, duty, or increase therein, is now or hereafter assessed, levied, or imposed upon this transaction, on the goods to be sold, or upon any sale, delivery, or other action taken here-under, or upon the import of such goods, the burden or such charge or change shall be borne by Buyer.
Buyer shall bear the risk of any loss, deterioration, or damage of all goods from the time the goods are delivered to Buyer's premises.

Installation
1. By Associated Time & Parking and subcontractors as detailed above.
2. All work to be performed during standard business hours of 8AM - 5PM CT, Monday - Friday. Additional charges apply for work requested to be performed after standard business hours and/or weekends.
3. Firm start date for installation to be determined after complete order has been received by Associated Time Instruments.
4. Installation scheduling varies depending upon our current project work-load at the time the complete order is received.

Permits
The costs associated with obtaining required city building or electrical permits are not included in this contract unless expressly stated herein. If ATI is required to obtain permits in connection with this contract, all costs will be billed as incurred. Permit costs may include time, mileage, city fees, drafting expenses, copies, etc.

Product Delivery
1. Estimated six to eight week lead time (after down payment is received) for product delivery.
2. Upon delivery and receipt of materials, property owner must provide a secure storage area for said materials throughout the duration of the installation.

FCA
FCA, such that TIBA Parking will pay shipping and freight and title of the goods will pass to (CUSTOMER) at the time of shipment from our Factory in Columbus, OH. TIBA Parking will insure shipment for its full value till delivery, and prepay freight already included in the PO. In any case,
TIBA Parking is responsible for packing, crating, marking and transporting.
Also want to confirm that TIBA Parking will insure the equipment in transit and at your location through our Inland Marine/Cargo Insurance. We also extend coverage to the property while the property/equipment is in our care, custody, and control under our all-risk property insurance

Tax
All prices include applicable sales tax unless otherwise noted.

Change Orders
Any alteration or deviation from the above product list, including but not limited to additional material and/or labor, will be executed only upon written order signed by both Customer and Associated Time Instruments and the price will be added to the total of the contract.

Delay
Associated Time Instruments shall be excused for delay in completion of the work covered by this Contract caused by federal, state, or municipal action or

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regulation, strikes or other labor troubles not the fault of ATI, inclement weather, fire, acts of God, acts of the Owner/Buyer, Owner/Buyer's Agent, lender, and/or other subcontractor(s), damage to or destruction in whole or part of merchandise or manufacturing plant; lack of, or inability to obtain raw materials, labor, fuel, or supplies; or any other causes, contingencies, or circumstances unforeseen by ATI and beyond its reasonable control which prevent or hinder the manufacture or delivery of the merchandise or make the fulfillment of this Agreement impracticable.
In the event performance is delayed through no fault of Associated Time Instruments, the time for completion of ATI's performance shall be extended by the same amount of time as the length of the delay and ATI shall be entitled to additional compensation to fully compensate ATI for damages incurred by ATI for labor, materials, and its profit and overhead.

Default
Associated Time Instruments may stop work if any payment specified herein above is not paid when due. If payment is not made within ten (10) day after its respective due date, Associated Time Instruments Systems may abandon the work and pursue all rights and remedies available to it, Including, but not limited to, suing Owner and/or Buyer for the reasonable value of work theretofore performed and/or damages for breach of contract, including ATI's lost profits, lost opportunities and overhead as well as interest and attorneys' fees thereon.

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Cancellation & Returns
Customer may not cancel the accepted, executed quotation/contract without the written consent of Associated Time Instruments. If Associated Time Instruments approves a cancellation or return, Customer agrees to pay a minimum restocking charge of 25%.

BG
BG

Bonding, Insurance, & Liquidated Damages
1. Any bonding requirements are not included in this quotation and shall be provided at an additional charge based upon scope.
2. Any insurance requirements outside of standard coverage's carried by Associated Time Instruments are not included in this quotation and shall be provided at an additional charge based upon the requirements and terms of coverage.
3. Liquidated damages are not included in this quotation.

Warranty
A two year parts and one year labor warranty is included for defects in materials or manufacturing from the date of delivery to Customer. The warranty does not cover damage or malfunctions resulting from acts of God, collision, vandalism, misuse, electrical surges or power failure, or use of non-manufacturer approved supplies.

Payment Terms
50% down payment due upon order acceptance
30% due upon delivery of equipment

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Remainder to be invoiced upon completion of system installation - Net 30 days
Cancellation of contract or PO prior to on-site delivery results in a 25% restocking charge

Costs and Attorney's Fees
If any action, arbitration, suit or other proceeding is instituted to remedy, prevent or obtain relief from a default in the performance by any party of its obligations under this Agreement, the prevailing party shall recover all of such party's costs and its reasonable, but not less than its actual, attorneys' fees incurred in each and every such action, suit, arbitration or other proceeding, including any and all appeals or petitions therefrom.

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BG

Limitation of Liability
In no event shall Associated Time Instruments' liability (whether based on an action or claim in contract, tort or otherwise) to Buyer arising out of or related to the product here-under exceed the contract price.

Entire Contract
This writing constitutes the entire Agreement between the parties and exclusively determines the rights and obligations of the parties. Any prior cause of dealing, custom or usage of trade or cause of performance notwithstanding.

Invalid Provision
In the event that any provision hereof is found to be invalid or unenforceable pursuant to judicial decree, the remainder to this Agreement shall remain valid and enforceable according to it terms.

Arbitration
Any controversy between the parties to this agreement involving the construction or application of any of the terms, provisions or conditions of the agreement, shall under written request of Buyer, served by certified mail on Associated Time Instruments, be submitted to arbitration in accordance with the rules then in existence of the American Arbitration Association ("AAA"), provided, however, that (1) the parties shall be entitled to all discovery rights in any applicable arbitrator, that the parties would otherwise be entitled to all discovery rights in any applicable arbitrator proceeding, subject to the jurisdiction of the AAA arbitrator, that the parties would otherwise be entitled to had the matter been subject to the jurisdiction of a Texas Superior court and (2) in the event that buyer is made a party to any other court proceeding arising from or related to the goods or service that are subject to this sales contract, the Buyer shall have the right to elect to adjudicate any action through the AAA or the court handling such other court handling such other court proceeding. The cost of arbitration shall be borne by the losing party.

Indemnity
Buyer hereby releases, and shall defend, indemnify and hold harmless, Associated Time Instruments and ATI's officers, agents and/or employees, and assigns ("ATI Related Parties") from any and all claims, suits, or causes of action for damages for bodily injury, or property damage, arising out of or in any way connected

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~~with, or alleged to be arising out of or connected with, the goods or services described in this sales contract. "Bodily injury" shall mean physical injury to any person, emotional distress, death and/or loss of consortium. Such duties as set forth herein shall be owed to Associated Time Instruments and to the ATI Related Parties to the full extent allowed by law and regardless of any alleged or actual negligence, liability or fault on the part of ATI or any ATI Related Party, whether vicarious, direct, active, passive, sole, or concurrent, save and except that a duty to defend only, and no duty to indemnify, shall arise should it be finally adjudicated by a forum of competent jurisdiction that the said bodily injury, personal injury or property damage arises from the sole negligence or willful misconduct of the Buyer of any Buyer Related Party. The defense obligation contemplated herein is contingent upon the tender by ATI or ATI Related Parties of a claim which wholly or partially comes within the ambit of the above, and Buyer shall pay promptly when due and as incurred, all attorneys' fees and costs generated in the defense of ATI and/or ATI Related Parties in connection with the entire action, including bonds and the costs of appeal. No obligation of Buyer shall be lessened, reduced, delayed or affected by the existence of other potential or actual indemnitors or insurers, or by ATI or ATI Related Parties' rights against any third party for contribution, subrogation or pro-ration.~~

BG
BG

Hold Harmless
Company shall not be responsible for incidental or consequential injury, damages, or loss of revenue resulting from the products and/or support services provided under this agreement.

~~**Governing Law & Jurisdiction**~~
~~The construction and performance of this Agreement shall be government by the laws of Texas. Buyer irrevocably consents to the institution of any legal action or proceeding against it or any of its property arising out of or in any way connected with this Agreement in Texas State or United States federal court located in Dallas County, and submits to the nonexclusive jurisdiction of the aforesaid courts in any such legal action or proceeding.~~

BG
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Quotation Validity
This quotation is valid for 30 days. If the quote is accepted after the expiration date, Associated Time Instruments may need to issue a revised quote.

Acceptance
The prices, deliverables, specifications, and conditions are satisfactory and are hereby accepted. Associated Time Instruments is authorized to perform the work as noted.

TIBA PARKING SYSTEMS

AU-60

Card Reader



FAST

- Small size profile lane terminal for access control entry and exit
- LPR support for easy access
- TIBA Parking Pro-M-T (Magnetic) Barrier integration
- Supports SmartPark Bluetooth mobile access devices for quick entry

FLEXIBLE

- Both ground and wall mounting options
- QR Barcode scanner for e-validations and State Driver Licenses
- Supports various access credentials, including: LPR, HID Proximity, Mifare, QR, and Bluetooth

CREDIBLE

- O/S less embedded technology
- Rugged, tamper resistant stainless-steel housing
- Offline database support (offline monthlies)
- FCC, EMC, ADA Compliant
- Outdoor compliant
- Easy service design

*Disclaimer: Not all features are available or standard in all regions. Check with your local TIBA representative for availability.

About the New TIBA X60 Series

- Smarter and faster than ever with new product architecture
- Increased security to protect your data
- Connectivity using native TCP/IP and/or RS485
- User engagement through amoled screen
- Easy to install, service, and maintain
- Backward compatibility - Seamlessly mix X30 and X60 series devices
- Modern technology - More features at a lower cost of ownership

AU-60 Card Reader

Features

Screen	High-resolution 4.3” Amoled Color Screen
Panel	Front panel for easy maintenance, easy to follow customer prompts
Audio	Embedded voice annunciator and speaker (optional)
BLE	BLE (Bluetooth) Board
Construction	Stainless- Steel Construction
Thermostat	Thermostat controlled heater (optional)
Microphone	Built in microphone
Power	External 24V power supply

Housing

Construction	Stainless-steel
Dimensions	8” (20.3 cm) Width;11.8”(30cm) Depth; 45.9” Height; 45.86” (116.5 cm)
Weight	30kgs
Color (Housing)	Standard white

Electrical

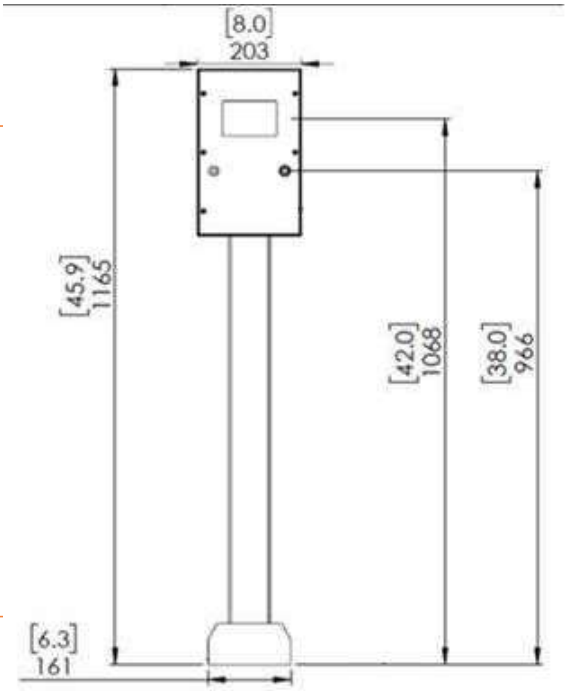
Input Voltage	24VDC
Current	5A approximate max with heater, 2.5 A without heater
Power Consumption	120W approx with heater, 60W without heater
Operating Voltage	24VDC

Environmental Conditions

Operating Temperature	(-20° to 50°C (-4° to 122°F) with heater
Water Rating	IP53

Regulatory

Safety	UL 60950-1:2007 CAN/CSA-C22.2 No. 60950-1-07
EMC	CE, FCC Part 15,Subpart B, Class B



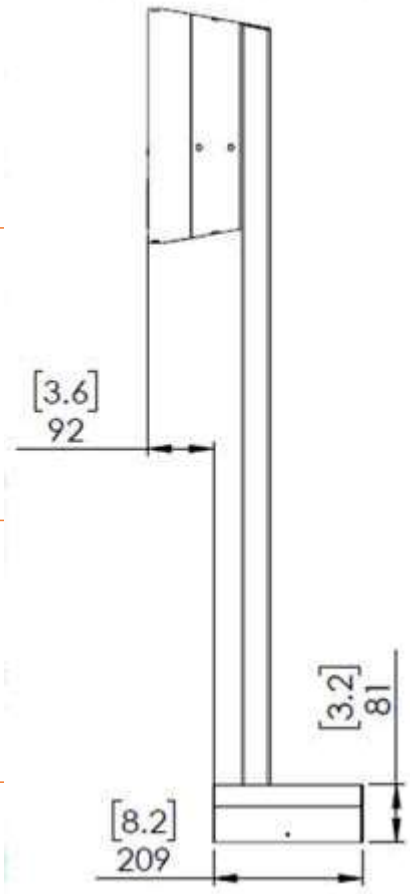


Diagram measurments shown in mm.

TIBA PARKING SYSTEMS

USA
2228 Citygate Drive
Columbus, Ohio 43219

T: +1 (614) 328-2040 **F:** +1 (614) 864-2153
866-901-8883 Toll Free

ISRAEL
17 Hamefalsim Street
Petah-Tikva, Israel 4951251

T: +972-3619-9777 **F:** +972-3-905-4306

www.tibaparking.com • info@tibaparking.com

TIBA PARKING SYSTEMS

MC-60 PARCS MASTER CONTROLLER

The Fog Computing Layer that leaves the other Platforms lost in the Clouds



FAST

- Fog Computing removes latency and application failures associated with plain Cloud Computing
- Quickly processes and distributes thousands of data transactions, events, and statuses from hundreds of devices
- Distributed infrastructure for quick decisions, efficient data storage, processing, and analysis

FLEXIBLE

- Keeps all devices communicating and fully operational without dependency on the cloud
- Handles and processes validations, cash and credit transactions, and count data
- All-inclusive cardholder database for full offline standalone operation, control, and accountability
- Easily connects anywhere on the local network via native ethernet
- Cross compatible, Forward and Backward, with all TIBA platforms (X30 & X60)

CREDIBLE

- No 3rd party Operating Systems
- Embedded technology and Low power consumption
- Masssive storage = 99K transactions
- PCI 3.2 compliant
- FCC, CE, UL, CSA certified



About the New TIBA X60 Series.

- Smarter and faster than ever with new product architecture.
- Increased security to protect your data.
- Connectivity using native TCP/IP and RS485.
- User engagement through extra-large, high contrast touch screen.
- Easy to install, service, and maintain.
- Backward compatibility. Seamlessly mix X30 and X60 devices.
- New technology. More features at a lower cost of ownership.

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **3202486**

Contractor: **Associated Time Instruments**

Description: **Amendment #2 Extending the Term of the Agreement, modifying scope of work and Increasing Compensation in the Amount of $76,118.25 to a total of $1,576,118.25 excluding NMGRT.**

Contract ☐ Agreement ☐ Lease / Rent ☐ Amendment ☉

Term Start Date: **TBD** Term End Date: _____

☐ Approved by Council Date: _____

Contract / Lease:

Amendment # **2** to the Original Contract / Lease # **3202486**

Increase/(Decrease) Amount $ **$76,118.25**

Extend Termination Date to: **October 18, 2023**

☐ Approved by Council Date: _____

Amendment is for:

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

3. **Procurement History:** _____

Purchasing Officer Review: Feb 7, 2023 Date:

Comment & Exceptions: Original procurement via RFP in FY18

4. **Funding Source:** _____ **Org / Object:** **535042/510310**

Andy Hopkins
Andy Hopkins (Feb 6, 2023 17:05 MST)

Budget Officer Approval: Feb 6, 2023 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: _____

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Associated Time Instruments

Procurement Title: Amendment #2 Extending term, Modifying Scope of Work, Increasing Compensatio

Procurement Method: State Price Agreement ☐ Cooperative ☐ Sole Source ☐ Other ☐

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

Department Requesting Public Works/Facilities Div Staff Name Caryn Grosse

Procurement Requirements:

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

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES	N/A	
●	☐	Approved Procurement Checklist (by Purchasing)
●	☐	Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
☐	●	State Price Agreement
●	☐	RFP
☐	●	Evaluation Committee Report
☐	●	ITB
☐	●	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:

Caryn Grosse, PMP	Project Administrator Sr.	1/17/2023
Department Rep Printed Name (attesting that all information included)	Title	Date
[signature]	Contracts Supervisor	Feb 7, 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

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

BUSINESS REGISTRATION

Business Name: ASSOCIATED TIME INSTRUMENTS CO, INC.
DBA: ASSOCIATED TIME INSTRUMENTS CO, INC.

Business Location: 9104 DIPLOMACY ROW
DALLAS, TX 75247

CRS Number: 03-537979-00-0

Owner: ASSOCIATED TIME INSTRUMENTS CO, INC.

License Number: 228947

License Type: Business License - Renewable

Issued Date: October 26, 2022

Classification: Out of Jurisdiction Business License

Expiration Date: October 26, 2023

Fees Paid: $10.00

ASSOCIATED TIME INSTRUMENTS CO, INC.
9104 DIPLOMACY ROW
DALLAS, TX 75247

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

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

TO BE POSTED IN A CONSPICUOUS PLACE

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 12/30/2022

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 Beecher Carlson Insurance Services Part of Brown & Brown Inc. 6 Concourse Parkway, Suite 2300 Atlanta, GA 30328 www.bbinsurance.com	**CONTACT NAME:** Stephanie Gordon **PHONE (A/C, No, Ext):** **FAX (A/C, No):** 678-539-4890 **E-MAIL ADDRESS:** stephanie.gordon@bbrown.com
INSURED Associated Time Instruments Co Inc., dba Associated Time & Parking Controls, Inc. I 3 Concepts; I-3 C 9104 Diplomacy Row Dallas TX 75247	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** Zurich American Insurance Company — 16535 **INSURER B :** Travelers Property Casualty Co of Amer — 25674 **INSURER C :** Travelers Indemnity Co of Connecticut — 25682 **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 72268081 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	✓ **COMMERCIAL GENERAL LIABILITY** ☐ CLAIMS-MADE ✓ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ✓ POLICY ☐ PRO-JECT ☐ LOC OTHER:			GLO 4846192-02	1/1/2023	1/1/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 100,000 $ 5,000 $ 2,000,000 $ 2,000,000 $ 2,000,000
C	**AUTOMOBILE LIABILITY** ✓ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			810-9M554093-23-14-G	1/1/2023	1/1/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
B	✓ **UMBRELLA LIAB** ☐ OCCUR **EXCESS LIAB** ☐ CLAIMS-MADE ☐ DED ☐ RETENTION $			EX-9M884057-23-14 (Auto & EL)	1/1/2023	1/1/2024	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000
B	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		UB-9M560769-23-14-E	1/1/2023	1/1/2024	✓ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
A	Excess General Liability			AUC 04846193-02	1/1/2023	1/1/2024	Limit - $5,000,000 Occ/Agg	

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

CERTIFICATE HOLDER

City of Santa Fe
PO Box 909
Santa Fe NM 87504-0909

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE Beecher Carlson Insurance Services, LLC

Beecher Carlson Insurance Services, LLC

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City of Santa Fe, New Mexico
Memorandum

DATE: **January 8, 2021**

TO: **Governing Body**
Finance Committee
Public Works Committee

VIA: **Regina Wheeler, Director, Public Works Department** RW
Noel Correia, Director, Parking Division NPC

FROM: **Matthew Knowles, Contract Administrator** MPK

ACTION REQUESTED

Request for the Approval of Amendment 1 to IT Agreement 19-0828 to assign the remaining after sales and warranty portion of the Parking Access and Revenue Control System (PARCS) agreement to a new vendor, Associated Time Instruments, Inc. (ATI), certified by the PARCS equipment manufacturer, TIBA. ATI's compensation will not exceed the $114,920.06 remaining balance of the original Agreement, and will not exceed the approved total project cost of $1.5 million. The manufacturer's warranty term will be two years from date of project acceptance. Request is hereby made by Noel Correia, Parking Division Director, npcorreia@santafenm.gov, (505) 955-6611

BACKGROUND AND SUMMARY

Souder Corporation, d.b.a. Mountain Parking Equipment has been sold and is no longer a certified and authorized dealer, installer or service provider for the TIBA manufactured PARCS equipment. Consequently, TIBA has assigned Associated Time Instruments, Inc. (ATI) to represent them as their certified dealer, installer and service provider with immediate effect. ATI has agreed to assume in its entirety the rights, responsibilities, and duties of the Contractor Souder Corporation (d.b.a. Mountain Parking Equipment) under the contract between Mountain Parking Equipment and the City of Santa Fe. ATI has agreed to provide the after sales service and warranty portion of the original PARCS agreement as the alternate certified and authorized equipment sales, service and warranty vendor.

The installation of the new PARCS has been completed in all three (3) City garages and is fully operational. There are a number of minor equipment adjustments needed identified during testing and acceptance which will be completed by ATI upon approval by the Governing Board of this Amendment 1 to IT Agreement 19-0828.

PROCUREMENT METHOD:

The original procurement method was RFP '18/49/P. This Amendment 1 does not change the original cost or scope of the PARCS agreement, just assigns the remaining balance of that agreement to the new vendor.

CONTRACT NUMBER:
The original Munis contract number is 3201424, the new Munis contract number is 3202486.

FUNDING SOURCE:

Item# 21-0075

Munis Contract#3201424

CITY OF SANTA FE

AMENDMENT No. 1 TO

INFORMATION TECHNOLOGY AGREEMENT

ITEM#19-0828

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE INFORMATION TECHNOLOGY AGREEMENT, dated 10/30/19 (the "Agreement"), between the City of Santa Fe (the "City") and Souder Corporation d.b.a. Mountain Parking Equipment. (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. The Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the City has selected the Contractor as the Proposer most advantageous to the City; and

B. An RFP No. '18/49/P was issued to provide and install a state of the art Parking Access and Revenue Control System (PARCS);

C. Under the terms of the Agreement, Contractor has ascertained that they are a certified and authorized dealer, installer and service provider for PARCS equipment manufactured by an independent PARCS manufacturer TIBA and has agreed to install PARCS by TIBA, provide warranty and service as outlined in Exhibit A, attached hereto and incorporated herein by reference.

D. Pursuant to Article 23 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. ASSIGNMENT

Souder Corporation, d.b.a. Mountain Parking Equipment has been sold and is no

longer a certified and authorized dealer, installer or service provider for the TIBA PARCS equipment. Consequently, TIBA has assigned Associated Time Instruments, Inc. (ATI) to represent them as their certified dealer, installer and service provider with immediate effect. ATI has agreed to assume in its entirety the rights, responsibilities, and duties of the Contractor Souder Corporation (d.b.a. Mountain Parking Equipment) under the contract between Mountain Parking Equipment and the City of Santa Fe. ATI has agreed to provide the after sales service and warranty portion of the original PARCS agreement as the alternate certified and authorized equipment sales, service and warranty vendor:

Associated Time Instruments, Inc. (ATI)
6699 Portwest Dr., Suite 160
Houston, TX 77024

2. COST OF PROPOSAL

The original cost of $1.5 million for the PARCS project does not change with the reassignment of this PARCS contract to Associated Time Equipment (ATI).

3. CONTRACTOR PERSONNEL

Article 12 of the Agreement is amended as follows:

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the City. Key personnel are those individuals considered by the City to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

Andrew White – Executive Vice President
Michael Ball – Sales Executive

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the City. For all personnel, the City reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel

assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to City approval. The City, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The City reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the City, meeting the City's expectations. This clause does not apply to subcontractors hired by the prime Contractor.

4. NOTICES.

Article 25 is amended as follows:

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

For CITY
Contract Administrator
City of Santa Fe
(505) 955-6674
PO Box 909
Santa Fe, NM 87504-0909

For CONTRACTOR

Associated Time Instruments

713-263-1366

www.associatedtime.com

6699 Portwest Dr., Suite 160

Houston, TX 77024

Any change to the Notice individual or the address, shall be effective only in writing.

