Agenda

Regular Meeting of the Public Works and Utilities Committee
January 6, 2025 at 5:00 PM
Council Chambers, City Hall
200 Lincoln Avenue

Procedures for Public Works and Utilities Committee Meeting

Viewing: Members of the public may view the meeting through the Government Channel on Comcast Channel 28 and Comcast HD928 or may stream the meeting live on the City of Santa Fe's YouTube channel. The YouTube livestream can be accessed from most smartphones, tablets, or computers.

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. Public Comment
6. Presentations
    a. Update on the Asset Management System Being Implemented by Utilities and Public Works Departments. (Taylor Jurgens, Engineer Utilities and Sean Moody, Capital Projects Manager, Public Works)
7. Action Items: Consent Agenda
    a. Request for Approval of the December 2, 2024 Public Works & Utilities Committee Meeting Minutes. (Xavier Martinez, Administrative Manager; xbmartinez@santafenm.gov)

        Committee Review:
        Public Works & Utilities Committee: 1/06/2024

    b. Request for Approval of a Budget Amendment Resolution (BAR) in the Amount of $183,874 from the Water Enterprise Cash Fund to Water WIP Design for Water-Related Engineering Services. (Clinton Peterson, Engineer Associate;

cdpeterson@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 01/06/2025
Finance Committee: 01/13/2025
Governing Body: 01/15/2025

c. Request for Approval of a General Services Contract with B&D Industries in the Total Amount of $477,016.30 for Replacement of Heating and Cooling Units at the Southside Library with Term Ending June 30, 2026. (Spencer Schwartz, Public Works Project Manager; smschwartz@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 01/06/2025
Finance Committee: 01/13/2025
Governing Body: 01/15/2025

d. Request for Approval of a General Services Contract with B&D Industries in the