5. AGREEMENT IN FULL FORCE.

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

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

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

DATE: Mar 15, 2021

CONTRACTOR:

Associated Time Instruments

Andrew White, Executive Vice President

DATE: 1/15/2021

CRS#03-537979-00-0

Registration #228947

ATTEST:

CITY CLERK

GC

GB MTG 03/10/2021

CITY ATTORNEY'S OFFICE:

Marcos Martinez

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Mary McCoy

MARY MCCOY, FINANCE DIRECTOR

5350455/570500

FD

Org. Name/Org.#

2021 1 5 Amendment 1 PARCS ATI Agreement

Final Audit Report 2021-01-05

Created:	2021-01-05
By:	Irene Romero (ikromero@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAA6C72tIIoiZDt6kVEI4IF0FUwSoCGnwlh

"2021 1 5 Amendment 1 PARCS ATI Agreement" History

Document created by Irene Romero (ikromero@ci.santa-fe.nm.us)
2021-01-05 - 10:54:18 PM GMT- IP address: 63.232.20.2

Document emailed to Marcos Martinez (mdmartinez@santafenm.gov) for signature
2021-01-05 - 10:54:42 PM GMT

Email viewed by Marcos Martinez (mdmartinez@santafenm.gov)
2021-01-05 - 10:57:52 PM GMT- IP address: 174.56.49.116

Document e-signed by Marcos Martinez (mdmartinez@santafenm.gov)
Signature Date: 2021-01-05 - 10:58:01 PM GMT - Time Source: server- IP address: 174.56.49.116

Agreement completed.
2021-01-05 - 10:58:01 PM GMT

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **3201424, Original**

Contractor: **Associated Time Instruments, Inc. (ATI)**

Description: **An Amendment to IT Agreement 19-0828 to assign the remaining after sales and warranty portion of the PARCS agreement to a new vendor, ATI, who is certified by the equipment manufacturer, TIBA. The new vendor contract in MUNIS is 3202486.**

Contract ☐ Agreement ☐ Lease / Rent ☐ Amendment ☉

Term Start Date: **10/18/2019** Term End Date: **06/30/2023**

☑ Approved by Council Date: **10/18/2019**

Contract / Lease: **Purchase and install Parking Access and Revenue Control System**

Amendment # **01** to the Original Contract / Lease # **19-0828**

Increase/(Decrease) Amount $ **Compensation will not exceed the $114,920.06 remaining Agreement balance.**

Extend Termination Date to:

☐ Approved by Council Date:

Amendment is for: **Amend IT Agreement 19-0828 to assign remaining portion to replacement vendor.**

2. **HISTORY** of Contract, Amendments & Lease / Rent - **Please Elaborate** (option: attach spreadsheet if multiple amendments)
This is the first time this Agreement has been amended.

3. **Procurement History:** **RFP #'18/49/P**

Fran Pinaway (Feb 12, 2021 08:51 MST)

Purchasing Officer Review: Date:

Comment & Exceptions:

4. **Funding Source:** **A New Mexico Finance Authority loan** **Org / Object:** **5350455/570500**

Alexis Lotero (Feb 12, 2021 08:39 MST) Feb 12, 2021

Budget Officer Approval: Date:

Comment & Exceptions:

Staff Contact who completed this form: **Matthew Knowles** Phone # **(505) 955-6674**

Email: **mpknowles@santafenm.gov**

To be recorded by City Clerk:

Clerk #

Date of Execution:

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Associated Time Instruments, Inc.

Procurement Title: Installation of Parking Access and Revenue Control System, RFP '18/49/P

Procurement Method: State Price Agreement ☐ *Cooperative* ☐ *Sole Source* ☐ *Other* ☐ _____

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

Department Requesting Public Works, Parking Division Staff Name Noel Correia, Director

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: _____

Noel Correia — Noel P. Correia — Parking Division Director — 01/06/2021

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

Fran Dunaway (Feb 12, 2021 08:51 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 any resulting contract.

*

Information Technology Agreement

Contract No._____ ITEM # 19-0828

THIS Information Technology Agreement ("Agreement" or "Contract") is made by and between the City of Santa Fe, hereinafter referred to as the "City" and **Souder Corporation dba Mountain Parking Equipment**, hereinafter referred to as the "Contractor" and collectively referred to as the "Parties".

WHEREAS, pursuant to the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the City has selected the Contractor as the offeror most advantageous to the City; and

WHEREAS, all terms and conditions of the **RFP No. '18/49/P to provide and install a state of the art Parking Access and Revenue Control System (PARCS)** and the Contractor's response to such document(s) are incorporated herein by reference;

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

A. "Acceptance" or "Accepted" shall mean the approval, after Quality Assurance, of all Deliverables by the City's Contract Manager.

B. "Application Deployment Package" shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.

C. "Business Days" shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.

D. "Change Request" shall mean the document utilized to request changes or revisions in the Scope of Work – Exhibit A, attached hereto and incorporated herein.

E. "IT Director" shall mean the Information Technology Director for the City.

F. "Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential client information as such term is defined in State or Federal statutes and/or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the City as confidential, including all information designated as confidential under federal or state law or regulations; (5) unless publicly disclosed by the City, the pricing, payments, and terms and conditions of this Agreement, and (6) City information that is utilized, received, or maintained by the City, the Contractor for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed.

G. "Contract Manager" shall mean a Qualified person from the Parking Division responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be designated by the Parking Division Director.

H. "Default" or "Breach" shall mean a violation of this Agreement by either failing to perform one's own contractual obligations or by interfering with another Party's performance of its obligations.

I. "Deliverable" shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.

J. "Designated Representative" shall mean a substitute(s) for a title or role, e.g. Contract Manager, when the primary is not available.

K. "DoIT" shall mean the Department of Information Technology.

L. "DFA" shall mean the Department of Finance and Administration;

M. "Escrow" shall mean a legal document (such as the software source code) delivered by the Contractor into the hands of a third party, and to be held by that party until the performance of a condition is Accepted; in the event Contractor fails to perform, the City receives the legal document, in this case, Source Code.

N. "Enhancement" means any modification including addition(s), modification(s), or deletion(s) that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an error correction.

O. "GRT" shall mean New Mexico gross receipts tax.

P. "Intellectual Property" shall mean any and all proprietary information developed pursuant to the terms of this Agreement.

Q. "Independent Verification and Validation ("IV&V")" shall mean the process of evaluating a Project and the Project's product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the City.

R. "Know How" shall mean all technical information and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.

S. "Payment Invoice" shall mean a detailed, certified and written request for payment of Services by and rendered from the Contractor to the City. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the Payment Invoice is submitted.

T. "Performance Bond" shall mean a surety bond which guarantees that the Contractor will fully perform the Contract and guarantees against breach of contract.

U. "Project" shall mean a temporary endeavor undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and the Project approval is given by the Contract Manager and verified by the City.

V. "Project Manager" shall mean a Qualified person from the City responsible for the application of knowledge, skills, tools, and techniques to the Project activities to meet the Project requirements from initiation to close. Under the terms of this Agreement, the Project Manager shall be Leonard Romero, Parking Maintenance Supervisor, or his/her Designated Representative.

W. "Qualified" means demonstrated experience performing activities and tasks with Projects.

X. "Quality Assurance" shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.

Y. "Services" shall mean the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.

Z. "City Purchasing Agent (CPA)" shall mean the City Purchasing Agent for the City or his/her Designated Representative.

AA. "City Purchasing Department (SPD)" shall mean the City Purchasing Department of the City.

BB. "Software" shall mean all operating system and application software used by the Contractor to provide the Services under this Agreement.

CC. "Software Maintenance" shall mean the set of activities which result in changes to the originally Accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline system.

DD. "Source Code" shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily read as text and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly useable by a computer.

EE. "Turnover Plan" means the written plan developed by the Contractor and approved by the City in the event that the work described in this Agreement transfers to another vendor or the City.

EF. "Implementation Services" means services related to system implementation, configuration, data conversion, customization, and training.

ARTICLE 2 – SCOPE OF WORK

A. Scope of Work. The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.

B. Performance Measures. The Contractor shall substantially perform to the satisfaction of the City the Performance Measures set forth in Exhibit A. In the event the Contractor fails to obtain the results described in Exhibit A, the City may provide written notice to the Contractor of the Default and specify a reasonable period of time in which the Contractor shall advise the City of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the City from exercising its rights pursuant to Article 6 or Article 16.

C. Schedule. The Contractor shall meet the due dates, as set forth in Exhibit A, which due dates shall not be altered or waived by the City without prior written approval, through the Amendment process, as defined in Article 23.

D. License. Contractor hereby grants the City a non-exclusive, irrevocable, license to use the TMS-SmartPark -TIBA Management System Standard Edition Single Facility License. TMS-SmartPark-Upgrade to Enterprise Edition-Single Site Enterprise License. Upgrade from Single Central PARCS controller to 3 PARCS Controller. Software and any and all updates, corrections and revisions as defined in Article 2 and Exhibit A, for the term of this Agreement.

The right to copy the Software is limited to the following purposes: archival, backup and training. All archival and backup copies of the Software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

E. Source Code. The Parties agree the City has no right to Contractor's Source Code.

1. Contractor agrees to maintain, at Contractor's own expense, a copy of the Software Source Code to be kept by an escrow agent and to list the City as an authorized recipient of this Source Code. The Source Code shall be kept current with the releases/versions of the software in live use at the City. The Source Code shall be in magnetic form on media specified by the City. The escrow agent shall be responsible for storage and safekeeping of the magnetic media. Contractor shall replace the magnetic media no less frequently than every six (6) months to ensure readability and to preserve the Software at the current City revision level. Included with the media shall be all associated documentation which will allow the City to top load, compile and maintain the software in the event of a Breach.

2. If the Contractor ceases to do business or ceases to support this Project or Agreement and it does not make adequate provision for continued support of the Software it provided the City; or, if this Agreement is terminated, or if the Contractor Breaches this Agreement, or if the Contractor is merged or acquired and no longer supports the Software, the Contractor shall make available to the City within thirty (30) calendar days of the date services cease: 1) the latest available Software program Source Code and related documentation meant for the Software provided or developed under this Agreement by the Contractor and listed as part of the Services; 2) the Source Code and compiler/utilities necessary to maintain the system; and, 3) related documentation for Software developed by third parties to the extent that the Contractor is authorized to disclose such Software. In such circumstances, City shall have an unlimited right to use, modify and copy the Source Code and documentation.

F. The City's Rights.

1. Rights to Software. The Parties agree the City does not have rights to the Software except as explicitly stated in this Agreement.
2. Proprietary Rights. The Contractor will reproduce and include the City's copyright and other proprietary notices and product identifications provided by the Contractor on such copies, in whole or in part, or on any form of the Deliverables.
3. Rights to Data. Any and all data stored on the Contractor's servers or within the Contractors custody, in order to execute this Agreement, is the sole property of the City.

The Contractor, subcontractor(s), officers, agents and assigns shall not make use of, disclose, sell, copy or reproduce the City's data in any manner, or provide to any entity or person outside of the City without the express written authorization of the City.

ARTICLE 3 - COMPENSATION

A. Compensation Schedule. For Implementation Services, the City shall pay to the Contractor a not to exceed price for each Deliverable, per the schedule outlined in Exhibit A, less retainage, if any, as identified in Paragraph D. All travel expense costs shall be included in the not to exceed price. The City will not make a separate payment for reimbursable expenses.

B. Payment. The total compensation under this Agreement shall not exceed one million five hundred thousand dollars ($1,500,000.00) excluding 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.

Payment for Implementation Services shall be made upon Acceptance of each Deliverable according to Article 4 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. Taxes. The Contractor shall be reimbursed by the City for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage. The City shall retain 15% of the not to exceed Deliverable cost for each Deliverable that is the subject of this Agreement as security for full performance of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable.

E. Performance Bond. The Parties agree there is no Performance Bond.]

ARTICLE 4 – ACCEPTANCE

A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the City. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A, less retainage as set forth in Article 3(D).

B. Acceptance. In accord with Section 13-1-158 NMSA 1978, the Contract Manager shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been Accepted, in

writing, by the Contract Manager. In order to Accept the Deliverable, the Contract Manager, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:

1. Complies with the Deliverable requirements as defined in Article 2 and Exhibit A;
2. Complies with the terms and conditions of the **RFP No. '18/49/P**;
3. Meets the performance measures for the Deliverable(s) and this Agreement;
4. Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
5. Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Contract Manager or their Designated Representative, the Contract Manager will notify the Contractor of Acceptance, in writing, within thirty (30) Business Days from the date the Contract Manager receives the Deliverable(s) and accompanying Payment Invoice.

C. Rejection. Unless the Contract Manager gives notice of rejection within the thirty (30) Business Day Acceptance period, the Deliverable will be deemed to have been Accepted. If the Deliverable is deemed unacceptable under Quality Assurance, thirty (30) Business Days from the date the Contract Manager receives the Deliverable(s) and accompanying Payment Invoice, the Contract Manager will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) Business Days to resubmit the Deliverable to the Contract Manager with all appropriate corrections or modifications made and/or addressed. The Contract Manager will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) Business Days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Contract Manager. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The City may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the City may terminate this Agreement.

ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE CITY.

This Agreement shall be effective on the date that it is fully executed and terminate upon full installation and acceptance by the City. This is a purchase of equipment and installation contract and therefore will not have a contract length other than the negotiated time for installation and going live.

Maintenance of PARCS equipment contract, terms of which will be ongoing, as negotiated by the City. Ongoing maintenance contract will be effective at the end of the first two-year warranty period provided by the equipment manufacturer. Term shall comply with §13-1-150

ARTICLE 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. Appropriations. By the City, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature, or the City Council for the performance of this Agreement. The City's

decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City terminates this Agreement pursuant to this subsection, the City shall provide the Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination.

C. Notice; City Opportunity to Cure.

1. Except as otherwise provided in Paragraph (3), 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 5, "Appropriations", of this Agreement.

D. 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.*

ARTICLE 7 – TERMINATION MANAGEMENT

A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:

1. Transfer, deliver, and/or make readily available to the City property in which the City has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the City;
2. Incur no further financial obligations for materials, Services, or facilities under the Agreement without prior written approval of the City;
3. Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the City may direct, for orderly completion and transition;
4. Take such action as the City may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
5. Agree that the City is not liable for any costs arising out of termination and that the City is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
6. Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of City's programs;
7. In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the City's receipt of program funds from any governmental City, the Contractor shall remit to the City the full amount of the reduction;
8. Should this Agreement terminate due to the Contractor's Default, the Contractor shall reimburse the City for all costs arising from hiring new Contractor/subcontractors at potentially higher rates and for other costs incurred;
9. In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall develop and submit to the City for approval an Agreement Turnover Plan

at least ten (10) Business Days prior to the effective date of termination. Such Turnover Plan shall describe the Contractor's policies and procedures that will ensure: (1) the least disruption in the delivery of Services during the transition to a substitute vendor; and (2) cooperation with the City and the substitute vendor in transferring information and Services. The Turnover Plan shall consist of the orderly and timely transfer of files, data, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the City or created by the Contractor under this Agreement, to the City, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the City, the Contractor shall provide to the City a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the City or created by the Contractor under this Agreement.

B. City. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the City shall:

1. Retain ownership of all work products and documentation created pursuant to this Agreement; and
2. Pay the Contractor all amounts due for Services Accepted prior to the effective date of such termination or expiration.

ARTICLE 8 – INDEMNIFICATION

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

B. The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the City, as necessary, to satisfy any outstanding claim that the City may have against the Contractor.

ARTICLE 9 – INTELLECTUAL PROPERTY

Ownership. The Contractor will own the Intellectual Property.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

A. Intellectual Property Indemnification. 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, and shall pay all costs, damages and attorney's fees that may be awarded as a result of 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 the amount of the judgment. To qualify for such defense and/or payment, the City shall:

1. Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
2. Work with the Contractor to control the defense and settlement of the claim; and
3. Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. City Rights. 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 sole 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.

ARTICLE 11 – WARRANTIES

A. General. The Contractor hereby expressly warrants the Deliverable(s) as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverable(s) and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

B. Software. The Contractor warrants that any software or other products delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software provided under this Agreement will meet the applicable specifications for twelve (12) years after Acceptance by the Contract Manager and implementation by the City. If the software fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the City, so that the software meets the applicable specifications.

ARTICLE 12 – CONTRACTOR PERSONNEL

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the City. Key personnel are those individuals considered by the City to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

Scott Souder, President
Zach Souder, Vice President
Kevin Humphreys, Operations Manager/Sales Engineering
Anne Mirabella, Service Manager, IT Manager
Kate Fey, Project Supervisor
Ryan Welsh, Sales Engineer

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the City. For all personnel, the City reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to City approval. The City, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding

replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The City reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the City, meeting the City's expectations. This clause does not apply to subcontractors hired by the prime Contractor.

ARTICLE 13 - CHANGE MANAGEMENT

A. Changes. Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Contract Manager. Such change may only be made to Tasks or Sub-Task as defined in the Exhibit A. Under no circumstance shall such change affect the:

1. Deliverable requirements, as outlined in Exhibit A;
2. Due date of any Deliverable, as outlined in Exhibit A;
3. Compensation of any Deliverable, as outlined in Exhibit A;
4. Agreement compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 6.

B. Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:

1. The Project Manager shall draft a written Change Request for review and approval by the Contract Manager to include:
   (a) the name of the person requesting the change;
   (b) a summary of the required change;
   (c) the start date for the change;
   (d) the reason and necessity for change;
   (e) the elements to be altered; and
   (f) the impact of the change.

2. The Contract Manager shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the Contract Manager are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

ARTICLE 14 – DEFAULT/BREACH

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

ARTICLE 15 – EQUITABLE REMEDIES

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

ARTICLE 16 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property at any time, in any way, if and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor or a defect of any equipment provided or installed, provided in whole or in part by the Contractor pursuant to the Agreement. Contractor shall not be liable for damages arising out of, or caused by, alterations made by the City to any equipment or its installation or for losses caused by the City's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and/or employees of the City, or any remedy that may exist under law or equity in the event a defect in the manufacture or installation of the equipment, or the negligent act or omission of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

ARTICLE 17 – 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 this Agreement's approval authorities.

ARTICLE 18 – SUBCONTRACTING

A. General Provision. The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the City. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the City.

B. Responsibility for subcontractors. The Contractor must not disclose Confidential Information of the City to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of the Contractor under this Agreement.

ARTICLE 19 – RELEASE

The Contractor's Acceptance of final payment of the amount due under this Agreement shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

ARTICLE 20 – CONFIDENTIALITY

Any Confidential Information provided to the Contractor by the City or, developed by the Contractor based on information provided by the City in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the City within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the City will result in direct, special and incidental damages.

ARTICLE 21 –CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and 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 certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

ARTICLE 22 - 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 City. The City 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 City to recover excessive or illegal payments.

ARTICLE 23 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities. Amendments are required for the following:

1. Deliverable requirements, as outlined in Exhibit A;
2. Due Date of any Deliverable, as outlined in Exhibit A;
3. Compensation of any Deliverable, as outlined in Exhibit A;
4. Agreement Compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 6.

ARTICLE 24 – MERGER, SCOPE, ORDER OF PRECEDENCE

A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or City or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

ARTICLE 25 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

For CITY
Contract Administrator
City of Santa Fe
(505) 955-6674
PO Box 909
Santa Fe, NM 87504-0909

For CONTRACTOR
James Scott Souder, President
Souder Corporation dba Mountain Parking Equipment
ScottSouder@mtnpark.com
(720) 259-4883
2009 S Cherokee Street
Denver, CO 80223

Any change to the Notice individual or the address, shall be effective only in writing.

ARTICLE 26 – GENERAL PROVISIONS

A. The Contractor agrees to abide by all federal and state laws and City ordinances, including but not limited to:

1. Civil and Criminal Penalties. 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.
2. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and City Ordinances, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, 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, 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.
3. 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.
4. Americans with Disabilities Act. The Contractor agrees to comply with the Americans with Disabilities Act Section 504 of the Rehabilitation Act of 1973 and not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities. The Contractor agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees, and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by the Contractor.
5. City Code of Conduct. The Contractor shall, as a condition of being awarded this Agreement, to require each of its agents, officers and employees to abide by the City's policies prohibiting sexual harassment, firearms and smoking, as well as all other reasonable work rules, safety rules or policies regulating the conduct of persons on City property at all times while performing duties pursuant to this Agreement. The Contractor agrees and understands that a violation of any of these policies or rules constitutes a breach of the Agreement and sufficient grounds for immediate termination of the Agreement by the City.

B. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. 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 such lawsuits arising under or out of any term of this Agreement.

C. Waiver. 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

ARTICLE 27– SURVIVAL

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

ARTICLE 28– TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, unless Business Days are used; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 29 – FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or Default in performing hereunder if such delay or Default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

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

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

DATE: 10/18/19

CONTRACTOR:

See Attached
NAME AND TITLE

DATE: _____

CRS# 03-411104-00-2
City of Santa Fe Business
Registration # 19-00153051

ATTEST:

Yolanda Y. Vigil
YOLANDA Y. VIGIL, CITY CLERK
CC mtg. 10-8-19

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

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

DATE: 10/18/19

CONTRACTOR:

James Scott Souder
NAME AND TITLE President

DATE: 10/30/19

CRS# 03-411104-00-2
City of Santa Fe Business
Registration # 19-00153051

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK
CC mtg. 10-8-19

APPROVED AS TO FORM:

8/8/19
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:

For Mary McCoy 10/17/19
MARY MCCOY, FINANCE DIRECTOR

52155.562600 or #5350455
Business Unit / Line Item

Exhibit A – Scope of Work
Mountain Parking Equipment
Parking Access and Revenue Control System (PARCS)

Mountain Parking Equipment, Primary Contractor, Scope of Work

Mountain Parking Equipment (MPE) will:

- Remove the existing parking equipment and Install a new flexible, scalable, modular parking system. The installation will be a phase approach beginning with the Railyard Municipal Parking Garage.
- For the lane equipment installation MPE will utilize the existing inter island conduit for connectivity between the gates and ticket dispensers. The installation of the new Pay on Foot machines will involve new conduit. Conduit and power will be installed by the electrical subcontractor.
- Electrical subcontractor is a local Santa Fe electrical company named Alive Electric. They will install the necessary new conduit for low voltage and power for the new parking system. Including but not limited to new Pay on Foot machines, new License Plate Recognition cameras, and new space available signs.
- To ensure penetrations into the concrete are safe MPE will conduct sonar scans of the drive lane to map out snow melt and various other penetrations needed for this project. Including the area where the directional loop counts will be for the level counts between P1, P2, and P3.
- Sequenced approach to Railyard installation:
    - Meet with City Project Manager and review the intended execution plan. Schedule and utilize sonar to check and verify concrete penetration areas. Electrician starts running conduit at Level P1 to Various Pay Stations
    - Electrician continues installation of Pay Station conduit and installs camera conduit
    - Receive TIBA equipment. Flash and Test in MPE office
    - Transport equipment from Denver to Santa Fe
    - Install computers which includes working with Santa Fe IT for network infrastructure evaluation and testing internet speeds. MPE will run test credit card transactions to ensure that the transactions are recorded in the proper bank account and double-checked for proper MID and TIDs transmissions. MPE will ensure the transactions are correctly recorded and settled.

F. SYSTEM DESIGN AND REQUIRED COMPONENTS

The PARCS shall be comprised of the various hardware and software components, modules or devices that will be tightly integrated into a seamless network environment. Some devices listed below may be combined into a single housing or multi-purpose operating unit. For example, an entry lane ticket dispenser may also possess an integral magnetic stripe and or barcode reader capability (Credit Card In and Out), integral intercom and validation functionality. To the extent possible it is the City's desire that the Contractor provide system components that are modular in nature. Commonality of components among different devices is highly desirable.

Some entry or exit lanes within the system and within a parking facility may be configured differently (for example, lane devices with or without LPR functionality) however; the devices shall be configured so as to allow multiple processing capabilities within the same lane. The functionality of device in any lane shall not be impaired by the operation of another device and the System software shall be capable of identifying, tracking and reporting system activity by individual device as well as by lane. The devices may independently address other peripherals within the lane (preferred) or other network components or communicate through a lane controller.

All devices in a given parking facility should be connected to a network switch, an intermediate networking device located at each lot or garage, via standard shield twisted-pair CAT 5/6/7 network cables (RJ-45 connector) which in turn would connect the PARCS central server(s). Devices must be capable of Transport Control Protocol/Internet Protocol (TCP/IP) standard network communications (with minimal, if any, proprietary software or firmware protocols).

F1. Facility Management Software or System (FMS)

The Contractor shall provide a fully on-line, virtual real-time, fault-tolerant system that shall be monitored and controlled by a software application or integrated group of software modules or applications described as the Facility Management System (FMS) software. The term FMS shall be used to describe the sum total of all software components, modules and functionality. The software components of the individual field hardware devices or special purpose subsystem devices shall be discussed in the appropriate section below.

The Facility Management Software (FMS) or system shall be an integrated program or group of programs designed to communicate with, control and monitor all PARCS components in virtual real time and have the capability to interface in real-time with City's current Financial System or any future Financial System City acquires at no additional cost to the City. This online system shall include all communications control software and components, as well as, provide secure access to and management of the central and distributed active and archival storage devices. The FMS shall be based on a central database displayed as an event log or journal file that records all system activity in an immutable format. The FMS shall constantly poll all devices whether active or inactive to monitor and report on communications link conditions as well as, device status. All field-programmable functions of the individual PARCS devices shall be programmable (either globally or individually) utilizing the FMS interface.

The FMS shall have a Windows-based graphic user interface (GUI) from which the user may access all FMS functions. This GUI shall present all pertinent system information in virtual real time and in an organized fashion in a single or multiple Windows that can be controlled by the individual operator. The FMS shall be available to any authorized user from any computer on the City's administrative network that has been granted access to the PARCS network. The main screen of the FMS shall include a facility map that depicts the City's parking facilities in relation to each other. A properly authorized user shall be able to "drill down" from the facility map to view and control the status of individual System devices. The GUI shall also include a series of pull-down menus organized in such a manner as to make them intuitively easy to use.

The FMS will automatically provide system time synchronization by maintaining the system clock for the entire PARCS. The FMS will regularly query and update the internal clocks on the individual PARCS devices whenever the device clock differs from the system clock by fifteen (15) seconds or more. The FMS software shall automatically adjust for daylight saving time and leap years in its internal interface and allow modification of device internal clocks for this purpose.

The FMS shall possess at least six (6) password security levels. Access to individual events or functions shall be assigned to each security level and locally programmed. System exception events and alarms shall be displayed (audibly and graphically) on the FMS GUI and shall be acknowledged by the system operator. The audible alarms may be silenced and all event alarms shall be individually programmable. The acknowledgement of any alarm shall be recorded on the FMS system journal or event log.

The FMS software shall be fully integrated with the License Plate Inventory (LPI) and License Plate Recognition (LPR) software modules or subsystems below. The FMS shall allow any user operating a workstation on the communications network to access, monitor and review LPI or LPR data (including license plate images) stored within the PARCS. This requirement would include any image data processed or stored at the device or lot level.

All FMS data shall be stored in a location and format that is readily accessible throughout the communications network. All FMS data shall be formatted to allow modification of the output data (filtering, sorting, indexing, etc.) using standard reporting tools (integrated into the FMS) without modifying the underlying source data. All data elements shall be exportable to any designated workstation or to storage media in a format readable by any ODBC-compliant software package. The FMS shall be capable of accurately generating and storing standard reports as described below as well as ad hoc reports created through the System query functionality. All FMS reports shall have the capability of being sent to any printer on the PARC communications network using an appropriate print dialog box, icon, or the print screen function. All FMS data and reports shall be archived with appropriate security level restrictions (using online or off line storage) for a period of up to three (3) years (the current year's data shall be stored online). Archived data may be saved in a compressed format.

All computer software, hardware and firmware related to the FMS shall be suitable for its purpose and allow for reasonable growth without material degradation of its functionality. Reasonable growth shall be defined as being able to accommodate up to two hundred percent (200%) of the current number of devices, workstations, transactions, total revenue or peak data volume.

To the greatest extent possible, industry standard software packages shall be utilized and such software package shall be identified in the Contractor's submittal. The Contractor's submittal shall state the purpose of the software package, where it will be used, and how it will be used. If one software package is required to interface with another software package, the interface shall be documented as appropriate. Custom software required by the Contractor to operate the PARCS shall be supplied to the City with complete documentation and supporting schema, flowcharts and block diagrams limited to non-proprietary information.

F2. License Requirements

The Contractor shall provide to City (subject to the City project manager's approval) all software licensing for the software packages used for the System and any subsystems selected by the Contractor for implementation at the City. The licensing arrangement for the FMS software shall include an unlimited site license so that any number of authorized users on the PARCS communications network may access the System's functionality at any given time. This unlimited use shall not degrade the operations of the PARCS or any workstation computer used to access the System. Third party software licenses for software used in the PARCS shall be limited to 10 user licenses.

The Contractor shall provide appropriate software licenses as required for each of the software programs that have been developed or provided (off-the-shelf) to operate the System. If available, a site license shall be provided to City. The Contractor shall identify all third-party software and associated licenses in the System Definition Documentation. The Contractor shall submit in their proposal, a listing of all software licenses the proposed System will require through the standard warranty period.

F3. Software Upgrades and Escrow Requirement

All System software or firmware applications programs, modules, or subsystems shall be warranted to be free of defects for a period of one (1) year following final acceptance of the PARCS. All third party software shall retain full warranty as provided by the software vendor; however, cannot be less than one (1) year. The City may elect to have the Contractor maintain the software as part of the Contractor's maintenance support services. During the warranty period and any subsequent maintenance period the City shall receive at no additional cost any relevant software updates or added functionality relating to the FMS that the Contractor publishes or otherwise makes available for sale. Copies of all software (and software updates/upgrades made during the one-year warranty period) must be provided to City at the conclusion of the warranty period. A list of all commercial off-the-shelf software tools required to fully execute the software shall be provided to the City project manager in the Maintenance Manual.

All software and all software updates/upgrades shall be escrowed with an approved escrow agent for a minimum of ten (I 0) years and the Contractor shall provide the City project manager written evidence of all action taken to fulfill this requirement. The initial setup and the first year of the escrow agreement is the sole responsibility of the contractor, years 2-10 will be the responsibility of the City. The software shall be held by a third party escrow agent to be identified by the City and having a facility convenient to the City. The City shall have the unconditional right to use, update or otherwise modify the above referenced code in the event the Contractor becomes insolvent or if the Contractor as agreed in the terms and conditions of the contract and the escrow agreement is found to have materially and consistently failed to meet its contractual support obligations through abandonment or non-responsiveness. The escrowed materials shall include software code, Contractor specific compiler(s) and tools, and instructions to fully execute the escrowed software. The escrowed materials shall reflect City's System at the time of system acceptance.

All PARCS software updates and upgrades shall be provided free of charge for five (5) years starting twelve (12) months from date of System acceptance; however, City shall have the option of implementing the updates and upgrades or not. All software updates and upgrades must be accompanied by accurate and complete documentation, as well, as proof that the updates have been added to the escrow account as required. When software updates_include new processes (enhancements), the Contractor shall provide a written evaluation of the updated software's impact on City's System prior to installation of the updated software. Central server and workstations software shall be delivered with the most recent service packs and software patches unless specified by City and must be updated throughout the warranty period unless specified by City. The Contractor shall provide normal software improvement releases (updates) when they become available or when delivered to other clients (whichever comes first). Where software problems are identified by the City and are agreed to be minor, these problems shall be corrected in a new software release to be available to City within thirty (30) days of notification.

A system update is any software/hardware fix that is deemed necessary to add in order for the system to perform at its intended level of operation. For example, if a software bug is found in a system in Germany and determined that it could adversely affect all systems with that version of software, a fix is programmed, it shall be included as a software update package and distributed to all clients.

A system upgrade is a system feature or operational enhancement that can be added to the system or a newer software version that increases the speed and/or efficiency of the system. For example, if a newer version of PARCS is released and City wishes this newer version, it would be considered an upgrade and the City will have the option to request the contractor to upgrade its PARCS in accordance with Item F3. Software Upgrades and Escrow Requirement.

F4. Required Interfaces

The Contractor shall ensure that the System has the capability of exporting data in specific formats as required in these specifications. The exact formats of the data streams making up these system interfaces shall be identified in the System Definition Document.

It shall be the responsibility of the Contractor to research each system to determine the most appropriate method of transferring data within City's current networking environment. Systems or subsystems potentially requiring interfacing include but are not limited to the City's website, a frequent parker module, a parking reservation module, and the credit/debit card processing module. Displaying messages on the City's Website such as occupancy or best parking is the sole responsibility of the City; the Contractor delivers the information necessary in the appropriate format through the PARCS interface. The integration of the Reservation module on the City's website is the responsibility of the City.

F5. Required Software Modules or Functions

The Facility Management System or Software (FMS) shall provide a set of modules or functions that will allow it to function as the hub of all PARCS activity. The FMS shall also provide administrative controls, user management, and access security for all modules. These functions herein described as modules will be based on the centralized System Event Log or Journal. The Event Log or Journal shall be the database repository of all system messages and activity. The Event Log or Journal shall be immutable and maintained in secure database.

The Event Log or Journal will record all transaction data so as to allow the System to properly and accurately calculate, collect, and report revenue. The FMS will provide a central electronic audit trail so the accuracy and completeness of revenue reporting can be verified. The calculation of fees shall be based on the ability of the FMS to establish and adjust parking rate schedules (globally or per facility) for all types of transactions. The System shall also allow the City to set and change System "complimentary" and "grace" times globally and by facility. Complimentary time is the amount of time a patron has to enter and exit a parking facility without being charged a parking fee. Grace time is the amount of time allowed before the next increment of time is added to the parking fee. The rate schedules shall be resident on the system servers and also downloaded to individual devices so they may be able to calculate rates properly either on-line or off-line.

All the modules listed below shall be based on a report to the Event Log or Journal. The Event Log or Journal shall be maintained in a City approved database and shall have user-friendly query functionality. The methods and architecture the Contractor plans to use for the FMS software shall be described in detail in the System Definition Document.

F5.1. Device Monitoring and Control

One of the primary purposes of the FMS is to provide centralized processing and monitoring of all system data. The device monitoring and control module shall be the core module of the FMS and be based on the System Event Log and Journal. This module shall include all device and component interfaces or drivers necessary at the server or workstation level to provide full device monitoring and control functionality. This module shall also include all necessary user interfaces (such as the Facility Map) that may be required for proper centralized control of the entire parking operation.

F5.2. Revenue Tracking and Reconciliation

The Revenue Tracking and Reconciliation module or function is perhaps the most important of the software functionalities. The Contractor shall clearly detail the method to be employed to implement this functionality in the System Definition Document. This module will include all revenue tracking functions, as well as, rate tables and other such structures. This module shall include appropriate server and workstation reporting of all revenue by cashier, device, lane, facility, transaction type and any other parameter addressed in these specifications.

F5.3. Reporting and Analysis

The FMS shall include Reporting and Analysis functionality that will allow it to generate and store the information necessary to manage and report all parking revenue activities. The reporting and analysis module will give authorized users access to transaction data as recorded in the System Event Log or Journal. This module shall include a query function that will allow authorized users (through the use of filters, sorting and other methods) to produce custom data output based on the content of the System Event Log or Journal.
Standard reports will allow users to view data in pre-formatted output sent to a screen or a printer. Custom reports to be specified at a later time shall also be included in this module and included in the appropriate system and subsystems reports menus. This module shall also have strategic planning capabilities that shall allow the City to conduct 'What If' analyses of historical parking data. This type of analysis may be used to assess the impact of rate adjustments and to allow the City to properly plan future facilities in terms of comparing fee calculation based on historical occupancy information and alternative fee assignments to the actual occupancy and revenue information. Additional information on this functionality can be found in the Reports and Reporting Capabilities discussion below.

F5.4. Accounts Receivable

The FMS shall include an Accounts Receivable module that will provide management reports, invoicing, billing and tracking functionality for desi$_{gn}$ated accounts (prepaid validations, etc.). This module shall be fully integrated with the FMS software and the access control module described in the sections herein. The module shall include appropriate screens to manage individual and company accounts, as well as, generate the reports required to produce and distribute the billing product. *The Contractor shall include* a full description of the desi$_{gn}$ and function of this module in the System Definition Document.

F5. 5. Ticket Processing

The FMS shall include functionality to handle all ticket transaction processing for the PARCS. This module shall be able to receive and track data from the field hardware devices and generate appropriate transaction and management reports. This functionality shall be closely tied to the device monitor and control and reporting and analysis modules so as to properly account for all normal and exception ticket-based transactions. Additional information concerning the ticket processing function at the server/workstation and device levels is included in the various device descriptions listed below.

F5. 6 Credit/Debit Card Processing

The FMS shall include a fully PCI DSS compliant module for credit/debit card processing communications capability to allow it to centrally request transaction approvals. The FMS shall also allow for batch processing of credit/debit card transactions. This processing may be conducted internally to the central server or preferably by using a dedicated credit server or group of servers.

The module shall also include the tools necessary to research and resolve credit/debit card exceptions. This functionality shall include all interfaces and drivers that may be required to interface with the card processing clearinghouse and some functions may actually be conducted using clearinghouse software. The Contractor shall include a full discussion of this functionality including procedures for implementing changes in card processing clearinghouses in the System Definition Document.

F5. 7. Other RFID or Magnetic Card Processing

This module shall include all the software elements that will allow the City to use other RFID or ma$_{gn}$etic stripe and or barcode cards or badges for special purposes such as employee parking, employee and patron discounts, etc. Some cards may be used as non-revenue cards, cards with quarterly billing or added value cards that may be reloaded at the parking operations office. The module will include server-resident 'anti-passback' capability desi$_{gn}$ed to prevent fraud from multiple entries using the same access media. The Contractor shall include a full discussion of this functionality including procedures for managing and billing the various types of card users. All available system cards used in the new PARCS system such as non-revenue, coupon validation or other access cards shall be described in the System Definition Document.

F5.8. A VI (Access Control)

For the purposes of this document the AVI module shall refer to the software functionality necessary for the use of media solely for access control. Revenue transactions may be tracked similarly but handled by separate modules. All AVI devices (antennae. reader, controllers, etc.) will be integrated into the FMS so that AVI transaction data is accurately conveyed and posted to the FMS system journal or event log, AVI revenue and transaction counts are accurately reported and AVI transaction reconciliation may occur on a daily basis.

The AVI software module shall be capable of sending and receiving appropriate commands to and from the barrier gate in each lane to allow that device to confirm gate status and open or close the barrier gate. In multi-use lanes the AVI device shall not interfere with the proper operation of other lane devices, except that other devices will be disabled when the lane controller receives a good AVI read. This disablement maybe accomplished through communication with the barrier gate, lane controller or FMS rather than direct communications among the individual devices.

F5.9. License Plate Recognition (LPR) Process Control

The FMS shall include an LPR process control function either as an internal module or as a tightly integrated separate application. The LPR processing module shall allow the City to maintain positive revenue control while it implements new customer service options.

The LPR process control module shall assist in the capture, processing and matching of LPR images.

FS.10. Validation Tracking and Control

The contractor shall provide a system which is capable of providing a multi-value validation program based on manual offline validations units. These units shall encode on the magnetic side stripe of the parking ticket up to five (5) different dollar values of validated time and allows up to 999 different validation accounts. Each tariff account has its own tariff information allowing the flexibility to assign one specific group of an individual account a different rate structure. Multiple validation units should be able to be assigned to the same validation account or group.

FS.11. Frequent Parker Program

The FMS shall include a software module or functionality that will allow the City to develop and implement a Frequent Parker Program (FPP). This module would be integrated with other modules to allow for proper processing, control and reporting of FPP data. The module shall be capable of tracking customer parking activities from LPR records, smart cards, and Credit/Debit Card Processing The module shall include appropriate enrollment screens (to add patrons to the database), an appropriate tracking database, and appropriate reports.

FS.12. Parking Space Count Monitoring

The FMS shall be capable of controlling either directly or through an integrated application all aspects of the parking count subsystem. The status and count values for each area, lot or floor shall be displayed on the FMS GUI and updated in virtual real time. Count values may be adjusted or reset through the FMS. The FMS shall include the capability to accommodate prepaid, frequent parker or non-revenue accounts (organized in individual or in company groups) which will allow access into the parking facilities and track usage and movement within the system. The Contractor shall integrate within their software module an account specific counting to provide cumulative counters for each account group like credit card in/out, short term parking, and FPP enrolled customer parking.

FS.13. Parking Reservation Program

The FMS shall be capable of introducing a Parking Reservation Program functionality which will allow the City to implement a reservation program based on internet or smart phone input. This module will allow the City to implement this program by suitable integration between this module and other FMS modules such as the Credit/Debit Processing module, the Parking Space Count Monitoring module, and the Device Control and Monitoring Module. The Contractor shall fully discuss its approach to this functionality in the System Definition Document.

FS.14. Maintenance Management

The Contractor shall provide an off-line, easy to use maintenance log function independent from the PARCS system. This module will allow authorized users to track and identify equipment maintenance and performance trends. The module shall also allow

the City to track and verify technician performance based on the number and types of service calls completed. Appropriate reports as described below shall be provided in order to properly implement this functionality.

All software modules or functions shall be properly documented in the System Definition Document.

F6. Field Hardware Devices

All PARCS field hardware devices will be the newest available at date of contract signing and of the highest quality and levels of operation to facilitate ease of use, reporting, maintenance, spare parts inventory, and continuity of performance throughout the parking system. Each device shall provide for network communications to the FMS through intermediate switches as may be required for proper operation of the device and provide for an audit trail at the device level (where applicable) and as part of the total PARCS. All devices will be compatible with each other, as well as with the functional requirements of each successive level of operation, including, but not limited to the software requirements of the PARCS for control, reporting and auditing of parking operations. All Devices shall have maximum commonality of electronic components (boards, readers, ticket transports, displays, etc.) with similar exit devices so as to reduce spare parts costs.

All exterior equipment will be finished in a manner approved by the City project manager and as documented in the System Definition Document. Housings of all exterior installations will be weatherproof and suitable for the conditions prevalent at the City. All access doors and panels will be located in such a manner as to facilitate ease of use and maintenance. Access to doors and panels will not be blocked by any other device or by bollards, guardrails, barriers or other protective devices. All connections, cables, switches and fuses/circuit breakers required for lane monitoring will be fully secured in such manner that they are inaccessible to personnel involved in daily operations and marked in accordance with City standards and the requirements contained in these specifications. All device power cables and power switches will be secured in such manner as to prevent access by unauthorized personnel.

Each entry or exit lane device will be protected from lightning and transient voltage devices both through power and communication lines in such a manner as befit conditions prevalent at the City. All device connections including, but not limited to, mechanical, electrical and communication will be identical to the connections on every other device and shall be labeled with nomenclature identical to that provided with the Contractor's system documentation. All devices will be Underwriters Laboratory (UL) listed (or City approved equivalent).

The equipment shall have stand-alone capability to operate in an offline mode if communication to the central server is interrupted. When in off-line mode, all device/s must be able to record and store all transactions' information locally. All stored information shall be uploaded to the central server once communications have been re-established.

When uploading information, virtual real-time data shall take precedence over stored data if a conflict arises. Before the equipment exceeds the limit on number of transactions in storage, the equipment shall have the intelligence to close the lane or device so that the stored transactions are not overwritten. Each device must be capable of storing minimum of one thousand (1000) transactions.

All equipment appearances, functions, features, and characteristics shall be the Contractor's standard equipment and is subject to the approval of the City project manager and are to be documented in the System Definition Document.

F7. Lane Configurations

Details of each lane configuration shall be included in the System Definition Document. To the greatest extent possible the City would like to see standard lane layouts (for similarly functioning lanes) that will facilitate patron use and make maintenance less complex. The Contractor's desi$_{gn}$ shall take into account any future functionality that may be required such as additional forms of payment or access control devices (smart phone payments, pre-paid cards, etc.). In designing the entry lane configurations the Contractor shall also take special care in providing the necessary number of properly-placed inductive loops required for proper functioning of all devices and the lane in general. The Contractor may reuse existing loops but will be solely responsible for their proper function for at least ten (10) years from the System Acceptance date.

F7.1. Entry Lanes

All public parkfng entry lanes shall offer credit card in functionality and must include, at a minimum, one (1) ticket-issuing machine (TIM)/proximity/ma$_{gn}$etic stripe and or barcode card (such as credit/debit cards) reader device in facilities with multiple entrance lanes or two (2) ticket-issuing/proximity/ma$_{gn}$etic stripe and or barcode card (such as credit/debit cards) reader devices in locations when a facility has only one entry lane , LED si$_{gn}$ for rate and special event messaging, "Red/Green" lane status lights, an appropriate ADA-compliant intercom, a barrier gate (straight and preferably 180 degree articulated and/or fence arms), all required LPR subsystem components (cameras, lights, controllers, etc.), appropriate detection devices (such as inductive loop detectors) designed and spaced to detect motorcycles and small cars such as SmartCar, etc., a lane closure barrier gate, an uninterruptible power supply (UPS) up to two (2) hours, and protective bollards (or similar structures). In addition, some or all public entry lanes may have additional special equipment to implement programs such as the parking reservation system, etc. Employee parking patrons will be processed at certain public facilities through the use of proximity card readers mounted on or near the entry TIM.

All non-public entry lane configurations, if desired by City, shall be similar to the public entry lanes. With the exception of the LPR subsystem equipment, LED information si$_{gn}$s and the lot closure gates, the non-public lanes should include many of the same elements listed above. Other than the different access media and to the extent possible, it is expected that the non-public entry device will be essentially similar in appearance and desi$_{gn}$ to the public entry devices. No additional special purpose equipment is envisioned for the non-public entries but the Contractor shall provide specifics on how it plans to address the required functionality for these lanes in the System Definition Document. All

elements of the System Definition Document shall be based on Contractor's standard equipment and is subject to review and approval by the City project manager.

F7.2. Exit Lane

All public parking exit lanes shall be identical to the entry lane design and shall include, at a minimum, a proximity/ magnetic stripe and or barcode ticket/card (such as credit/debit cards) reader device, an LED sign for patron information, "Red/Green" lane status lights, a receipt printer, an appropriate ADA-compliant intercom, a barrier gate, all required LPR subsystem components (cameras, lights, controllers, etc.), appropriate detection devices (such as inductive loops detectors), a lane closure gate, an uninterruptible power supply (UPS) up to two (2) hours, and protective bollards (or similar structures). In addition, all public exit lanes except those specified by the City shall also include a cashier interface to allow operation of the lane in an attended mode. The cashier interface may be integrated with the self-service interface described above or may be a separate fee computer. The City's preferred solution would be to have single device, herein discussed as a dual purpose exit device, to address both the unattended and attended functionality. The dual purpose exit device shall also include two lockable cashier drawers (primary and relief) and a patron fee display to be mounted as per Contractors specification (to be approved by the City project manager) that shall be operational at all times when the lane is in the attended mode.

All non-public parking exit lanes, if desired by City, will be configured similar to the public exit lanes. With the exception of the LPR subsystem equipment, LED information signs and the lane closure gates, the non-public lanes should include many of the same elements listed above. The lanes shall include a proximity card reader. To the extent possible the non-public exit device shall be similar in design and appearance to the public lane exit reader and also the non-public entry device. No additional special purpose equipment is envisioned for the non-public exits but the Contractor shall provide specifics of how it plans to address the required functionality for these lanes in the System Definition Document. All elements of the System Definition Document shall be based on Contractor's standard, as well as third party, equipment and is subject to review and approval by the City project manager.

F7.3. Additional Lane Component Requirements

The Contractor shall provide battery backup capabilities at all entry and exit lanes. The battery backup or UPS device provided by the Contractor will be critical for the proper functioning of each lane. UPS units will be mounted in such manner as to be inaccessible to unauthorized personnel and, where possible, shall be fully-integrated into the existing booths, housing or communications cabinets. The UPS system shall also provide surge and lightning protection. Each lane will have an UPS capable of two (2) hours of use. To the extent possible, all UPS units at all entry and exit lanes shall be similar in order to reduce battery costs.

The Contractor shall provide an LED sign designed to provide better patron information and conform to applicable regulatory or statutory signage and ADA requirements.

"Red/Green lane status si_{gn}s shall convey lane status information such as, whether the lane is open or closed. Where appropriate these si_{gn}s shall be used in concert to convey additional special purpose messages such as when lanes are open only for certain purposes (such as "AVI Only", "Card Only", etc.). A lane controller or a primary device in the entry or exit lane shall control the lane status lights and the Contractor shall provide up to eight preformatted messages for the LED si_{gn}s and the capability to add messages locally as required. The lane and the lane status lights shall be controlled through and programmable from the FMS by a signal sent to the si_{gn} or to the device controlling it. Certain device malfunctions shall result in an automatic lane closure message from the FMS. The types of malfunctions that will trigger a lane closure shall be user-programmable through the FMS and result in an automatic switching of the Red/Green lane light to the 'Closed' or Red option. The particulars of the LED si_{gn} proposed and preformatted messages shall be submitted to the City project manager for review and approval.

The Contractor shall provide an appropriate patron fee display (in addition to the self-service interface display) at all lanes with a cashier interface. The Patron Fee Display shall provide feedback to the patron on parking fees and change due. When the Cashier is not processing a transaction the Patron Fee Display will indicate the system time as derived from the FMS. The color and font of visual information provided by the Patron Fee Display will conform to industry best practices and comply with local, state, federal laws, ordinances, regulations or guidelines. Special consideration shall be given to ADA-related guidelines. Alternate mounting locations may also be proposed if the Contractor determines that such locations would improve the visibility of the Patron Fee Display or the legibility of the information it conveys. Alternate Patron Fee Display mounting locations shall also take into account vehicle and employee safety and not present an undo hazard to persons or vehicles. The mounting locations for all patron fee display shall be subject to the review and approval of the City project manager.

The Contractor shall also provide all appropriate barrier or lot closure gates in a manner that satisfies the requirements below. The gates provided shall strike an appropriate balance between safety (for vehicles and pedestrians) and revenue control. Any barrier or lot closure gate with a "bounce back" safety feature shall be adjustable so that the gate will only bounce back when striking an object and so that the gate cannot be held in the up position when energized (to reduce the chance of fraud). The bounce back feature may also be disabled if adjustment is not possible.

The City prefers "intelligent" gates that possess their own internal logic and communications functions. The barrier or lane closure gate should be capable of receiving input signals from various lane devices and be capable of reporting gate status (gate up, gate down, gate broken or missing, etc.) and vend signals to the lane devices or directly to the FMS. The City prefers direct-drive gates (belt driven gates will not be considered) and the use of high-speed barrier gates in lanes possessing AVI devices. Gate housings shall conform to the general requirements listed below for device construction and finishes. Gate arms shall be $desi_{gn}$ed so that they may be replaced by one individual with appropriate tools. The gate arm may be constructed of wood, plastic or metal (or combination thereof) but shall possess a padded protective surface on its bottom edge.

Gates shall function properly in high wind conditions. The Contractor shall provide technical specifications for the proposed gates, for review and approval by the City project manager, in the System Definition Document.

F8. Entry Lane Devices

FB.1. Device Description

The Entry Device will be primarily a ticket issuing, reading and verification device however, in non-public facilities the devices shall be configured to read and verify magnetic stripe and or barcode or proximity cards and AVI only. As a dispenser, it will dispense a magnetic stripe and or barcode ticket to incoming public parking patrons. It will also send a vend signal to the barrier gate mechanism to open and allow access. The device will also have the capability to accept magnetically-encoded credit/debit/smart cards and/or facility specific parking cards (for prepaid, validations or non-revenue applications) encoded and issued by the City.

The Entry Device (public only) will be designed to dispense either a single magnetically encoded 'credit-card' sized ticket, multiple tickets joined together or allow the insertion of a single magnetic stripe and or barcode credit card or similar media (prepaid card, non-revenue card, smart card, etc.). Multiple tickets joined together will be used for advertising purposes.

The public entry lane device will be designed to dispense a ticket when a vehicle is detected on the arming loop and the parking patron depresses the proper button or switch to dispense a ticket. The Entry Device will provide an audible signal when a ticket has been dispensed or magnetic stripe and or barcode card has been inserted. The signal shall remain active until the ticket or magnetic stripe and or barcode card is removed or retracted, as applicable.

When a ticket is issued, it will be encoded both magnetically and in human readable format with transaction information to include but not limited to, a unique sequential transaction number, a lane or device number, a facility number or code, the date and time of issue in 24-hour format and the applicable rate code. When a magnetic stripe and or barcode card is inserted into the reader slot the device shall read the ml}gnetic stripe and or barcode and take appropriate action based on the type of card presented. Credit/Debit cards shall be checked for validity as described in Section 1.8 below, while other cards (prepaid, value-added, non-revenue, smart cards etc.) shall activate other software modules. All transaction infonnation, regardless of media type, shall be immediately conveyed to the FMS via the PARCS communications network.

All Entry Devices shall be installed in a manner that will allow issuance of tickets to or acceptance of magnetic stripe and or barcode cards from users in vehicles not exceeding six foot six inches (6'6") in height. This vital security safeguard may be accomplished using infrared beam height detectors.

FB.2. Entry Device Construction/Mechanical

The Entry Device will be constructed of heavy-duty steel or aluminum, will be of all welded construction and designed for all weather usage. If steel, the cabinet will be painted with, at minimum, a single coat of primer and two coats of polyurethane enamel or epoxy resin finish in a color to be approved by the City. If aluminum, the cabinet will be painted in a powder coat paint in a color to be approved by the City project manager. The Entry Device will be constructed in such manner as to allow ease of repair and replacement of the ticket transport and card reader mechanisms. The cabinet will provide a minimum of two access doors (except as provided below) for easy serviceability and ticket loading. All Entry Devices will be keyed alike, with one key for the ticket panel and a separate key for the mechanism access panel. Alternately, the cabinet may be internally compartmentalized to allow access to the ticket OR access to the mechanism, each accessible by separate interior panels. The Entry Device (public only) shall hold a minimum of 5,000 tickets in removable steel or aluminum bin or by use of easily inserted cardboard ticket boxes. A separate bin or similar device within the same compartment shall collect all impounded tickets. The Entry Device will use a thermal printer to imprint human readable data on the ticket to match the encoded information. Each print head will be capable of printing, at a minimum, 1,000,000 tickets. The tickets shall be separated from the ticket stack by a ticket cutting mechanism or assembly. Graphics how to insert a magnetic ticket shall be described in the SOD to the approval of the project manager.

F8.3. Entry Device Electrical/Electronic

Each Entry Device should have a 'single slot' fascia so that all magnetic stripe and or barcode media (tickets and cards) are processed using the same slot. The slot should allow for directed insertion with single magnetic heads using ISO-compatible side stripe confi$_{gu}$ration.

The Entry Device will provide electronic inputs and outputs to be used by the FMS to control and monitor access and to compile lane and transaction activity reports. Such communications shall be TCP/IP-based network communications. Although full communications with the FMS will be the required confi$_{gu}$ration, the Entry Device shall also be able to operate when such communications are interrupted or otherwise not present. The Entry Device shall have sufficient local memory storage capacity to cache no less than eight hours' worth of transaction data with the exception to LPR images and the in-lane image capture processor has not lost communication. Upon reestablishing communications with the central server (FMS), logic within each Entry Device will automatically download data for all transactions conducted while the device was offline. The data download shall occur in a manner that will not degrade the operation of the overall communications network and transactions shall be posted to the FMS Event Log or Journal in time-sequenced order (as they occurred rather than when received in the FMS). Before the equipment exceeds the number of transactions in storage the device shall have the intelligence to close the lane so that the stored transactions are not overwritten.

Each Entry Device shall possess an internal clock function that can be set and updated from any FMS workstation or at the device. The internal clock shall be updated by the main FMS server every hour in order to prevent system time differences greater than 15

seconds. The clock shall have the ability to automatically adjust for daylight savings time and leap years.

Each public Entry Device shall have the capability to interface with the license plate recognition (LPR) subsystem to record plate information for incoming vehicles. Depending on the system used, the LPR data may be reported to the FMS, processed locally, or reported to an intermediate controller for further processing or storage. The LPR function should be configured in a 'post capture' operation (after ticket issuance or card read). The Entry Device shall also be configurable to operate in a non-LPR environment (non-public) and this capability shall be field programmable.

The Entry Device should possess a diagnostics program accessible at the lane level through use of a laptop computer or other similar device. All instructions and prompts in the diagnostic program will be in English. The Entry Device shall be capable of appropriately interfacing with every other entry lane device and component, including peripheral components (barrier gates, lane lights, LPR processor, etc.) and other transaction processing devices (AVI readers, proximity card readers, etc.).
The Entry Device shall have an appropriate display, compliant with ADA guidelines and capable of conveying clear instructions and status information to the patron (LCD or equivalent screen at least 5" in size). Windows-based bitmap (or JPEG) images are the preferred method for conveying patron information but other methods will be considered as acceptable. Each Entry Device will include signage indicating: *"PUSH BUTTON FOR TICKET OR INSERT CREDIT/DEBIT CARD"* or similar patron instructions as approved by the City and to be placed in accordance with the City's guidelines. Visual cues provided via the device display may reinforce but not substitute for signage.

The Entry Device shall also have an intercom function that complies with ADA requirements and all requirements contained in these specifications. The Contractor shall propose an intercom that is two-way and hands-free in operation. If the patron does not take the dispensed ticket or insert the appropriate media in a field programmable time longer than a usual transaction needs to process the presence loop (via a relay) shall automatically activate the lane intercom function so assistance may be provided. All intercoms shall be routed to a master or sub-master panel as directed by the City project manager. The Contractor-provided intercom system is subject to approval by City's project manager. A discussion of the intercom system shall be provided in the System Definition Document.

The Entry Device will be capable of operating in a tandem or redundant installation in a lane that would allow one Entry Device to be active (primary), while a secondary Entry Device remains in standby mode. Upon failure of the primary Entry Device, the secondary Entry Device will automatically become active and have appropriate visual cues that will allow patrons to distinguish which Entry Device to use. The inactive device's ability to dispense a ticket or process cards will be disabled however, monitoring communications with the FMS shall be maintained.

Each Entry Device will send a signal to vend the gate, to the FMS and to the parking space count subsystem when activity occurs. The vend signal will allow access to the

facility and the other notifications will update the transaction database and facility vehicle count. The Entry Device will not issue another ticket until such time as it receives a signal (from the gate or FMS) that the barrier gate has been lowered. Each public Entry Device shall also have appropriate sensors that will allow the device to send a signal (alarm) to the FMS or any workstation on the PARCS communications network when the ticket supply falls below a user-settable level. The Entry Device shall also report other alarm conditions to include but not limited to, ticket jams, card jams, loss of communications, open device, etc.

Each Entry Device will have a heater to assist in humidity control. The Entry Device shall have thermostatic capability that will automatically adjust heating or ventilation devices to maintain internal housing temperature within an acceptable range. The environmental controls shall allow operation in exterior conditions between +25 and +120 degrees Fahrenheit and 10 to 95% relative humidity.

All equipment appearances, functions, features, and characteristics are subject to the approval of the City project manager and shall be documented in the System Definition Document.

F9. Exit Lane Devices

F9.1 Device Descriptions

There shall be two types of exit lane devices, exit readers and dual purpose exit devices. The devices shall be configured for public or non-public use. Depending on the functionality of the lane (attended versus unattended), different equipment components will be required at each exit lane. Depending on the location however, the lane shall be capable of processing public and non-public parking transactions or non-public parking transactions only. Each transaction processed by a public exit lane device shall commence with an LPR process (FMS query local capture and verification for LPR mode). Exit lane gate will be opened only upon closing of the cash drawer whenever an exit transaction is completed in an attendant mode.

Each public Exit Lane Device will be capable of reading the magnetically-encoded ticket dispensed by the Entry Device described above, reading validated tickets from a POF machine then validating and computing the correct fee based on the appropriate rate table. A 'single slot' configuration is preferred where the ticket and credit card (along with any other magnetic stripe and or barcode media) would be read using a single-slotted, magnetic stripe and or barcode reader/encoder.

The Contractor will provide a credit/debit card system, internal to the public Exit Devices, which will allow for the processing of credit cards, debit cards, prepaid cards non-revenue cards and other magnetic stripe and or barcode cards as the City may choose to accept in the future.

Credit/debit card system will be fully integrated in the revenue control system to provide for full reporting through the Exit Device and the FMS. All normal transactions processed through the FMS shall be approved in an average time of no more than four (4) to eight (8) seconds (dependent on response time from clearinghouse) from the time input is

completed. Whenever possible transactions will be cleared in virtual real time however; when network communications are temporarily unavailable, batch processing of transactions will be used. Upon completion of an approved exit transaction, the FMS shall simultaneously send a signal to open the exit lane gate as well as the "roll-down" facility closure gate when applicable.

Each public Exit Device shall be capable of retaining information on invalid ticket or other similar exceptions in local memory provided that the exception was broadcast over the network prior to loss of communications. Upon reestablishing communications with the central server (FMS), logic within each device will automatically download data for all transactions conducted while the device was offline. The data download shall occur in a manner that will not degrade the operation of the overall communications network and transactions shall be posted to the FMS journal (or indexed) in time-sequenced order (as they occurred rather than when received).

Tickets that have been processed in an exit lane shall be invalidated for future use, both on the ticket and electronically within the system. The invalidation methodology shall be discussed and described within the System Definition Document. Exception transactions described later in these specifications may not be processed at unattended lanes.

At non-public facilities the exit lanes shall utilize exit readers proximity card processing functionality. Select public lanes shall also include proximity card processing functionality. All public exit lanes shall be capable of operating in an unattended mode that accommodates ticket-based transactions, credit/debit-card transactions and POF transactions. Cashier-attended lanes shall be capable of also processing all such transactions.

All Exit Devices will be keyed alike and keyed uniquely from all other parking control devices, with one key for ticket access and a separate key for the mechanism access panel.

F9.2. Exit Reader

The Exit Reader shall be similar in almost all respects to the Entry Device used in public and non-public applications as described above. The preferred solution for this device would be one that shares common components with the Entry Device (transports, housing, print heads, etc.). In public exit lanes, rather than issue a ticket, the Exit Device will allow patrons to exit through unattended lanes by inserting tickets from the Entry Device, or tickets validated by Pay-on-Foot machines and other validation machines. The Exit Device shall also be capable of processing "credit card in/out" transactions, "ticket in/credit card out" transactions, as well as, prepaid and non-revenue magnetic stripe and or barcode cards. The Exit Reader shall have the capability to impound collected tickets and deposit these tickets in a special purpose ticket hopper. The Exit Reader in public lanes shall also be able to provide the patron a "credit-card" size (or other media fonnat) receipt containing all required information as described in the Consumables section below.

However, the fee computer functionality capabilities discussed below for the Dual Purpose Exit Device shall also apply to the Entry Reader when confi$_{gu}$red for public

patron use. The Exit Reader at non-public lanes shall be used to read proximity cards only and shall be capable of providing server-resident anti-pass back functionality. To the extent possible these non-public Exit Readers should be similar in appearance and design to the Exit Reader provided in the public parking facilities.

F9.3. Dual Purpose Exit Device

The Dual Purpose Exit Device shall be a device that combines the functions of a Fee Computer and Exit Reader described above. The Dual Purpose Exit Device solution will (if possible) provide a single device located in or adjacent to the existing cashier booth that allows the lane to be used in an attended or unattended mode. The Exit Reader functionality of this device shall allow patrons to complete their own magnetic stripe and or barcode card-based transactions (self-service) whether or not the lane is attended.

The Dual Purpose Exit Device must be capable of separately accounting for and reporting shift and transaction data for transactions conducted by cashiers and transactions conducted by parking patron. The Dual Purpose Exit Device will be an on-line virtual real time revenue control device which provides fee calculation and reporting features at an exit of the parking facility. The devices shall be fully-networked using standard TCP/IP protocol. Although full network communications with the FMS will be the required configuration, the devices shall also be capable of operating without such communications being present ('standalone mode'). Each Dual Purpose Device shall be capable of buffering a minimum of 24-hours of transaction information on local storage media.

Each Dual Purpose Exit Device shall be capable of accepting manually keyed information in the event that the magnetically encoded ticket or card is unreadable. The device will assign a unique and sequential number to every transaction. The exit date and time will be based on an internal system clock, set accordingly to and by the FMS. The device will print one receipt per transaction (a function that may be set to manual or automatic mode) to include all information as listed in the Consumables section of these specifications.

Each Dual Purpose Exit Device will have a liquid crystal display (LCD) or HD LCD display visible to the cashier (cashier interface) and another visible to the patron (self-service interface). The cashier display shall have "touch screen" capability for standard cashier transactions and a keyboard for all exception transactions involving intervention with LPR. Each Dual Purpose Exit Device will integrate with or provide a display visible to the patron (patron fee display) that will convey fee amount and change due information when the device is used in an attended mode. The default display for the display shall be the system time and the type of information provided (time, fee or change due) should be readily identifiable by the patron at all times. Each device will be capable of sending a signal to vend the barrier gate at the completion of the transaction and upon the closing of the appropriate cash drawer.

F9.4. Exit Device (Reader & Dual Purpose) Programmability

Each Exit Device will be fully programmable either at the device or via download from the FMS. The public Exit Devices will be capable of being programmed for definable

time increments by minute, hour, day, number of days, and day of the week. The public exit devices will be capable of being programmed for up to ninety-nine (99) separate rate tables, each with for up to nine hundred ninety-nine (999) time increments. The rate tables shall have maximum flexibility for time increments (variable between one and sixty minutes per hour and multiple hours, days, weeks or months), grace periods, complimentary periods and dollar amount per increment. The public exit devices will be capable of being programmed to set a daily maximum parking rate for each device within each parking area, a grace or complimentary period that runs concurrently with the first time increment and definable dollar amount-based or time-based validations that may be programmed on the ticket by pay-on-foot devices or ticket validation machines. Lastly, the public exit devices shall be capable of being programmed with "holiday rates" (rates with limited duration, pre-programmed to commence and expire automatically). Contractor is responsible for providing sufficient training to the City to allow unlimited fee rate changes at no additional cost to owner. The term fee rate change is meant to change the rates for each tariff step but not the tariff step structure.

The Dual Purpose Exit Devices will be capable of being programmed for up to nine hundred ninety-nine (999) users (cashier and supervisor ID numbers) with the ID numbers programmed on magnetic stripe and or barcode media issued by the PARCS system to each user. A dual security system would be used so that each user would have both unique ID media and unique password to access the PARCS system. Each Dual Purpose Exit Device shall have a cashier interface with standard alphanumeric keys, and keys programmable for, but not limited to, up to two hundred (200) different validation accounts, and all exception transactions listed in these specifications or otherwise provided by the Contractor. The programmable keys on the touch screen shall be configurable so as to enable or disable each type of function.

F9.5. Exit Device Audit Trail

All public Exit Devices will be capable of transmitting, in virtual real time, an electronic audit trail to the FMS via standard network communication. The cashier interface of the Dual Purpose Exit Device will also be capable of producing a printable local audit trail. The audit trail will consist of, at a minimum, the entry/exit times and dates (in 24-hr format) for all transactions, entry/exit device identifiers for all transactions, the rate code used for transactions, validation codes used (if any), validated amounts (if any), number of exception transactions (by type), number of exception events, illegal exits, cashier/shift log-in information and any power or communication failure data.

Each Dual Purpose Exit Device will maintain separate records for each cashier and possess the capability of suspending a shift for breaks or relief. The device will maintain a non-resettable totals and subtotals for each shift. The device will clear cashier shift totals at the end of the shift marked by the running of the shift-end report. All data from completed shifts shall be stored locally at the device for a period of at least thirty (30) days. The device shall also report any incomplete or open shifts (where no end shift event has occurred). A supervisor with appropriate access shall have the capability to close any incomplete shifts, but such action shall be marked in the audit trail (and reported to the FMS) as an exception event.

F9. 6 Dual Purpose Exit Device Cashier Reporting

Each Dual Purpose Exit Device shall be capable of providing a printed end of cashier shift report to include but not limited to, device identifier, cashier or supervisor identifier, date and time of report, non-resettable transaction numbers, non-resettable fee totals, the number of total transactions, the number of normal transactions (with subtotal), number of transactions and fee totals by tender type, number of validation transactions (with subtotal) and number of exception transactions (with amounts and by type).

F9. 7. Exit Devices Construction/Mechanical

The required construction, mechanical, electrical and electronic characteristics of all Exit Devices (public or non-public) shall be similar to those enumerated above for the Entry Devices. The Contractor shall provide a full description of these characteristics as part of the System Definition Document. All equipment appearances, functions, features, and characteristics are subject to the approval of the City project manager and shall be documented in the System Definition Document.

Each Dual Purpose Device will consist of cashier interface, a ticket validation device, a printer, a power supply, patron fee display and up to two cash drawer (one primary and one relief) and a patron (self-service) interface which will be similar to the Exit Reader. The cashier interface will be constructed in such manner as to fit in the current booths. If the Contractor is unable to do this, they shall provide an alternative solution, acceptable to the City project manager, which meets all other requirements of this specification.

FlO. Special Purpose Fee Computers

FJ0.J. Parking Operations Office Fee Computer

A fully-functioning Fee Computer shall be provided in the Parking Operations Office. This Fee Computer shall be used primarily to process, manage and control special purpose magnetic stripe and or barcode cards used for employee parking, discount coupons, etc. Special authorized users would prepay for special transactions or discounts using this device. Although identified as a fee computer, a properly confi$_{gu}$red workstation may be used to fulfill this requirement. This device would have the reporting and audit trail functionality listed for the devices above. The device would also have the integral capability to encode or re-encode cards with card value and identifying data. The City envisions this fee computer as a tool to replace several manual exception processes (employee discounts, etc.) with an automated, auditable process based on magnetic stripe and or barcode cards.

This fee computer need only have one lockable cash drawer but would still require an appropriate patron fee display. If however, a workstation is used for this functionality, the cashier drawer requirements would not apply. Details on the Contractor's proposed solution to address this functionality shall be included in the System Definition Document for review and approval by the City project manager.

F10.2. Central Cashiering Fee Computer (Option)

The Central Cashiering Fee Computer shall be used to assist customers preferring cashiered services and to assist customers in the Pay-on-Foot (POF) area of a garage. This

device shall have similarities to both the cashier interface of the Dual Purpose Exit Device and the POF devices described below.

The Central Cashiering Fee Computer shall include all the appropriate programmability, audit trail and reporting capabilities listed for cashier interface of the Dual Purpose Exit Device. Additionally and similar in function to the POF devices, the Central Cashiering Fee Computer will allow users to prepay their parking fees and provide them with a validated (paid) ticket with the appropriate lag time to allow patrons to exit via the Exit Readers. Lag time is a preset length of time programmed into the system to allow patrons paying at the Central Cashier or POF devices to return to their vehicles and exit. Failure to exit prior to the expiration of the lag time period would result in the accrual of additional fees payable at exit. Lag time, measured in minutes shall be set and changeable by the City for a specific parking facility, or globally for all parking facilities. This ability shall be granted only to those with appropriate user access and verified password. Lag time shall be changeable by the City through on-line communication from designated workstations and broadcast to all system devices. Details on the Contractor's proposed solution to address this functionality shall be included in the System Definition Document for review and approval by the City project manager.

F11. Pay-on-Foot (POF) Devices

F11.1. Device Descriptions

The Contractor shall provide Pay-on-Foot (POF) devices that will allow patrons to prepay their parking fees before arriving at garage exits. Payment may be tendered using validations, credit/debit cards, currency notes or combination thereof that would be processed by the POF device. Two different configurations shall be required, one which accepts both currency and credit card payments and one configured to accept credit/debit/smart card payments only.

The POF will be an integrated part of a larger PARCS system that would include all other transaction processing devices, all of which would be monitored and controlled by the FMS software resident on a central server. The Contractor shall furnish and install the necessary equipment and incidentals for the POF devices to be approved by the City project manager.

The POF shall possess an internal clock that may be set or updated at the device or globally from any FMS workstation (or central server) to ensure accuracy with fifteen (15) seconds of the central server's clock. The POF devices will normally be in constant communication with the FMS or central server via a network connection. Network communications will use the TCP/IP standard protocol. The POF devices shall have the ability to transmit, receive and store transactional (including exceptions) and operational data in manner similar to lane devices.

The POF will also be able to operate offline until the memory buffer is filled or such time as a communications link has been reestablished, whatever occurs first. Upon reestablishing communications with the central server (FMS), logic within each device will automatically download data for all transactions conducted while the device was offline. The data download shall occur in a manner that will not degrade the operation of

the overall communications network and transactions shall be posted to the FMS journal (or indexed) in time-sequenced order (as they occurred rather than when received). Each POF shall have sufficient local memory storage to cache 24-hours of transaction information when offline and sufficient intelligence to cease operations prior to overwriting stored data.

FII.2. POF Device Operations

The POF shall be a PC-based device running a City approved application that will calculate parking fees due (for tickets issued at any PARCS entry lane) based on a magnetic stripe and or barcode ticket inserted into the appropriate slot on the face of the device. The POF shall print or encode on the ticket, in applicable media format and also in human readable format, respectively, all transaction information that would normally be written to the ticket by an exit device. The device will accept payment and provide an exit pass or validated ticket that will allow the patron to exit (via any lane with an Exit Reader or Dual Purpose Exit Device) within a given field programmable lag time or grace period. Should the patron exceed the allotted lag time or grace period additional parking fees will accrue. Each POF shall be capable of processing any valid ticket issued by any other device in the PARCS system. The POF device shall be able to retract processed tickets ifleft in the POF after a user-defined timeout period.

Each POF shall be able to track, and reject any illegal tickets (invalid, used or foreign) and notify the FMS via an alarm (to be determined by the City Project Manager) message that such a ticket has been detected. The POF shall have rate table programmability feature similar to and compatible with the specified Exit Devices. Each POF shall be configured with a UPS unit (including surge protection for power or data systems) either internal to the device or in line with its AC power supply.

All POF devices shall have credit/debit/smart card processing capabilities similar to those specified for exit lane devices. In addition to these credit/debit/smart card processing capabilities the POF devices shall also have the ability to generate a system alert and direct customers to the central cashier should they encounter problems processing their cards. Some POF devices shall also be capable of accepting cash payments. At a minimum, the cash-accepting device shall accept U.S. currency (excluding $2 notes) in denominations up to and including twenty (20) dollars and dispense U.S. currency in denominations up to ten (10) dollars. All currency notes shall be parked or escrowed until the transaction has been completed.

If necessary these POF devices shall also be capable of dispensing change (rounded to the next whole dollar, if required) as appropriate. In addition to the one set of banknote canisters or cartridges delivered with each cash and credit/debit card POF device, three (3) additional sets of canisters or cartridges (per device) shall be provided with an additional 10% for spare parts support.

POF devices shall provide a single receipt for each transaction. These receipts may serve as credit/debit/smart card vouchers as well. The receipt shall include all the information found on receipts issued by other exit devices and enumerated in the Consumables section below plus the lag time available to the customer before additional fees become due. The

receipt shall be field programmable so that a receipt is issued for every transaction, upon request, or when a certain programmable total parking fee threshold in reached.

FJJ.3. POF Device Construction/Appearance

Each POF will be enclosed in a locked, tamper-resistant steel cabinet appropriate for the storage of large amounts of currency. The POF cabinet shall be installed in a manner that makes it compliant with ADA requirements, customer convenience and any applicable statutory or code requirements. The POF shall have internal security features to include but not limited to, open device notification to the FMS, internal tracking of maintenance mode operations, a digital camera with ability to record within the POF to view a patron's face and or activity around the POF Device. Special keying or password protection to uniquely identify anyone accessing the device will be an integral part of the device security system. The POF shall be capable of maintaining an internal electronic event journal to log transaction data as well as significant or exception events, and shall be capable of relaying this data in virtual real-time to the FMS for logging in the central Event Log or Journal. The POF cabinet shall contain an UPS unit that provides two (2) hours battery backup power and power conditioner; domestic power shall be connected directly to the UPS unit so that the POF shall constantly operate using conditioned power.

The POF devices shall have clear and appropriate graphics or video guidance systems the Contractor shall describe in the System Definition Document each single screen) to guide the patron through the transaction process. The graphic user interface (GUI) shall be in English and Spanish (and having a multi-language support as an option based on contractor's standard languages) with universal icons, color text and graphics used appropriately. The customer guidance on the POF devices shall be with minimum human intervention, except for the payment itself and will be displayed at a minimum on a 12" Display. Should the device be out of service an appropriate message shall be displayed instructing patrons to either pay at exit or use alternate POF locations. The POF shall also be equipped with a two-way intercom function that will allow patrons to get assistance as required by pushing a button. The intercom shall be ADA-compliant in its operation and installation.

The colors for the POF housing, the type of intercom, the type of display, and all text, and graphics shall be documented in the System Definition Document and approved by the City project manager prior to delivery.

FJJ.4. Employee Parking Proximity Card Reader

The Contractor shall propose AVI or RFID access control devices similar to the existing proximity card readers used for non-public parking. These devices should at minimum be "contact less" in operation with a read distance of up to one (1) foot. These devices will be installed as free standing units or be incorporated in the Public Parking Entry/Exit Devices for use by employees and pre-paid parking patrons.

F12. Network and Computer Devices

The City shall provide an independent network, comprised of appropriate computing and networking devices, components and interfaces, that is robust, able to accommodate the System requirements and in compliance with current City Information Technology and

Telecommunications (ITT) standards. The City and the Contractor will work together on the design and implementation of the network infrastructure. The Contractor shall submit the network design requirements for the PARCS system for approval to the City project manager in the System Definition Document.

The Contractor shall assist the City to provide a network design with system and component redundancy so that no single failure of a device shall cause an operational failure. The network design shall be based on open architecture standards that support future upgrades, while building on existing infrastructure investments and minimizing network down timer. The network design shall be able to accommodate reasonable growth and development so as to allow a doubling in network traffic, storage requirements, and network devices. Although the System will operate on its own network with certain dedicated workstations, the Contractor shall provide (subject to the approval of the City project manager) an interface with the City's administrative network for access to the System by authorized users from their desktops anywhere within the administrative network. All networking installation tasks shall be conducted under the guidance of the City's network management staff. Detailed descriptions of the network design and its component parts, to include but not limited to descriptive narratives, diagrams, technical specifications, procedures, and operating instructions shall be provided by the City and included in the System Definition Document by the Contractor.

F13. Data Communications

The Contractor shall implement data, audio, and video communications (in a manner approved by the City project manager) between the System-redundant central servers, the network switches, workstations, and field hardware devices. The server location will be as directed by the City's ChiefInformation Technology Officer (CITO). The contractor shall provide the servers with peripherals, connectors, patch cords, terminations and all other devices (excluding racks or other mounting infrastructure) necessary to accomplish the required connectivity. The Contractor shall be responsible for all cabling and connectivity within the individual parking facilities. To the extent possible this connectivity shall be accomplished using the existing communications infrastructure and in a manner that minimizes impact on parking operations and customer service.

The Contractor shall be responsible for providing proper communication links and all physical or software connections between the different components of the System. The deployment of any communications components that may be required for the proper functioning of the System, but is not provided by the City, shall be the responsibility of the Contractor and charged to the City. Communications cabling between devices on the network shall be fiber optic or in accordance with the City's cabling standards and as appropriate for the particular cabling runs. The Contractor shall provide patch cords to connect all supplied equipment to the communications infrastructure. In the System Definition Document, the Contractor shall provide a detailed description of the physical cabling topology for City project manager approval in a format to be approved by the City project manager.

F14. Computer Rooms

The System central servers shall be located in the City's Data Center or as determined by the City's CITO.

F15. Maintenance Support System

The Contractor will provide and install, and implement equipment that supports Simple Network Management Protocol (SNMP) and remote monitoring of distributed units. Network management shall be independent of the operational/applications software.

F16. Servers

The Contractor will provide, install, connect, test, and commission at a minimum two (2) identically configured servers or group of servers (a primary and a backup) to function as the central host computer for the PARCS. The servers shall be dedicated to the PARCS system and independent from any other system or application running on the City's network. All server installations shall include all required peripherals and must be performed under the supervision of the City's information technology staff. All necessary software and configuration such as the database and cluster applications shall be provided by the Contractor. The City and the Contractor will work together on the design and implementation of the database server system. Where possible and appropriate, the Contractor shall attempt to minimize the number of redundant server systems operating by having multiple applications residing and operating from common servers. To provide physical redundancy and facilitate load-balancing, load-sharing, System servers shall be placed within the City's Network Operations Center (NOC). At the City's option, the redundant or backup set of servers may be installed in a separate location with appropriate network connectivity that will provide additional survivability. Such servers or group of servers, which shall consist of core data input, storage, processing, and dissemination facilities, shall be suitable for the intended purpose and sized in a manner as to operate the PARCS according to the performance standards set forth in these technical specifications. Such servers or group of servers shall generally comply with the City's server standards and may be physical and/or virtual. The preference is for all of the server and database systems to be virtual

The servers or group of servers shall be capable of processing all data and of meeting all other performance requirements as set forth in these specifications. The servers and group of servers shall be sized to allow for system expansion of up to 100% of existing volume in terms of transactions, LPR images, number of PARCS devices or number of facilities controlled. At a minimum, the servers shall meet specifications set forth by the City's CITO. If physical, the servers or group of servers shall include dual or redundant power supplies, data backup capability (network-based storage), and a network interface card.

The servers configuration shall include all software (installed by the Contractor), including licenses and documentation, necessary for their operation and administration. The operating system shall be the latest compatible version of Microsoft software. The City may at its sole discretion use an existing license for the new servers and request a credit for the Contractor. All middleware, administration desktop application and

communications packages or drivers (to include documentation and licenses) appropriate for the specific configuration shall also be included.

The servers shall be installed and configured to support a City issued or approved security system in all the servers to prevent unauthorized access (as approved by the City project manager). The security system shall include the latest version of software certified by the Contractor at the time of installation and shall provide for multi-processor support and secure server database access.

The Contractor may be required to provide, install, configure, commission, and support anti-virus software that includes the most current virus scan data available at the time of installation. The City may at its sole discretion use an existing license for the new servers and request a credit from the Contractor.

The Contractor may be required to provide (as approved by the City project manager) all software necessary to backup and restore the System data and server operating system on optical discs. The Contractor will provide written recommended backup procedures and practices in a format acceptable to the City project manager. In addition, the City shall have the ability to carry data to other City storage devices as desired. These other storage devices shall include common third-party equipment such as network hard drives, etc. to be provided by the City.

The database storage and memory shall be confi$_{gu}$red in such a manner as to maintain six (6) months of on-line system transactions data (including LPR data and images) and all summary reports. The Contractor is responsible to provide sufficient storage space to accommodate the amount of data to be stored for six (6) months of online system transactions data (including LPR data and images) and all summary reports. The Contractor shall provide a backup/archiving system (software only) whereby reports are properly catalogued, such that historical data can be retrieved, added to new reports, or printed. All summary reports for up to five (5) years shall be archived on electronic media. All operational data for the current year and the two previous years (36 months of data) shall be available on-line. The term operational data shall include full details of all event or journal log entries relating to failures, complaints and lane closures and all exception transactions. Detailed event data shall be maintained for 180 days with the balance of the data up to 36 months shall be in summary format. The Contractor provided redundant server system hardware shall size the System servers' storage capability to have three years active data on hard disk along with software and other programs required to operate the system.

The Contractor shall provide a written description of the hardware/virtual configuration of all system servers as well as provide a written description of the software confi$_{gu}$ration (to be approved by the City project manager and the Contractor) and in a format (also to be approved by the City project manager and the Contractor) so it can be incorporated as part of the System Definition Document.

F17. Network Switches

The Contractor will work with City's CITO to install, connect, configure, and commission managed network switches in the appropriate communications rooms to allow network connection of all PARCS devices. The Contractor will meet the City's current network switch configurations. All network communication hardware and software documentation shall be incorporated by the Contractor into the System Definition Document.
All network switch installations and configurations shall be performed under the supervision of City information technology staff and properly documented in a manner acceptable to the City project manager.

F18. Other Equipment

F18.J. Uninterruptible Power Supply

The Contractor may be required to supply install, connect, and configure one each Uninterruptible Power Supply (UPS) to allow a minimum of two (2) hours of uninterrupted operation of the System Server and the backup server in the event of a power supply failure to one or both. The Contractor shall submit technical specifications to City's CITO for approval the appropriate UPS requirements to allow the Central Server to shut down gracefully in the event of power outage.

FJ8.2. Workstations

The Contractor shall provide the recommended workstation specifications for the dedicated workstations to be primarily used to monitor and control the System but will also have the capability to run other programs (such as the Microsoft Office suite) in a Windows environment. The Contractor will procure the necessary workstations and install them with oversight from the City's CITO or designee. Besides the dedicated System workstations, the City will allow authorized users to access the System through the City's administrative network using their existing desktop computers and a custom web browser application. The Contractor shall supply the minimum workstation requirements to allow such capabilities. The Contractor shall clearly state in the System Definition Document which specifications are for the dedicated System workstations and which specifications are for the existing City workstations (if the requirements are different).

F18.3. Printers

The Contractor shall specify minimum printer requirements that would allow the City to efficiently and effectively monitor and control the parking operation. The Contractor shall provide the recommended printer specifications and the suggested number of printers to operate the System.

G ***REPORTS AND REPORTING CAPABILITIES***

G1. System Reports and Reconciliation

The Contractor shall provide a comprehensive package of their standard City system reports (to be defined in SDD) that shall allow the City to maximize the utility of all System functionality. The system reports shall assist the City and the parking management company in the proper monitoring, control, staffing, auditing, planning and development of the System and the parking facilities. All reports provided shall be consistent and reflect the reporting accuracy standard contained in these specifications.

Final versions of all system reports shall be included in the System Definition Plan and the Configuration Management Plan shall be updated to reflect revision numbers.

The Contractor shall provide a detailed description and presentation of the reconciliation processes required within the System and shall explain how the system reports shall be used to accomplish this critical task. The Contractor shall provide a step-by-step description of all report balancing and reconciliation activities for approval by the City project manager. These reconciliation descriptions shall include (at a minimum) the procedures for balancing the overall parking operations statistics, transactions, revenue, license plate recognition, inventory, space count, pay-on-foot, and parking reservations. Changes to the reconciliation processes may be requested and provided by the Contractor to the City. The final description of the reconciliation procedures will be included in the System Definition Document

G2. Reporting Capabilities

The City shall have the ability to view on screen or print all reports in full or for select periods of time and dates or save to a file in a variety of format (PDF or CSV) to be defined in the System Definition Document (subject to the approval of the City project manager) including, at a minimum Microsoft™ Excel. The City shall also have the ability to generate the reports using a comprehensive report menu system (resident in the facility management software) that groups reports by function and may be accessed from any workstation on the PARCS network. The reports shall be used to access current and historical data and may be set for automatic or on demand generation.

The Contractor shall provide the City with the ability to create queries and reports on the System's transactional data without jeopardizing the System's data integrity. The City's preference is that all query and reporting functionality shall be resident on the System and accessible through the FMS reporting menu system.

The Contractor shall also provide statistical information that will allow authorized users to conduct "What If' analyses, at their own conclusion based on the outcome of the reports, for strategic functions such as revenue projections, parking demand trend analysis, rate adjustment impact and facility management planning.

G3. Required System Reports

G3.1. Daily Summary Reports

A collection of transaction data (including number and types of transactions, number of tickets issued, collected or outstanding, dollar value of outstanding tickets or vehicle inventory in the facilities, number of credit/debit card transactions, revenue collected by lane, shift, tender type, or cashier, etc.) for all activity by lane number or other identifier for a twenty-four hour period (user defined) presented in a single report.

G3.2. Monthly Summary Reports

Similar in scope and data elements to the Daily Summary Reports, the Monthly Summary Report aggregates and summarizes all the data from the individual daily reports.

G3.3. Revenue Reconciliation Report

A management report designed to provide all revenue infonnation in a single location so that total revenue collected versus total revenue expected may be reconciled on a daily basis. This report may be run for any period of time (hours, days or months and groups or portions thereof).

G3.4. Ticket or Transaction Reconciliation Report

A report designed to account for all ticket and non-ticket transactions and compare these totals against gatc vends and LPR vehicle inventory.

G3.5. Maintenance Log Report

A report derived from the system journal or log that identifies malfunctions and down time by device and/or lane. This report may include trend analysis. (These reports to be provided to pre-designated City's Parking Division Unit or staff member independent of the PARCS report package).

G3. 6 Equipment Downtime Report

A maintenance management report designed to track and correct chronic maintenance problems for specific devices or components. Each lane device and POF device shall be listed along the length of downtime each experienced within a user-settable length of time. (These reports to be provided to pre-designated City's Parking Division Unit or staff member independent of the PARCS report package).

G3. 7. Technician Performance Report

A maintenance management report listing all technicians and detailing the number and length of service calls or procedures performed in a given period of time. (These reports to be provided to pre-designated City's Parking Division Unit or staff member independent of the PARCS report package).

G3.8. System Exception Reports

A management report that shall summarize all system exceptions (or filter exceptions by type) reported to the FMS and written to the system journal or log for review and action by the appropriate party.

G3.9. Lane Activity or Volume Reports

A summary report that indicates lane and device usage on a daily or monthly basis in terms of number of vehicles or transactions processed. The report shall highlight usage by time, device and lot.

G3.10. Credit Card Processing or Reconciliation Report

A revenue report designed to allow reconciliation of amounts transmitted to the credit card clearinghouse versus amounts deposited in the City's revenue accounts (less any applicable transaction or discount fees).

This report shall become part of the system once the City has deployed the AVI system and the interface is developed.

G3.11. Validation Reports

Periodic (daily, weekly, or monthly) revenue reports that list all validations received and fees not collected by validation type or account from field devices, list all amounts collected or billable from validation customers by, validation account, type and amount.

G3.12. System Journal or Event Log Report

This is a multi-purpose report that may be filtered on any field in the system journal or event log report database to fit the users' needs. This report serves as the basic query function for the system's journal or event log.

G3.13. Cashier Shift Reports (Fee Computer)

A management and revenue report available either at the lane or via the FMS that provides transaction and revenue totals for each shift worked by an individual cashier or supervisor.

G3.14. Supervisor Shift Report

A summary report that indicates all the lane and cashier activity totals for given supervisor's shift.

G3.15. Cashier Analysis Report

A management report desi$_{g\,n}$ed to track and identify patterns in cashier productivity by compiling transactions processed by each cashier with special emphasis on exception transactions and transaction volume per shift. The report may also be used for corrective training, incentive plans or disciplinary action.

G3.16. Peak Occupancy Reports

A periodic summary report (daily, monthly or weekly), this report indicates peak vehicle occupancies by hour and by day for each garage and lot with subtotals for each floor of a garage and grand totals of entire facility.

G3.17. Duration Reports or Ticket Value Reports

A management report that categorizes all transactions (for a day, week or month) into user-programmable time or ticket value increments with subtotals for each increment. The report should also calculate average (mean) and median ticket prices.

G3.18. Current LPR vehicle inventory Reports

A daily, weekly or monthly management report that summarizes all current LPR data by facility (and if applicable by location). The report shall also include data on vehicles or plates purged from the database. A dollar value of the LPR vehicle inventory by facility shall also be provided.

G3.19. LPR Exception Reports

A daily, weekly or monthly management report desi$_{g\,n}$ed to summarize all disappeared, reappeared or moved vehicles. Primarily used to check the LPR database this report documents all plates that have been purged without a known exit, that have been previously purged at exit and inventoried (indicating a possible input error) or whose

location has changed since the last inventory update. LPR exception reports shall detail all transactions that have deviated from standard LPR imaging or matching process.

G3.20. Plate Inventory Aging Reports

Ad-hoc reports that list all license plates that have exceeded the established maximum stay at any given parking facility. The report is useful for identifying abandoned vehicles and for maintaining the LPR inventory.

G3.21. Abuse Report

A management report to be generated automatically by the system at user-settable intervals and designed to track vehicles or license plates having an excessive number of exception transactions within a given time period. This report shall be linked to the Hot List functionality required in the LPR subsystem.

G4. Custom Reports

All system design reports listed in the SDD.

H REQUIRED SUBSYSTEMS

The term "Required Subsystem" as used in this section, refers to specific system functionalities that require both significant special purpose software and hardware components in order to properly complete required tasks. The subsystems described below also require significant interfaces so they may interact with each other, other software modules or applications, and other field hardware devices or components. Several subsystems described below will also require significant development by the Contractor and are described in general terms so as to allow the Contractor discretion in responding to the requirements.

H1. License Plate Recognition (LPR) Subsystem

The Contractor shall provide a fully functional License Plate Recognition (LPR) module or subsystem for the PARCS. LPR functionality shall be available at each entry and exit lane utilized for public parking. The LPR subsystem is critical to maintaining positive revenue control as the City implements new parking products and customer service options such as ticketless transaction processing in combination with credit card used at entry and exit. LPR functionality shall also be used to improve accountability by aiding in the processing of exception transactions.

It is the City's desire to implement an LPR solution that includes image capture and decoding of rear license plate data (to include the surrounding vehicle surface) information. The Contractor shall determine what type of solution is feasible and explain their approach in the System Definition Document. The City would prefer use of proven image processing hardware or software technology available for parking or other similar applications.

The City desires that the Contractor provide ISO-compliant magnetic stripe and or barcode cards that will allow it to offer expedited processing into any public parking

facility for certain public and non-public parking patrons. When these special users (such as internet reservation patrons, authorized employees, etc.) enter a public parking facility the LPR subsystem shall track their license plate data as it would for regular public parking patrons. All transactions occurring in the public parking facilities shall include LPR processing. Oversized vehicles within the license plate and LPR "Target Range" shall be read. The LPR subsystem shall include all software and hardware devices (both in the lane and elsewhere) and all peripheral and mounting devices required to capture, decode, interpret, associate, store, retrieve, compare and report license plate images and information in a manner that complies with the requirements and standards set forth herein, and without causing degradation to any other function of the System. It will also be the responsibility of the Contractor to provide all infrastructure modifications and to make all appropriate connections to the lane devices excluding the City provided PARCS network that may be necessary and proper to ensure full LPR functionality.

The Contractor shall be responsible for providing an LPR subsystem that is fully interfaced and integrated into the System so that LPR data is available over the entire PARCS network. All license plate data shall be written to a secure, password-protected database that shall be indexed in a manner that allows the quickest plate matching possible. The database shall be searchable on any field and shall be linked with the transactions database so that associated plate information can be found for any data element in a transaction record.

License plate data (including images) shall be maintained in an active directory on the central server of the PARCS or on a special purpose server on the PARCS network. The central server or special purpose server shall be housed in the City's network operations center. Data availability shall be paramount and the Contractor and City shall design a system with sufficient processing speed and storage capacity to store no less than six months of data in the active directory. All LPR exceptions (no match, no tag, etc.) shall trigger an alert or alarm at the designated primary image review workstation, as approved by the City project manager, which shall continue until acknowledged by an operator or at City's discretion after a configurable timeout. This alarm or alert shall both be visual and audible and the City shall have the ability to individually disable such alarms if desired. Once a transaction cycle is completed at the entry, the vehicle's license plate number shall be stored in the active LPR database, a complete transaction cycle at an exit lane shall cause the vehicle license plate to be deleted from the active LPR database and added to an inactive LPR database. The inactive LPR database may be archived or purged either automatically or manually at reasonable intervals approved by the City project manager.

Archived data shall be easily accessible and located on the network so that it is readily accessible for research purposes. The Contractor, in the System Definition Document, shall detail its data archiving timetables and procedures. The City project manager shall have the right to request the Contractor to make reasonable adjustments or changes in the retention times or archiving procedures, in order to facilitate parking operations.

H.J. Entry/Exit Lane Configuration

It shall be the Contractor's responsibility to provide to the City project manager, via the System Definition Document, its proposed LPR subsystem design and lane

configurations. The Contractor shall detail all civil, cabling, conduit, power, lighting, trigger loops, and other requirements, that it will provide and which may be necessary for the full functionality of the LPR subsystem at each lane.

Precise location of the camera equipment shall be per the Contractor's recommendations subject to approval of the City's project manager. It shall be the responsibility of the Contractor to document the performance deterioration effects, if any, if the City's project manager selects a different location for the camera equipment. It is the City's preference to mount LPR cameras in an overhead position wherever possible.

The system shall be configured in a manner that will maximize automatic plate matching. It shall also be possible for the City to disable any requirement to correct license plate numbers at entry. For each lane, license plate data captured at exit and requiring manual review shall he routed to a primary workstation (to be designated by the City). The primary workstation routing shall be user-settable for each lane individually and the City may also designate a secondary review workstation as a fail over option. Each PARCS workstation resident on the communications network and operated by a duly authorized user shall be capable of providing license plate review and edit functionality.

All LPR subsystem processing shall occur in parallel with other functions occurring within the System and shall not increase the transaction processing time for vehicle entry or exit. All lanes shall be configured so as to reduce processing times and expedite transaction times. All LPR exceptions (no match, no tag, etc.) shall trigger an alert or alarm at the designated primary workstation for the given lane, as approved by the City project manager that shall continue until acknowledged by an operator or at City's discretion after a configurable timeout. This alarm or alert should be visual and audible and the City shall have the ability to disable such alarm, if desired.

HJ.2. LPR Performance Requirement

The LPR subsystem shall acquire a vehicle's license plate number image at each parking entry and exit lane for 100% of the entry and exit transactions. Oversized vehicles within the license plate and LPR "Target Range" shall be read. This 100% read rate shall apply to unobstructed and un-obscured license plates. Additionally, the LPR subsystem shall read all license plate characters (exclusive of unobstructed, un-obscured, and un-encroached license plates) correctly on a minimum of 100% of the transactions and will read all but two LPN characters correctly (exclusive of unobstructed, un-obscured, and un-encroached license plates) on a minimum of 100% of the transactions. An un-encroached license plate means it has no foreign object within .375 inches (3/8") of LPN characters. Table 3 summarizes these LPR performance requirements. The Contractor shall provide appropriate documentation to the City project manager concerning the technology's method of operation, the efficacy of technology and suggest suitable testing regimes.

Table 3: LPR Performance Standards

ILPR Task	Requirement I

Capture of all rear license plates entering and exiting lanes including oversized vehicles within the license plate and LPR "Target Range" shall be read.	100%
Character recognition shall be accurate within 2-digits (N-2) of all legible plates	100%
Character recognition shall be accurate for all characters (N) of all legible plates	100%
Provide an automated match of all entering and exiting vehicles	100%
Provide a match of ticket to the image captured	100%

Note: *During any testing, the above performance standards shall only apply to processing of images involving New Mexico license plates.*

HJ.3. LPR Entry Lane Processing

Processing of LPR data may vary depending on the type of technology, capture point and camera placement proposed. Generally speaking the City envisions an LPR subsystem that captures entry images in a "post capture" mode. Post capture shall mean beginning the image capture process after a ticket had been issued or a card has been read and the car passes the closing loop. Cameras mounted overhead would be triggered by the appropriate sensing device to begin capturing images and would cease the capture process when the barrier gate closes.

The images would be evaluated by an LPR engine (the software component of the LPR subsystem) and using appropriate parameters, the LPR engine would select and decode the best image or best group of images. The best image or group of images would be associated with a transaction record (for both ticket and card transactions) and the data record (text and images) would be sent to the active LPR database so that the system could later search on any field of the transaction record for the matched image. This process would allow, in ticketless transactions, patrons to enter and exit utilizing different credit/debit cards and would expedite exception transactions.

HJ.4. LPR Exit Lane Processing

When the vehicle arrives at an exit lane the LPR subsystem would be triggered by the appropriate sensing device. The camera(s) would begin capturing images to match against the image associated with the patron's exit media (ticker or card). If the LPR information matches, the transaction will continue as a normal transaction. If the LPR subsystem is unable to find a suitable match it may send the two best images to a designated workstation for further processing. This may involve a supervisory or cashier review as determined by the City. When the problem has been resolved the transaction would be completed and the barrier gate would be raised. The complete record of LPR data for the transaction cycle (one entry and one exit) would be moved to the inactive LPR database.

HJ.S. LPR in Exception Processing

The LPR system will be a key component in providing audit trail of exception tickets. This functionality shall be required to properly implement self-service transaction processing. Following successful completion of each exception transaction, the vehicle

license plate number, whether manually entered or read by the LPR subsystem, shall be automatically moved to an Exception Transaction File and made readily available for audit of exception tickets and corresponding exception transactions. .

It shall be possible to disable any single exception transaction identified below (within the LPR subsystem) without impacting the functioning of any other exception transaction.
The City desires the contractor propose alternate processing methods that will allow certain exception transactions to be processed at unattended lanes either directly by the patron or remotely by an attendant at a PARCS workstation.

Hl. 5.1. Lost Ticket

A lost ticket transaction shall occur when the patron arrives at an exit lane without an entry ticket. The LPR subsystem shall use plate matching to find the correct entry transaction so that the proper fee may be calculated. If the LPR subsystem fails to locate a matching license plate or image, an alarm message shall be broadcast over the network and written to the FMS Event Log or Journal. The workstation operator will acknowledge the alarm message and process the exit transaction by requesting the entry time and date from the active license plate database. This information shall then be provided to the cashier to complete the transaction or in the case of an unattended lane shall be completed by the workstation operator.

Hl.5.2. Unreadable Tickets

Similar to the Lost Ticket process described above, when a ticket is found to be unreadable by the System (whether mutilated, blank or foreign without LPR intervention), the LPR subsystem shall search for the entry transaction data associated with the vehicle's license plate number. If a match is found, the entry information shall be extracted and compared to the exit time, and the parking fee shall be calculated. The transaction proceeds as usual. The unreadable ticket shall produce a unique visible-alarm or alert at a designated workstation only if the LPR subsystem fails to locate a matching license plate or image. Processing of predefined alarms shall be password protected via the access rights.

Hl.6. Hot List & White List

The Contractor shall provide a function within the LPR subsystem that shall automatically track and report license plates that have been identified as having a high incidence of exception transactions. This listing of plates shall be known as the Hot List. The LPR subsystem shall allow an authorized user (with appropriate password access) to set the thresholds for types and numbers of transactions within a given time frame that shall trigger a response from the system.

The system shall generate an appropriate visual and audible alarm when a vehicle on the Hot List enters or artempts to exit the facility. Upon entry of any vehicle on the Hot List, the LPR subsystem shall sound an audible alarm at a designated workstation that shall continue until acknowledged by an operator Entry of plate numbers onto the Hot List shall be automatic and based on user-defined parameters. All Hot List entries shall at a minimum, include the date the plate number is added to the list and the reason for adding the plate number to the list (usually due to suspected abuse). Access to the Hot List shall

be controlled by user access and password. License plate numbers shall remain on the Hot List until removal by the City.

The City shall also have the capability to add plates to the list manually. Such additions or removals shall generate the appropriate message notification to the System Journal or Event Log.

The Contractor shall also provide a White List that will be populated with specific transaction data to be determined by the City. It is envisioned that the White List may be used to track usage by specific service vehicles or City VIPs.

HJ. 7. Cameras and Lighting

The Contractor shall provide all required cameras, filters and the necessary supplementary lighting necessary to equip every public parking entry and exit lane in a manner that will provide full LPR subsystem functionality. The Contractor shall also provide all housings, mounting posts, brackets, shielding or protective devices required and appropriate to protect LPR lane components from damage, tampering or theft. All connections and cabling would be similarly protected and identified in accordance with the appropriate City standard or the manufacturer's instructions.

The LPR lane devices shall be mounted in a manner that will best suit their functional requirements but the Contractor would give due consideration to the City's mounting location preferences. All device placements shall be properly documented in the System Definition Document and shall be reviewed by the City project manager prior to installation.

HJ.8. System Failure Procedures

The City shall have the option of temporarily disabling the functionality of the LPR subsystem should it become unstable or encounter a systemic failure. When such disablement occurs the System shall be automatically reverted to a manual LPI process at attended lanes by looking up the LPR active database. Likewise, should the LPR subsystem be disabled, the City shall have the option of continuing unattended transaction processing with manual intervention from a workstation or disabling the lane devices.

Turning off the LPR system will be done by an authorized System User and will result in a logged event including the user name, time, and reason. This normal operation of the PARCS shall not require patrons to wait for the expiration of an LPR-related timeout to process their transaction. To facilitate the return to normal operations, the system will provide two separate software switches: one for enabling (disabling) image capture and license plate recognition and a second for enabling (disabling) the LPR related alarms. This procedure shall be documented by the Contractor in the System Definition Document to be approved by the City project manager.

H2. Parking Space Count Subsystem

H2.1. Parking Space Count Subsystem Description

The Contractor shall provide and install a Parking Space Count Subsystem designed to accurately and continually collect, store, maintain and report (in *virtual real* time) counts of vehicles, and by derivation, available or occupied parking spaces, within all areas or

levels of all public parking facilities. The Contractor shall provide all application software and interfaces necessary for full and proper functionality for the subsystem generally, as well as, all subsystem devices and components including but not limited to, any logic controllers or other modules or devices. The Contractor shall also provide appropriate interfaces to other PARCS subsystems or software modules as may be necessary for the proper function of the overall System.
It is the City's desire to have a Parking Space Count Subsystem that is fully integrated with the parking access and revenue control system and resides on the central server. The subsystem must include the flexibility to adjust counts of available spaces to allow for special circumstances such as parking reservations, adjust counts based on input from the LPR or LPI subsystems and set closing and reopening thresholds at levels lower that the maximum number of spaces. The subsystem must also be expandable to the same extent as the overall PARCS having sufficient, memory, database and communications capacity to accommodate a 200% expansion of the number of parking spaces, number of detecting devices, number of areas, levels or lots, and number entry and exit lanes.

Under normal conditions the operation of the Parking Space Count Subsystem shall be fully automated. The Parking Space Count Subsystem shall also allow for manual adjustments and override of all functions enumerated herein (and as described in the System Definition Document) via any PARCS workstations. Such manual adjustment features shall be accessible through a properly secured menu system only accessible by authorized users. Subsystem information shall be included in a graphical user interface available at any PARCS workstation that will act as a facility map and depict the relative location and status of the various facilities the PARCS controls. All numerical representations of space occupancy or availability shall be displayed so the user can toggle between the actual number and the corresponding percentage of total spaces. The subsystem shall automatically control all parking space count si_{gn}age, automatically adjust all area, level and facility counts, as well as, provide automatic or on-demand reports and any required real-time information to external systems (such as the City's official website).

The Parking Space Count Subsystem shall use special detecting devices, located on each garage level, in each area, and in each entry/exit lane, to detect vehicles entering and exiting a given parking area, level or facility. The City prefers that non-intrusive detection devices other than loop detectors be used in the garages and wherever they may be appropriate. Detection devices shall be capable of detecting vehicle direction (bi-directional) and provide anti-coincidence detection to minimize the possibility of missed counts.

The Contractor shall detail in the System Definition Document all relevant subsystem $desi_{gn}$ features to include but not limited to, all screen layouts relating to the graphic user interface, all detection devices and technologies, all automatic and manual user functions, all reports and reporting capabilities and all necessary interfaces with other software modules and subsystems of the PARCS, as well as all external systems. The Contractor shall discuss methods to ensure that all counts for all areas and levels are accurate to within 1% of actual vehicle counts and that all counts for facilities are accurate to within 1% of actual vehicle counts in any given 24-hour period. Contractor shall also discuss

appropriate procedures for testing accuracy levels in the System Definition Document and in the Testing Plan. The System Definition Document, and other related deliverables shall be subject to review and approval by the City project manager.

H2.2. Required Subsystem Devices (Signs)

The Contractor shall provide, install, integrate, test and commission all space count $si_{gn}s$ associated with the Parking Space Count Subsystem. These $si_{gn}s$ shall include 'monument' or 'scoreboard' $si_{gn}s$ at key entry points to each public parking structure (does not apply to surface lot). The Contractor shall provide such signs at locations approved by City project manager for other public parking facilities.

The Contractor shall also provide appropriate status $si_{gn}s$ for each area, floor or level to be controlled by the subsystem. All $si_{gn}s$ provided as a part of the Parking Space Count System shall meet all applicable industry standards, as well as, federal, state and local laws, regulations, codes, ordinances or guidelines for $si_{gn}age$ of this type. At a minimum, $si_{gn}s$ shall be visible and readily legible under ambient lighting conditions (to include low light conditions) at a minimum distance of one hundred feet (100) feet. Contractor shall obtain written approvals of $si_{gn}age$ submittals by City project manager prior to proceeding. Final placement of each si_{gn}, the si_{gn} type, size, character height, character color, background color, and font shall be subject to the approval of the City project manager prior to procurement and installation.

H3. Credit/Debit Card Processing Subsystem

H3.1. Credit/Debit Card Processing Subsystems Description

The Contractor shall provide a Credit/Debit Card Processing Subsystem in compliance with card processing regulations and the current service provider's protocols. All credit/debit card transactions whether device-based or module-based (parking reservation, etc.) shall be conducted, tracked and reported through this subsystem. The Contractor shall provide a list of the credit/debit card processing clearinghouses with which the Contractor's proposed subsystem is already certified. The subsystem shall have the flexibility to allow easy modification and expansion (in terms of lanes, transactions, or devices) without additional support from the Contractor or the processing clearinghouses. The term "Credit/Debit Card" as used herein, shall not be taken to imply a requirement for dedicated P.I.N. input pads on any field hardware device.

The Credit/Debit Card Processing Subsystem shall function independently of any one clearinghouse and the City shall be free to change credit card processing clearinghouses at its sole discretion. Any software or hardware modification necessary to effect such a change will be the responsibility of the Contractor during the installation and warranty periods. Any change of the clearinghouse requested by the City during the installation shall not prevent the Contractor to receive final acceptance of any phase of the project... The Contractor shall further agree to cooperate with the City should a change in clearinghouses be required after the installation and warranty periods.

The Credit/Debit Card Subsystem shall be connected to two separate processing centers so that a loss of communication with a processing center will not result in a total loss of on-line approval capability. Lane devices, switches or credit card servers in the overall PARCS, in each facility, or at each entry or exit plaza shall be connected or routed to alternating processing centers to equalize processing load. Loss of communications between any device, switch, router or server and the primary processing center shall result in the automatic switching or routing of credit card traffic (Fail Over) to the remaining or secondary processing center.

The Contractor will provide a credit/debit card processing capability internal to each PARCS hardware device (fee computer, entry/exit lane devices, POF, etc.),which will allow the processing of credit/debit cards, and other such magnetic stripe and or barcode cards as the City currently accepts or may choose to accept in the future.

Each such device shall have its own device identification number so that transactions and reports can reference the device for tracking purposes. The subsystem will be fully integrated in the revenue control system to provide for full reporting through the PARCS device (if applicable) and the facility management software (via a workstation).

The subsystem shall have the ability to perform transactions at the device level whether in an on-line or off-line (batch) mode so that loss of communications with the processing clearinghouse does not impede the acceptance of credit/debit cards. The normal transaction process shall be for online authorizations of all transactions. All transactions shall be subjected to industry standard validity checks (to include blacklist checks) and shall be stored at the facility controller of the device until such time as communications with the processing clearinghouse has been restored. The City shall be able to control how many and which transactions are sent in a batch file when the connection is reestablished, as well as, be able to assign priority processing of current transactions.

The subsystem shall have appropriate controls to secure all credit/debit card data from tampering or misuse. The security controls and procedures shall confirm to all industry standards, to include but not be limited to the VISA CISP program requirements for Levels 2 or 3 merchants in force at the time of installation. Credit/debit card data shall be stored in a secure, password protected database that allows only authorized users to perform queries and export functions required to research and resolve disputes, charge backs and other issues. Wherever possible reports, receipts and lists of credit/debit card data shall have truncated card numbers and other measures to minimize the chances of fraud.

The Contractor shall provide complete details of the credit/debit card processing functionality to include but not limited to credit card processing procedures, the security measures taken to safeguard credit/debit card information, details of on-line versus off-line processing, expected transaction accuracy rates, manual corrections or research processes and reporting capabilities. All such discussions shall be contained in the System Definition Document and shall be subject to review and approval by the City's project manager.

H3.2. Required Devices (Communications Devices)

The contractor shall be responsible for coordinating implantation of the subsystem with the City and the clearinghouse.

H4. Parking Reservation Subsystem

H4.1. Parking Reservation Subsystem Description

The City desires to implement a primarily web/internet-based parking reservation program. The Contractor shall design and provide a reservation system capable of taking a parking reservation for any City facility primarily via the internet, Wi-Fi or via telephone. The program would be implemented so as to be fully integrated with other public parking facilities without the need for nested or dedicated parking areas and without the need for dedicated special purpose lanes. The Contractor shall provide all software components (both in the central servers and field devices), all required interfaces with other System modules and subsystems, as well as, all field devices necessary and proper to implement this program (except as detailed below). This subsystem or functionality shall be listed separately as an attachment to the Proposal.

A patron will use a website that is linked to and accessed from the City's home page or call a specific telephone number (number and phone service provided by City) to access the parking reservation system. The patron will select the desired parking facility then provide their name and credit/debit card information, the anticipated arrival date/time, and the license plate number of the vehicle to be used. The patron will also provide the approximate duration of stay. A credit/debit card will be required to hold the reservation and the system shall take steps to ensure the card information is valid.

On the day for which parking reservations are made, the number of reservations for each facility shall be subtracted from that facility's space counts in order to allow for anticipated demand. The subsystem must allow authorized users to manually adjust or override all data received from the reservation subsystem.

When the facility is open, a patron with a reservation arrives at any entry lane of the chosen facility, or uses a credit/debit card and enters the appropriate facility. The LPR system will capture the vehicle's license plate then automatically compare that plate number with all license plates on the Reservation List for the given day and facility. If the plate is on that list, the transaction is then recorded as a 'Reserved Transaction' transaction.

When a facility is full the Contractor shall propose a process for allowing entry to patrons with reservations only. This process may involve additional devices placed so as to override the lot closure procedures imposed by the System. Such transactions shall then be identified and processed in accordance with the process detailed above.

At exit, the patron will be allowed to exit through any exit lane. The patron will present their credit/debit card. The appropriate parking fee will be calculated and displayed to the patron. Once the parking fee has been satisfied, a receipt will be generated for the patron

and the exiting procedures will continue as with a normal exit transaction. If practical, the City would prefer to have the patron's fees automatically charged to the credit/debit card used to secure the reservation.

It shall be possible for the City to set limits as to how many reservations the subsystem will accept for each parking facility and the entire parking system as a whole. Parking reservation transactions shall be classified as a unique transaction type to be tracked and reported separately within the System. The parking reservation system shall provide a rate structure programming function that will allow the City to charge rates that are the same or different for each facility and the same or different from those rates paid by regular patrons at each facility. This rate structure shall allow for charging additional service fees at the time of exit. It shall be possible to identify "No Show" license plates and the system should have provisions for disallowing future reservations from "No Shows" after a user-settable threshold has been reached. The System shall have provisions which will permit City to assess a convenience fee and/or cancellation fee to all reservation transactions.

There will be specific reports that will be developed for the subsystem and shall be included in the custom reports. They will include a listing of reservations categorized by date of reservation, a list of reserved parking patrons currently in the facilities, and a listing of the 'No Show' reserving patrons. The format and the intended content of the reports will be defined during the system design process.

Since it will be possible for patrons to make parking reservations via the Internet, the Contractor shall provide details on the data security and integrity measures to be employed to prevent unauthorized access to the System or the City's administrative network. If a dedicated web server is required for implementation the Contractor will provide server. The Contractor shall provide all software, all interfaces, all data communications devices and all other hardware necessary, except for the firewall, to connect the web server to the System. In addition, the Contractor shall develop, maintain, host, and outsource the web-front end associated with the parking reservation system for the first year of operation, after which time City will contract for and/or maintain all hosting and hosting associated requirements. The Contractor will provide the required assistance and support to facilitate this transition. The development, maintenance, and hosting of the web-front-end and all the specifics of the subsystem's implementation shall be included in the System Definition Document and shall be subject to the approval of the City project manager.

H4.2. Required Devices (Reservation Verifiers)

The Contractor shall propose whatever devices shall be required to implement the Parking Reservation Subsystem functionality, whether the facility the patron desires to enter is open or closed. The City does not envision any added devices will be required when a facility is open, but additional devices may be required to override lot closure procedures (such as lot closure barrier gates) at full facilities. The Contractor shall explore and discuss the feasibility of introducing such devices or addressing this issue through software in the System Definition Document.

H5. Validations Subsystem

H5.1. Validations Subsystem Description

The City desires to implement a comprehensive Validation program that will allow it to better track and implement discount programs and other special purpose transactions. The Contractor shall provide a complete, fully-functional Validation Subsystem that includes all software components (both in the central servers and field devices), all required interfaces with other System modules and subsystems, as well as, all field validating devices necessary and proper to implement this program.

The System the Contractor provides shall have the ability to allow validation codes to track validations by validation account number or code. The Validations Subsystem proposed must include appropriate management and billing reports, as well as, tracking functionality for up to nine hundred ninety-nine (999) separate validation accounts and up to ninety-nine (99) different validation types. The subsystem must be able to associate a given rate structure for each validation type, account and or code. The subsystem must be capable of handling validation transactions at any exit lane and must be compatible with other field hardware devices such as the POF devices and the special purpose fee computers. The Contractor shall document the process of handling validations as well as the devices to be used in the System Definition Document.

The System shall be capable of employing machine-readable validations (described above) that have been applied to the parking ticket by use of validation machines provided by the Contractor. The Validations subsystem shall allow the City to implement validations for discounts based on time or dollar amount.

In the event the value of a validation should fail to cover the entire parking fee, the transaction shall continue as a normal transaction with the validation treated as a partial payment, and the patron being prompted to pay the remaining fee amount. Should the validation amount exceed the actual parking fee, the subsystem shall record the lesser amount (the actual fee) in the transaction database and all associated reports. It shall be possible for the City to easily audit the validation transaction; therefore, validations shall be clearly distinguishable from other transactions. All validations shall be tracked and accounted for within the System reports by cashier on a daily and monthly basis.

H5.2. Required Devices (Validation Machines)

The Contractor shall provide validation machines or devices that may be used by the City or other authorized users to apply validations to System tickets. The validation machines shall also be capable of encoding one time badge validations on any magnetic stripe and or barcode media (paper or any card stock type). The validation machines shall encode identifiers used to identify data for the account holder issuing the validation and the appropriate fee structure to be applied. The validation machines shall have the ability to automatically re-encode the validation rate on the parking ticket at the point of validation. The cashier will have no interaction with rate adjustments at time of a "validated ticket" exit. The Contractor shall also describe in detail a process by which barcode discount coupons may be processed at exit through attended lanes. The Contractor shall document the capabilities of the validation machines and the capability of processing of barcode discount coupons in the System Definition Document,.

The City will be able to process a barcode validation coupon issued by an entity participating in the City's validation program provided the coupon follows the contractor's barcode specification and format.

A parking patron will drive to a manned exit cashier lane and present their parking ticket and barcode coupon to the cashier. The cashier will insert the system ticket (mag-stripe) into the fee computer and the appropriate rate will be calculated. The cashier will then read the coupon barcode via the barcode reader. The initial parking fee will be adjusted based on the validation program referenced by the barcode coupon. A report will be generated indicating the quantity and dollar volume of the barcode validation program. The City will work closely with the contractor to insure the proper creation and distribution of barcode coupons to prevent duplication and subsequent fraud of the barcode validation program.

L SYSTEM RELIABILITY AND ACCOUNTABILITY STANDARDS

The Contractor shall demonstrate that the System meets availability and reliability performance requirements prior to and during the start-up period, and demonstrate that to the City project manager through calculations documented in the System Definition Document and through the testing procedures specified elsewhere in these specifications. The System shall achieve a minimum overall System availability of 99.5% during operations following the final acceptance of the System. The 0.5% non-availability shall only apply to situations where a total failure of one sub-system occurs (such as loss of LPR functionality). Single lane or device failures shall not be included in the overall System availability calculations.

The System shall be desi$_{g\,n}$ed and implemented to minimize downtime by removing all single points of failure to the greatest extent possible. The System shall be desi$_{g\,n}$ed and implemented to facilitate prompt repair for all failed or degraded System components by providing, to the extent possible modular, subsystems and devices with field-replaceable components.

The Contractor shall conduct regular availability and reliability assessments of the entire System during all phases of the installations to establish its reliability and to identify areas of potential vulnerability and document these areas in the Risk Management Plan and the System Definition Document. The Contractor shall submit detailed results of this supporting documentation to include test results, test assumptions and calculations.

11. System Redundancy

All lane devices, special purpose computers and POFs shall be capable of continued operations in stand-alone mode in the event network communication services are interrupted. No redundancy is required at a lane unless common equipment is shared between multiple lanes. For example, equipment at a single lane may fail causing a shutdown of a lane; however, the failure shall not affect other lanes. To the extent possible all field devices shall be configured with proper battery backup, as well as lighting and surge protection so has to allow them to operate in less than optimal conditions.

ACTION SHEET
ITEM FROM FINANCE COMMITTEE MEETING OF 03/01/21
FOR CITY COUNCIL MEETING OF 03/10/21/21

d) **Request for the Approval of Amendment 1 to IT Agreement 19-0828 to assign the remaining after sales and warranty portion of the Parking Access and Revenue Control System (PARCS) agreement to a new vendor, Associated Time Instruments, Inc. (ATI). ATI's compensation will not exceed the $114,920.06 remaining balance of the original Agreement. Request is hereby made by Noel Correia, Parking Division Director, npcorreia@santafenm.gov, (505) 955-6611.**

Committee Review:
Finance Committee: 03/01/2021
Public Works and Utilities Committee: 03/08/2021
Governing Body: 03/10/2021

FINANCE COMMITTEE ACTION:

Approved on Consent

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

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

ACTION SHEET
PUBLIC WORKS AND UTILITES COMMITTEE MEETING OF 03/08/2021

ISSUE NO. 8b

Request for the Approval of Amendment 1 to IT Agreement 19-0828 to assign the remaining after sales and warranty portion of the Parking Access and Revenue Control System (PARCS) agreement to a new vendor, Associated Time Instruments, Inc. (ATI). ATI's compensation will not exceed the $114,920.06 remaining balance of the original Agreement. Request is hereby made by Noel Correia, Parking Division Director, npcorreia@santafenm.gov, (505) 955-6611.

Committee Review:
Finance Committee: 03/01/2021
Public Works and Utilities Committee: 03/08/2021
Governing Body: 03/10/2021

PUBLIC WORKS AND UTILITES COMMITTEE ACTION: Approved on Consent Agenda to forward to 3/10/2021 Governing Body

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

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

Signature: Geralyn Cardenas (Mar 15, 2021 08:30 MDT)

Email: gfcardenas@santafenm.gov

GB PWD PARKING 21-0075 Souder Corporation dba Mountain Parking Equipment - Associated Time Instruments

Final Audit Report 2021-03-16

Created:	2021-03-12
By:	Jimmy Tapia (jptapia@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAvf_ktQ8TW7NiO4-GSV0ykjKw5UhL4fPL

"GB PWD PARKING 21-0075 Souder Corporation dba Mountain Parking Equipment - Associated Time Instruments" History

Document created by Jimmy Tapia (jptapia@ci.santa-fe.nm.us)
2021-03-12 - 3:49:06 PM GMT- IP address: 63.232.20.2

Document emailed to Mary McCoy (mtmccoy@santafenm.gov) for signature
2021-03-12 - 3:53:11 PM GMT

Email viewed by Mary McCoy (mtmccoy@santafenm.gov)
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Document e-signed by Geralyn Cardenas (gfcardenas@santafenm.gov)
Signature Date: 2021-03-15 - 2:30:02 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Alan Webber (awebber@santafenm.gov) for signature
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Document e-signed by Alan Webber (awebber@santafenm.gov)
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Document emailed to Kristine Mihelcic (kmmihelcic@santafenm.gov) for signature
2021-03-15 - 2:57:30 PM GMT

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2021-03-16 - 4:45:38 PM GMT- IP address: 104.47.64.254

Document e-signed by Kristine Mihelcic (kmmihelcic@santafenm.gov)
Signature Date: 2021-03-16 - 4:46:12 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.
2021-03-16 - 4:46:12 PM GMT

City of Santa Fe, New Mexico
Memorandum

DATE: January 27, 2023

TO: Governing Body

VIA:
Regina Wheeler, Public Works Director
Melissa McDonald, Parks & Open Space Division Director MAM

FROM: Skyler Nielsen, Parks Operations Manager

ACTION: Request for the Approval of a General Services Contract for Seasonal Delivery and Servicing of Portable Toilets for the Parks Division with AAA Pumping Services Inc in an Amount Not to Exceed $135,400 per Year, for Four Years. (Skyler Nielsen, Parks Operations Manager: smnielsen@santafenm.gov, 505-469-6688.)

BACKGROUND AND SUMMARY: Portable toilets will be delivered by AAA Pumping Service Inc. to selected locations in the City Parks for use by the public from March 15th to Nov 15th thru the life of the contract. This will include cleaning 3 times a week, and will provide basic services to parks that do not have operational bathrooms.

TENTATIVE COMMITTEE SCHEDULE:
Finance Committee: February 13th, 2023
Public Works & Utility Committee: February 20rd, 2023
Governing Body: February 22h, 2023

PROCUREMENT METHOD: NM SPA AAA Pumping Inc. #90-00000-19-00044, expiring July 22, 2023

FUNDING SOURCE:

Project Ledger ID:
Fund Name/Number: General Fund/Fund 100 and MRC
Munis Org Name/Number: PTW Admin/1004150 and 5300271
Munis Object Name/Number: Svc Cntr/510310 and 510310

ATTACHMENTS:
Contract
Proposal
SPA
Certificate of Insurance
Business License
Summary of Contracts
Procurement Checklist

Reviewed By:
Halona Crowe
Halona Crowe
Business Operations Manager

Item#_____
Munis Contract# 3203878

CITY OF SANTA FE
GENERAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and **AAA Pumping Services Inc** herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

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

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

C. "You" and "your" refers to **AAA Pumping Services, Inc**. "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. **Scope of Work**

A. The Contractor shall perform the following work: Service 9 regular portable toilets 3x per week from March 15th to November 15th for each year of the length of this contract. Service 11 handicap portable toilets 3x per week for each year of the length of this contract. Service 6 regular units 3x per week with additional cleaning to remove excessive dumping/homeless vandalism beyond what a regular service call covers. Service 11 handicap units 3x per week with additional cleaning to remove excessive dumping/homeless vandalism beyond what a regular service call covers.

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	$375.00 x 9 regular units per month (includes 3x a week service) x 8 months x 4 years	$108,000.00
02	$475.00 x 11 handicap units per month (includes 3x a week service) x 8 months x 4 years	$167,200.00

03 $425.00 x 6 regular units per month (includes 3x a week service plus additional cleaning) x 8 months x 4 years
$81,600.00

04 $525.00 x 11 handicap units per month (includes 3x a week service plus additional cleaning) x 8 months x 4 years
$184,800.00

The total compensation under this Agreement shall not exceed $541,600.00 excluding 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 4 years from the signing of the contract. 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. Business Automobile Liability insurance for all owned, non-owned automobiles, with a combined single limit not less than $1,000,000 per accident.

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

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

34. **Impracticality of Performance**

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

35. **Invalid Term or Condition**

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

36. **Enforcement of Agreement**

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

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

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

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

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

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

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

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

38. **Survival**

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

39. **Disclosure Regarding Responsibility**

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

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

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

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

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

normally possessed by a prudent person in the ordinary course of business dealings.

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

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

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

41. **Notification**

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

To the City: Melissa A. McDonald, Parks Division Director
PO Box 909
Santa Fe, NM 87504-0909

To the Contractor: AAA Pumping Service, Inc
Po Box 12186
Albuquerque, NM 87195

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: AAA Pumping Service, Inc
Po Box 12186
Albuquerque, NM 87195

42. **Succession**

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

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

CITY OF SANTA FE:

_____
ALAN WEBBER, MAYOR

DATE:_____

CONTRACTOR:
AAA PUMPING SER. INC.

_____
NAME

President
TITLE

DATE: 1/26/23
CRS# 02024161005
Registration # ~~226044~~

ATTEST:

_____
KRISTINE BUSTOS MIHELCIC, CITY CLERK

CITY ATTORNEY'S OFFICE:
Marcos Martinez
Marcos Martinez (Jan 24, 2023 13:23 MST)
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

_____
EMILY K. OSTER, FINANCE DIRECTOR

Org.Name/Org.#

PROPOSAL

AAA PUMPING SERVICE, INC.
P. O. Box 12186
Albuquerque, NM 87195
Ph: 505-345-3965
Fax: 505-243-0314

Date: 1-19-23

To: City of Santa Fe Parks

Attn: Skyler Nielsen

Phone: 505-955-2106

Email: smnielsen@santafenm.gov

Job Location/Job Description/ Price:
Various Santa Fe NM Parks Locations
9-Regular units x $375.00 per unit per month (includes 3x a week service)
11-Handicap units x $475.00 per unit per month (includes 3x a week service)

6-Regular units x $425.00 per unit per month (includes 3x a week service)
11-Handicap units x $525.00 per unit per month (includes 3x a week service) ***The additional environmental violation mitigation service charge of $50.00 per month for these 17 units covers the excessive illegal dumping/homeless vandalism beyond what a regular service call covers.***

These would be in service from March 15th to Nov 15th each calendar year. This is for a 4-year contract via SPA#90-00000-19-00044

Monthly sub-total: $16,925.00 per month

Yearly subtotal: $135,400.00 per year

4-year contract total: $541,600.00



ACCEPTANCE OF PROPOSAL: The above prices, Specifications and conditions are satisfactory and are hereby Accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date:_____

Signature_____

Darla Romero
AAA Pumping Service, Inc

This proposal may be withdrawn if not accepted Within 30 days.

DocuSign Envelope ID: BA8A06E9-1833-4EE4-9133-949F2E9E845A

State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
2 Vendors

Email: _____
Telephone No.: _____

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

Invoice:
As Requested

Number: **90-00000-19-00044**

Amendment No.: **Three**

Term: **July 23, 2019 – July 22, 2023**

Procurement Specialist: **Mark Lujan**

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

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

Title: **Portable Toilets and Hand Washing Stations**

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

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from July 23, 2022 to July 22, 2023 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: 4/19/2022

Mark Hayden, New Mexico State Purchasing Agent

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

MS

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State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor: **2 Vendors**

Number: **90-000-19-00044**

Amendment No.: **Two**

Term: **July 23, 2019 – July 22, 2022**

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

Procurement Specialist: **Michael Saavedra**

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

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

Title: **Portable Toilets and Hand Washing Stations**

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

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from July 23, 2021 to July 22, 2022 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Valerie Paulk

Date: 5/5/2021

Mark Hayden, New Mexico State Purchasing Agent

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

MS CF

DocuSign SECURED

Certificate Of Completion

Envelope Id: 7EAEFB8F89C144FC8B1E0A8FA42F9A88
Subject: Please DocuSign: SPD SPA
Source Envelope:
Document Pages: 1
Certificate Pages: 5
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-07:00) Mountain Time (US & Canada)

Signatures: 1
Initials: 2

Status: Completed

Envelope Originator:
Clarke Fountain
13 Bataan Blvd
Santa Fe, NM 87508
ClarkeJ.Fountain@state.nm.us
IP Address: 174.237.131.253

Record Tracking

Status: Original
5/4/2021 4:12:45 PM
Security Appliance Status: Connected
Storage Appliance Status: Connected

Holder: Clarke Fountain
ClarkeJ.Fountain@state.nm.us
Pool: StateLocal
Pool: GSD

Location: DocuSign

Location: DocuSign

Signer Events	Signature	Timestamp
Clarke Fountain clarkej.fountain@state.nm.us Procurement Specialist New Mexico General Services Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	CF Signature Adoption: Pre-selected Style Using IP Address: 174.237.131.253	Sent: 5/4/2021 4:14:38 PM Viewed: 5/4/2021 4:14:53 PM Signed: 5/4/2021 4:15:02 PM
Michael Saavedra michael.saavedra@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 6/4/2020 11:04:51 AM ID: 9cac1b3e-4279-4c8f-b2b4-c607ea9821d8	MS Signature Adoption: Pre-selected Style Using IP Address: 174.237.136.206	Sent: 5/4/2021 4:15:03 PM Viewed: 5/5/2021 6:01:57 AM Signed: 5/5/2021 6:02:14 AM
Valerie Paulk valerie.paulk@state.nm.us State Purchasing Agent New Mexico General Services Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff	Valerie Paulk Signature Adoption: Pre-selected Style Using IP Address: 174.28.155.239 Signed using mobile	Sent: 5/5/2021 6:02:15 AM Viewed: 5/5/2021 6:05:35 AM Signed: 5/5/2021 6:05:54 AM

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	**Status**	**Timestamp**
Agent Delivery Events	**Status**	**Timestamp**
Intermediary Delivery Events	**Status**	**Timestamp**

Certified Delivery Events	Status	Timestamp
Carbon Copy Events	**Status**	**Timestamp**
Witness Events	**Signature**	**Timestamp**
Notary Events	**Signature**	**Timestamp**
Envelope Summary Events	**Status**	**Timestamps**
Envelope Sent	Hashed/Encrypted	5/4/2021 4:14:38 PM
Certified Delivered	Security Checked	5/5/2021 6:05:35 AM
Signing Complete	Security Checked	5/5/2021 6:05:54 AM
Completed	Security Checked	5/5/2021 6:05:54 AM
Payment Events	**Status**	**Timestamps**

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.SPDinfo@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.SPDinfo@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.SPDinfo@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.SPDinfo@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.

GSD/PD (Rev. 01/11)

State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor **2 Vendors**

Price Agreement Number: **90-000-19-00044**

Price Agreement Amendment No.: **One**

Term: **July 23, 2019 – July 22, 2021**

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

Procurement Specialist: **Michael Saavedra** MS

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

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

Title: **Portable Toilets and Hand Washing Stations**

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

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from July 23, 2020 to July 22, 2021 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Valerie Pauen for
New Mexico State Purchasing Agent

Date: 04/23/2020

VR

State of New Mexico
General Services Department

Statewide Price Agreement

Awarded Vendors:
2 Vendors - See Page 6

Telephone No. _____

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

Invoice:
As Requested

Price Agreement Number: **90-000-19-00044**

Payment Terms: **See page 6**

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

Delivery: **See page 6**

Procurement Specialist: Michael Saavedra

Telephone No.: 505-827-0610

Email: Michael.Saavedra@state.nm.us

Title: **Portable Toilets and Hand Washing Stations**

Term: **July 23, 2019 – July 22, 2020**

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

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 07/22/2019

Terms and Conditions
(Unless otherwise specified)

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

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

3. **Assignment:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

New Mexico Employees Health Coverage

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

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

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

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

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

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

Statewide Price Agreement

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

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

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

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

Article IV – Shipping and Billing Instructions
Contractor shall ship in accordance with the following instructions: Shipment shall be made only against specific orders which the user may place with the Contractor during the term; The Contractor shall enclose a packing list with each shipment listing the order number, price agreement number and the commercial parts number (if any) for each item; Delivery shall be made as indicated on 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) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach. Termination of this Contract, however, shall not affect any outstanding orders. This provision is not exclusive and shall not waive other rights and remedies afforded either party in the event of breach of contract or default. In such instances the contract may be cancelled effective immediately.

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

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

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

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

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

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

Awarded Vendors:

(AA) 0000048625
AAA Pumping Service
PO Box 12186
Albuquerque, NM 87195
505-345-3965
aaapumping@hotmail.com

Payment Terms: Net 30
Delivery: As Requested

(AB) 0000052965
Fresh and Clean Portable Restrooms
4202 Broadway Blvd., SE
Albuquerque, NM 87105
505-293-7311
freshandclean@aol.com

Payment Terms: Net 30 Days
Delivery: Within 24 to 48 Hours

Establish a Statewide Price Agreement for portable toilets, portable handwashing stations, wheelchair accessible portable toilets and service calls and relocation services during a wildland fire incident.

The term of this Statewide Price Agreement shall be for one (1) year from date of award with the option to extend for a period of three (3) 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 Statewide Price Agreement shall not exceed four (4) years.

To provide for immediate firefighting needs and in the best interest of the State of New Mexico (State), multiple awards may be issued.

This Statewide Price Agreement's purpose is to obtain fully serviced portable toilets and portable handwashing stations for use on a local and regional basis. The Vendor is responsible for all equipment, materials, supplies, setup, transportation and personnel necessary to meet or exceed the Statewide Price Agreement specifications. The resources will be used during wildland fire suppression activities. The Agency representative or Incident Commander or responsible Forestry Division representative is authorized to administer the technical aspects of this Price Agreement.

EQUIPMENT REQUIREMENTS

Equipment shall meet all standards established by specification and shall be maintained in good repair by the Vendor.

VENDOR PROVIDED EQUIPMENT

Vendor must provide a fee for all three (3) resource categories: portable toilets, portable handwashing stations, and wheelchair accessible portable toilets.

Portable Toilets

(a) Furnish standard size, industrial quality portable toilets and provide associated supplies and sanitary services. Portable units must meet all applicable federal, state, and local codes. Wheelchair accessible units must meet all appropriate accessibility standards.

All units shall arrive and be maintained in a clean and serviceable condition ("serviceable" means the toilet is ready to use). The using agency WILL NOT PAY a service call fee for the initial setup. Units shall include a wall mounted urinal, a bench style toilet with seat and cover, and hand sanitizer dispenser. All units shall contain a multi-roll lockable toilet paper dispenser which shall be filled on every service visit.

Units shall provide separate and sufficient ventilation to both the unit and the waste reservoir. All units must contain a waste reservoir with a minimum capacity of forty-five (45) gallons. Vendor is responsible for maintaining units in clean, sanitary, and good working condition and free of objectionable odors. Service (*e.g.,* what units will be serviced and schedule for servicing) shall be determined by the Using agency.

(b) WHEELCHAIR ACCESSIBLE PORTABLE TOILETS shall meet the specifications stated above, with the following exceptions or additions:

1. urinals are not required in accessible units;
2. units shall conform to Americans with Disabilities Act regulations for accessible portable toilets including an access ramp; and
3. holding tank shall be a minimum of thirty (30) gallons for the accessible units.

Handwashing Stations

(a) All units shall arrive and be maintained in a clean and serviceable condition ("serviceable" means the handwashing station is ready to use). The using agency WILL NOT PAY a service call fee for the initial set up. Handwashing stations shall have a minimum of:

1. two (2) basins with one foot (1') operated pump per basin;
2. a large basin with two (2) spigots is acceptable as long as there is one foot (1') operated pump per spigot;
3. tank capacity shall hold not less than twenty (20) gallons of potable water and twenty (20) gallons of gray water;
4. all fresh water tanks shall be sealed for personal hygiene;
5. snap in gray water bladder bags are not acceptable;
6. there must be one (1) soap dispenser and one (1) paper towel dispenser for every two (2) basins; and
7. each unit must have a paper towel dispenser filled with the appropriate towels for the unit.

(b) Service (*e.g.,* what units will be serviced and schedule for servicing) will be determined by the Using agency.

Service shall include removal and disposal of all waste in accordance with state and local law, as well as removal and disposal of trash in and around the unit, cleaning of the unit (units shall be clean and free of streaks and markings), repairing any damage, refilling with chemicals, stocking of paper towels, and liquid soap.

Vendor is responsible for potable water for refill of tank and gray water disposal for handwashing stations. Service trucks for pumping black water from portable toilet units must have a separate hose and wand to service the handwashing station, and must meet all federal, state, and local sanitation regulations.

Service Call

Service shall include removal and disposal of all waste in accordance with state and local law, as well as removal and disposal of trash in and around the unit, cleaning of the unit inside and out (units shall be clean and free of streaks and markings), repairing any damage, refilling with chemicals, stocking of toilet paper, hand cleaner, and other consumables when applicable. The using agency will pay all service calls in accordance with the "Service Call" fee as specified in this Statewide Price Agreement. Vendors must

label the amount as "Service Calls" on invoices. Service calls will be on an as needed basis.

Relocation Fee

Relocation fee is paid for each toilet that is relocated outside the camp area if ordered by the using agency.

Item #	Unit	Article and Description	Unit Price
001	Each	Portable Toilet	**(AA) $75.00** **(AB) $125.00**
002	Each	Hand Wash Station	**(AA) $125.00** **(AB) $125.00**
003	Each	Wheelchair Accessible Portable Toilet	**(AA) $150.00** **(AB) $195.00**
004	Each	Service Call	**(AA) $35.00, there is a $1.50 per mile roundtrip fee on top of the service call.** **(AB) $45.00**
005	Each	Relocation Fee	**(AA) $35.00, there is a $1.50 per mile roundtrip fee on top of the relocation fee.** **(AB) $45.00**
006	Each	Per mile from Bidder's place of business to set-up location, using www.mapquest.com. If multiple units are delivered at one time to one location only one fee may be billed for all units delivered.	**(AA) $35.00, our mileage is round trip fee.** **(AB) $2.20**
		Bidder's Address Bidder's City Bidder's State	**(AA) 2855 2nd Street, SW Albuquerque, NM 87102** **(AB) 4202 Broadway Blvd., SE Albuquerque, NM**

***** 6 Items Total *****

AAAPUMP-02 SOAKES1

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 1/31/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0757776 HUB International Insurance Services (SOW) 6565 Americas Parkway Suite 720 Albuquerque, NM 87110	CONTACT NAME: Stella Oakes PHONE (A/C, No, Ext): (480) 428-2191 FAX (A/C, No): E-MAIL ADDRESS: stella.oakes@hubinternational.com
INSURED AAA Pumping Service Inc P O Box 12186 Albuquerque, NM 87195-0186	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Westfield Insurance Company — 24112 INSURER B : CopperPoint Western Insurance Company — 13209 INSURER C : Ironshore Specialty Company — 25445 INSURER D : INSURER E : INSURER F :

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY [X] PRO-JECT [ ] LOC OTHER:			CMM291171Q	2/1/2023	2/1/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 500,000 $ 15,000 $ 1,000,000 $ 3,000,000 $ 3,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY / SCHEDULED AUTOS HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY			CMM291171Q	2/1/2023	2/1/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
A	UMBRELLA LIAB [X] OCCUR X EXCESS LIAB [ ] CLAIMS-MADE DED [ ] RETENTION $			CMM291171Q	2/1/2023	2/1/2024	EACH OCCURRENCE AGGREGATE	$ 1,000,000 $ 1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		1026247	2/1/2023	2/1/2024	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
C	Pollution Liability			ICELLUW00141849	2/1/2023	2/1/2024	Occurrence	1,000,000

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

CERTIFICATE HOLDER

City of Santa Fe Parks & Recreation
PO Box 909
1142 Siler Rd
Santa Fe, NM 87504

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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City of Santa Fe

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

BUSINESS REGISTRATION

Business Name: AAA PUMPING SERVICE INC
DBA: AAA PUMPING SERVICE INC

Business Location: PO BOX 12186
ALBUQUERQUE, NM 87195

CRS Number: 02024161005

Owner: AAA PUMPING SERVICE INC Krepfl

License Number: 226044

License Type: Business License - Renewable

Issued Date: January 27, 2023

Classification: Out of Jurisdiction Contractor - Septic Services

Expiration Date: January 27, 2024

Fees Paid: $10.00

AAA PUMPING SERVICE INC
PO BOX 12186
ALBUQUERQUE, NM 87195

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

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3203878

Contractor: AAA Pumping Services Inc

Description: **4 year general services contract for the seasonal delivery, and 3 times a week cleaning of portable toilets in city parks.**

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

Term Start Date: TBD Term End Date: 11/15/2027

[ ] 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: _____

Purchasing Officer Review: Feb 8, 2023 Date:

Comment & Exceptions: Procured via SWPA

4. Funding Source: General Fund/Fund 100 and MRC Org / Object: 1004150/510310 and 5300271/510310

Andy Hopkins (Feb 7, 2023 16:13 MST) Feb 7, 2023

Budget Officer Approval: Date:

Comment & Exceptions: _____

Staff Contact who completed this form: Skyler Nielsen Phone # 505-469-6688

Email: smnielsen@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: AAA Pumping Services Inc.

Procurement Title: Portable Toilets Delivery and Service for Parks

Procurement Method: State Price Agreement [•] Cooperative [ ] Sole Source [ ] Other [ ]

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

Department Requesting Public Works Staff Name Skyler Nielsen

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.

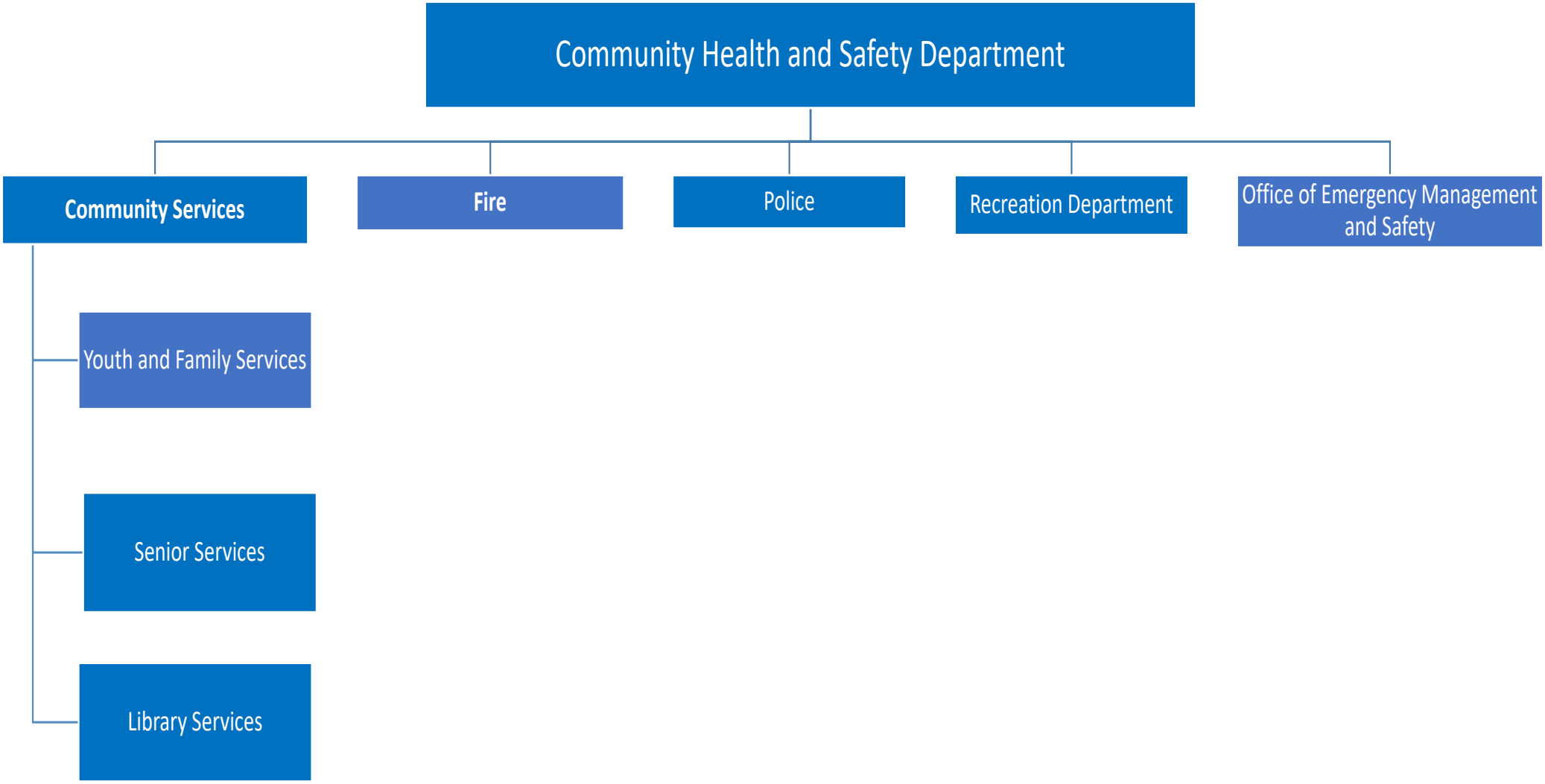
REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

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:

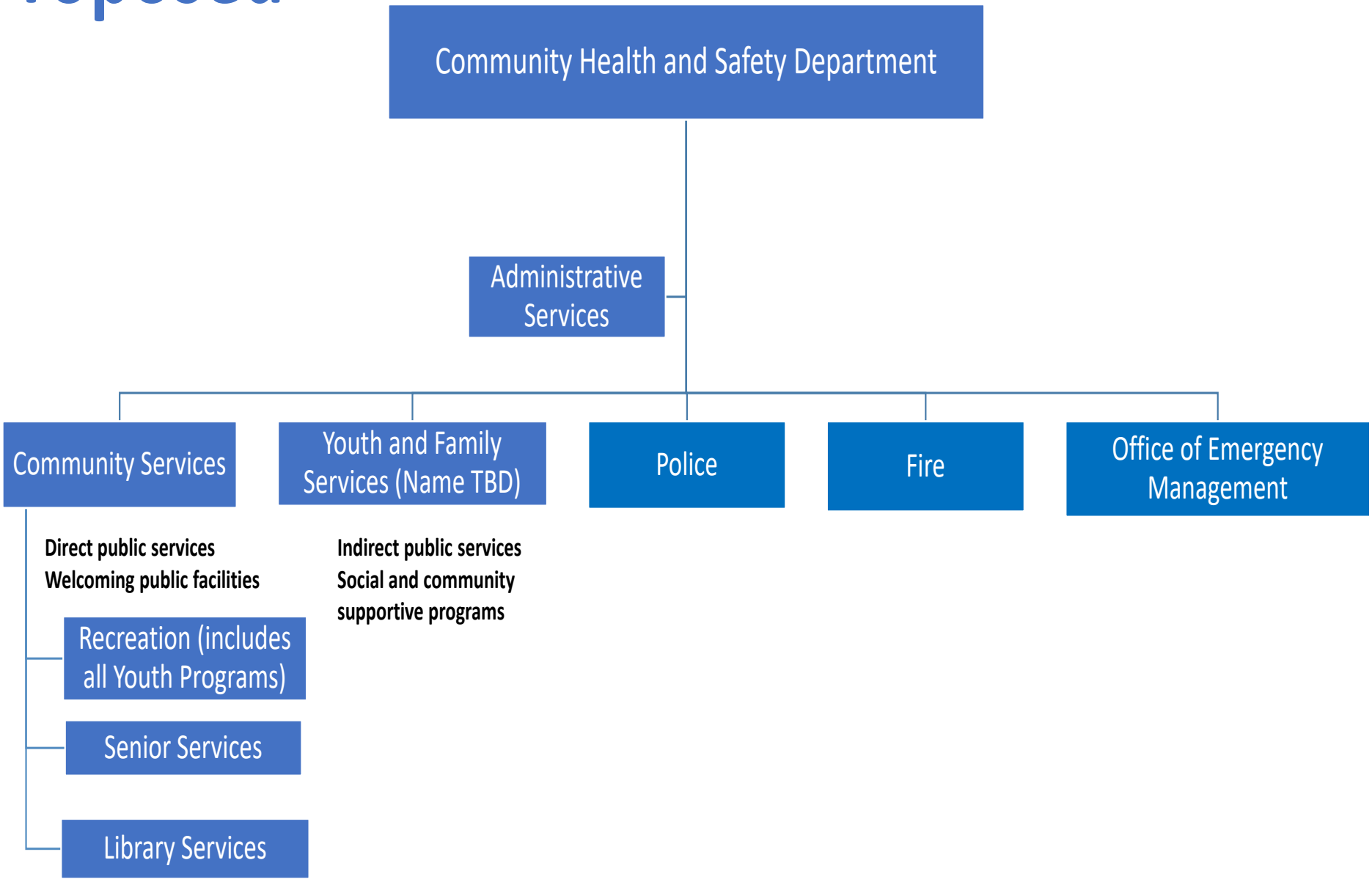
Skyler Nielsen	Parks Operations Manager	1/27/2023
Department Rep Printed Name (attesting that all information included)	Title	Date
	Contracts Supervisor	Feb 8, 2023
Purchasing Officer (attesting that all information is reviewed)	Title	Date

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

Current


Community Health and Safety Department
Community Services
Fire
Police
Recreation Department
Office of Emergency Management and Safety
Youth and Family Services
Senior Services
Library Services

Proposed


Community Health and Safety Department
Administrative Services
Community Services
Youth and Family Services (Name TBD)
Police
Fire
Office of Emergency Management
Direct public services
Welcoming public facilities
Indirect public services
Social and community supportive programs
Recreation (includes all Youth Programs)
Senior Services
Library Services

City of Santa Fe, New Mexico
Memorandum

Date: January 4, 2023

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

From: Kyra Ochoa, Community Health and Safety Department Director KO

RE: Updated Operating Structure of the Community Health and Safety Department

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EXECUTIVE SUMMARY:

The proposed bill amends SFCC 1987 Section 2-8.2, to update the structure of the Community Health and Safety Department. The bill removes the word "Safety" from the Office of Emergency Management, making the placement of that City function more flexible and it removes languages specifying particular components of the Department to allow the Community Health and Safety Department to respond to community and operational needs.

BACKGROUND:

The proposed bill follows up on the organizational changes made when the Community Health and Safety Department was established in 2020. Currently, the Department consists of the Police Department, the Fire Department, the Community Services Department, the Recreation Division, and the Office of Emergency Management and Safety. In order to create operational efficiencies and better streamline operations and services of the Community Health and Safety Department, additional changes to the organizational structure are proposed.

The proposed bill removes language specifying that the Recreation Division is a division. This change will allow the Recreation Division functions to be incorporated into the Community Services Department, which currently includes: public libraries, senior services, and youth and family services. This change will situate all City of Santa Fe direct services to the public and all indoor facilities that serve the community in one department. The value of this change is enhanced collaboration and coordination amongst facilities and programs, which will lead to increased quality and enhanced services to the community. This change enables efficiencies which will ensure that the Community Services Department's public facilities are well-maintained and welcoming and that the highest level of recreational, educational, safety-net, and social opportunities are provided for all who live and work in Santa Fe. Direct youth programs were moved into the Recreation Division after the initial reorganization and will remain a program of the Recreation Division, serving youth ages 5-17 with a variety of direct services. Moving the Recreation Division into the Community Services Department, where the youth programs were previously housed, comes at an important time when planning for the programming and operations of the Southside Teen Center is commencing. The community services of Libraries, Recreation,

Youth and Senior Services are all important components of a healthy, thriving, and equitable community.

The proposed bill also removes the limitation of "five" divisions within the Department, which allows the creation of new divisions under the Community Health and Safety Department without ordinance changes.

The bill also removes the specific inclusion of "youth and family services" as a component of the "Community Services Department," and recognizing that the listed components may not be the only components, creating flexibility for Youth and Family Services to be a separate division, but also allowing it to remain in its current organizational structure.

Finally, the proposed bill removes the word "Safety" from the name of the Office of Emergency Management and Safety. The intent of this change is that Safety personnel will report to the Deputy City Manager. Safety is an important internal City service and is best be managed in coordination with other internal city services, including risk management.

These changes will facilitate operations of the Community Health and Safety Department continuing to operate at a high level and provide for administrative, supervisory, and budgeting efficiencies.

ATTACHMENTS:

Bill
Fiscal Impact Report

17. PUBLIC COMMENT ON BILLS

b. CONSIDERATION OF BILL NO. 2023-6. (Mayor Webber)

An Ordinance Amending Section 2-8.2(A), “Creation of Department” by Removing Language that Prescribes a “Recreation Division” as a Division of the Community Health and Safety Department and “Family and Youth Services” as a Component of the Community Services Department; and by Removing the Term “Safety” from the Name of the “Office of Emergency Management and Safety”. (Kyra Ochoa, Community Health and Safety Department Director: krochoa@santafenm.gov)

Committee Review:

Governing Body (Introduced): 01/11/2023
Governing Body (Public Comment): 01/25/2023
Quality of Life Committee: 02/01/2023
Public Works and Utilities Committee: 02/06/2023
Finance Committee: 02/13/2023
Governing Body (Public Hearing): 02/22/2023

Name: Stefanie Beninato
Comment - 01/25/2023 12:22 PM: (No Vote)
WHY? What are the real time consequences of this change? Any change in hours or terms of employment for rec employees? BTW I appreciated the rec pool crew at Perez who showed up TWO HOURS after the TWO HOUR delay notice (6AM opening; 2 hr delay 8AM)
Not a 4 hr delay as the managerial staff who live in ABQ insisted on. Cody Martinez refused to allow the staff to open at 8AM alleging they could not handle the front desk. That is a joke. They know what goes on up at the desk and we paid this staff for a 4 hour delay that day. BTW opening facilities with a 6AM start time at 8AM means not all traffic begins at 10AM> It is generally safer to be out in light traffic.

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2023-6

INTRODUCED BY:

Mayor Alan Webber

A BILL

AMENDING SECTION 2-8.2(A), "CREATION OF DEPARTMENT" BY REMOVING LANGUAGE THAT PRESCRIBES A "RECREATION DIVISION" AS A DIVISION OF THE COMMUNITY HEALTH AND SAFETY DEPARTMENT AND "FAMILY AND YOUTH SERVICES" AS A COMPONENT OF THE COMMUNITY SERVICES DEPARTMENT; AND BY REMOVING THE TERM "SAFETY" FROM THE NAME OF THE "OFFICE OF EMERGENCY MANAGEMENT AND SAFETY".

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

Section 1. Section 2-8.2 of SFCC 1987 (being Ord. No. 2020-22, § 3) is amended to read:

2-8.2 Community Health and Safety Department.

A. *Creation of Department.* There is created a department of city government to be known as the "community health and safety department", which [~~comprised of five divisions:~~] includes, but is not limited to, the police department, the fire department, the community services department, [~~the recreation division,~~] and the office of emergency management[~~ and safety~~].

underscored material = new [~~bracketed material~~] = delete

B. *Police Department.*

(1) Powers and duties generally. Police officers shall execute and return all writs and processes directed to them by the municipal judge and, in criminal cases or cases of violations of city ordinances, they may serve the same in any part of the country. They shall suppress all riots, disturbances and breaches of the peace, apprehend all disorderly persons within the city and shall pursue and arrest any person fleeing from justice. They shall apprehend any person in the act of committing any offense against the laws of the state or the ordinances of the city, and forthwith bring such persons before a competent authority for examination and trial. They shall have, in the discharge of their proper duties, like powers and be subject to like responsibilities as sheriffs or constables in similar cases.

(2) Appointment of police officers; commissions. No person shall assume or exercise the functions, powers, duties and privileges incident or belonging to the office of municipal police officers without first having received an appointment in writing, known as a "commission", from the governing body. The advice of the chief of police shall be obtained in the employment and commissioning of all police officers of the department.

(3) Training schools and examinations.

(a) There shall be held and conducted at such times as may be prescribed by the chief of police, with the approval of the governing body, schools for training in modern police methods and practices. The schools for training and the checking of the qualifications and general fitness of applicants for positions in the police department shall be under the direction and supervision of the chief of police.

(b) All members of the police department shall take such

examinations as may be prescribed.

(c) In the taking of all written examinations there shall be assigned to each applicant a number which shall be endorsed on the applicant's examination papers, and the grading of the examinations shall be by number only.

(d) Except as otherwise provided, no member shall be retained in the police department and no applicant shall be appointed to the police department unless such member or applicant, after taking the prescribed training courses, has successfully passed the prescribed examinations, written and oral; provided, that the minimum educational qualifications required by the City Personnel Act shall not apply to members of the present police department who are otherwise qualified under the provisions hereof; provided further, that in passing on the qualifications of members of the present police department, consideration shall be given to:

(i) Length of service and faithfulness to duty; and

(ii) General aptitude for police work as disclosed by the individual records of such members to be confirmed by oral examinations.

(4) Extra or emergency police officers. The city manager may employ on behalf of the city such extra or emergency police officers as may be required in the proper administration of municipal affairs.

(5) Police department reserve.

(a) Created. There is created the city "police department reserve force", hereinafter referred to as the "reserve".

(b) Control by Chief of Police. The reserve is under the exclusive

control of the chief of the city police department who shall have the sole and exclusive authority to:

(i) Summarily discipline or dismiss members without appeal to any body or tribunal;

(ii) Approve or disapprove all bylaws, rules and regulations of the reserve; and

(iii) Approve or disapprove all officers, employees or agents of the reserve.

(c) Authority. The reserve and its individual members shall only have authority in law enforcement on specific request by the city police chief. A specific request shall be made for each individual instance of service.

(d) Powers and Duties.

(i) The duties of the reserve are to assist in enforcement of law by cooperating with all law enforcement agencies and regulatory bodies.

(ii) The reserve or its members when acting upon call, and only when acting upon call, of the city police chief, for the city or for another law enforcement agency or regulatory authority, shall be possessed of the same powers and duties as a city police officer or an officer of such law enforcement agency or regulatory authority.

(e) Call of Members. When the city police chief calls up the members of the reserve, the call shall be in writing, list the names of each member of the reserve called, the purpose of the call, and the date and time the call begins and terminates. Except when on call, reserve members shall have no more authority in law enforcement than that of any private citizen.

(f) Requests for Assistance. Should any law enforcement agency or regulatory body desire assistance from the reserve, the request shall be made to the city police chief who may authorize it, if:

(i) Reserve members are fully covered by the workman's compensation insurance policy of the assisted agency or body, and this is evidenced by a writing presented to the chief; and

(ii) Any and all liability that may arise against the city, its officers, employees or agents, the reserve, or its members as a result of such assistance, is assumed in writing by the assisted agency or body.

(g) Worker's Compensation. The city shall immediately take steps to provide necessary worker's compensation insurance for the reserve and necessary liability insurance covering liability that may arise against the city, its officers, employees or agents as a result of the activities of the reserve on behalf of the city. If any or a portion of such liability is to be self-insured, the self-insurance fund shall be increased accordingly.

C. Fire Department.

(1) Department authority and powers.

(a) Pursuant to Section 3-18-1F. and G. NMSA 1978 and 3-18-11B(1), the city may provide proper means for protection from fire and protect the property of its municipality and its inhabitants and preserve the health, safety, peace and order within the municipality. Therefore, the stated purpose of this subsection is to grant the fire department all authority necessary to protect life and property from the hazards created by fire, explosion, and similar emergencies.

(b) The fire department shall have full and complete authority in

connection with fighting, mitigating, and preventing the spread of any fire that may arise within the city, with the power to do and perform all necessary or expedient acts for the fighting of fire. When called to a fire, the fire department shall have:

(i) Full and complete authority of the premises to which it has been summoned until the fire has been extinguished and the premises are deemed safe by the fire department; and

(ii) By emergency vehicle or by foot, the right of ingress and egress on all public or private streets, alleyways, roads, driveways, and thoroughfares located within the city limits or the city annexation areas.

(c) The fire department shall have full and complete authority in connection with the provision of prehospital emergency medical services within the city, with the power to do and perform all necessary or expedient acts for the provision of these services.

(d) The fire chief shall have full authority to sign agreements, approved by the city attorney's office, with landowners to implement fire hazard mitigation activities.

(3) Department members designated as special police officers. Every member duly enrolled and in good standing in the fire department shall be a special police officer of the city with power to act as such from the time of the sounding of any fire alarm until the apparatus and equipment for fighting fire has been returned to the fire station.

(4) Obstructing or interfering with firefighters. It is unlawful for any person to obstruct, or interfere with firefighters while in the discharge of their duties.

D. Community Services Department. The community services department includes,

but is not limited to, senior services, and libraries[~~, and family and youth services~~].

E. Office of Emergency Management[~~ and Safety~~].

(1) In accordance with Section 12-10-5 NMSA 1978, the "office of emergency management[~~ and safety~~]," shall consist of:

(a) An emergency manager who shall be appointed in accordance with Section 12-10-5 NMSA 1978, and who shall be subject to the personnel system of the city;

(b) Additional professional and administrative personnel as may be required to effectively carry out the emergency management program; and

(c) All other city officers and employees, together with those volunteer forces enrolled to aid the city during periods of disaster or emergency.

(2) Definitions.

Civil emergency means conditions of unrest, including but not limited to riot, civil disturbance, unlawful assembly, hostile military or paramilitary action, war, terrorism, or sabotage.

Comprehensive emergency management plan (CEMP) means a written document that describes the city's overall emergency management plan. A CEMP specifies the purpose, organization, responsibilities, and facilities of the agencies and officials of the city in the mitigation of, preparation for, response to, and recovery from emergencies and disasters.

Curfew means a period of time declared by the mayor, during which no person or persons, other than persons authorized by the mayor by administrative order, may be upon the public streets, sidewalks, grounds, or semi-public property, either on foot or in vehicles of any type, within the city.

Disaster means the occurrence of a natural catastrophe, technological accident, or human-caused event that has resulted in environmental damage, property damage, deaths, and/or

multiple injuries, which may exceed the response capability of the local jurisdiction, necessitating state, and potentially federal, involvement.

Emergency means any occasion or instance, such as a terrorist attack, terrorist threat, civil unrest, wildland and urban fire, flood, hazardous materials spill, nuclear accident, aircraft accident, earthquake, hurricane, tornado, tropical storm, tsunami, war-related disaster, public health or medical emergency, other occurrence requiring an emergency response, or any other condition that warrants action to protect life, property, or the environment.

Emergency management means an approach to prevent, protect against, respond to, recover from, and mitigate the effects of incidents.

Emergency operations center (EOC) means the physical location at which the coordination of information and resources to support incident management (on-scene operations) activities normally takes place.

Emergency plan means an ongoing plan for responding to a wide variety of potential hazards.

Hazard mitigation plan means the representation of the city's commitment to reduce risks from natural hazards, serving as a guide for decision makers as they commit resources to reducing the effects of natural hazards.

National Incident Management System (NIMS) means the federal government's standardized framework of doctrines, concepts, principles, terminology, and organizational processes for emergency management.

(3) Purpose.

(a) The purpose of the office of emergency management[~~ and safety~~] is to coordinate the efforts of all municipal agencies and employees, nongovernmental agencies, and private sector partners to prepare for and function in the event of disasters and emergencies endangering the lives of

persons in the city, property of the residents of the city, or public property in the city.

(b) The duty of the office of emergency management[~~and safety~~] is to coordinate the development of emergency plans for the effective employment of municipal resources to protect the lives and health of the residents of the city and the private and public property therein from the effects of emergencies or natural or man-caused disasters.

(c) The office of emergency management[~~and safety~~] shall coordinate the implementation of such plans in preparation for, during, and after periods of emergency or disaster. Such plans shall be coordinated with those of the county and in consonance with the state emergency management plans.

(d) The office of emergency management and safety shall ensure that the safety of all city employees is a priority throughout the city's operations and coordinate and oversee safety protocols and implementation for the city.

(4) Emergency manager. The emergency manager shall:

(a) Be responsible to the director of community health and safety for the organization, administration, and operation of the emergency management program of the city;

(b) Coordinate the emergency management activities of all municipal departments and agencies of the city, nongovernmental agencies, and private sector partners;

(c) Be the liaison and cooperate with the emergency management agencies of the federal government, the state, the county, and the other political subdivisions therein;

(d) Develop an organizational structure for the office of emergency

management[~~ and safety~~], subject to the approval of the governing body and recommend appointments to fill the positions established therein subject to the city manager's authority;

(e) Manage the EOC; establish the overall structure, roles, responsibilities, and direction for the operation of the EOC; and ensure that the EOC is appropriately sited, staffed, equipped, and maintained;

(f) Maintain written emergency plans[~~ and safety protocols~~], including but not limited to all chapters, annexes, and appendices of the comprehensive emergency management plan and hazard mitigation plan, and annually review the plans to identify any recommendations for revisions; and

(g) Maintain records documenting compliance with requirements of federal and state emergency management programs, including the NIMS.

(5) Financing.

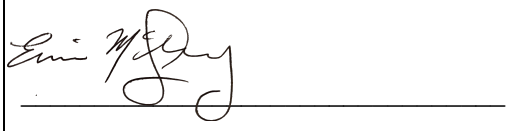
(a) Funds for necessary expenses of the office of emergency management[~~ and safety~~], including salaries for approved positions, may be made available through appropriations by the governing body in accordance with Section 12-10-7 NMSA 1978.

(b) The emergency manager shall prepare and submit to the governing body an annual proposed budget for emergency management[~~ and safety~~] expenditures and shall indicate those amounts eligible for matching funds under the federal grant programs.

(c) During an emergency, purchases may be exempt from the city's procurement code, as permitted pursuant to Section 11-13 SFCC 1987.

PASSED, APPROVED, and ADOPTED this _____day of _____, 2023.

APPROVED AS TO FORM:



ERIN K. McSHERRY, CITY ATTORNEY

Legislation/2023/Bills/Renaming the Community Health and Safety Department

FIR No. 10422

FISCAL IMPACT REPORT

General Information:

(Check) **Bill:** X **Resolution:** _____

Short Title(s): Amendments to the Community Health and Safety Department.

Sponsor(s): Mayor Webber

Reviewing Department(s): Community Health and Safety Department

Staff Completing FIR: Maria E. Tucker MT **Date:** 10/20/22 **Phone:** 505-955-6638

Reviewed by City Attorney: _____ **Date:** Jan 4, 2023

Reviewed by Finance Director: Emily K. Oster Emily K. Oster (Jan 4, 2023 16:59 MST) **Date:** Jan 4, 2023

Summary:
The proposed bill amends Santa Fe City Code SFCC 1987, Section 2-8.2, to update the legislative structure of the Community Health and Safety Department to remove the references to the recreation division and youth and family services and to remove "safety" from the Office of Emergency Management.

Departments Affected:
Community Health and Safety Management and Human Resources.

Consequences of Not Enacting Legislation:
If this legislation is not adopted, it could hinder the Community Health and Safety Department's ability to operate effectively under the current management and budget structure.

Conflict, Duplication, Companionship, or Relationship to Other Legislation:
None identified.

Performance and Administrative Implications:
The proposed amendments will improve the administrative structure and operations of the Community Health and Safety Department.

Fiscal Implications:
There is no financial commitment or impact to the City. The proposed ordinance only renames a current department and updates the operating structure to better reflect the current operational organization.

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
Personnel and Benefits*	$	$	$				
Capital Outlay	$	$	$				
Contractual/ Professional Services	$	$	$				
Operating	$	$	$				$
Total:	$	$	$				$

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

Expenditure Narrative:

Revenue

Revenue Type	FYE __	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 (Jan 4, 2023 09:24 MST)

Email: krochoa@santafenm.gov

Signature: Maria Tucker

Email: metucker@santafenm.gov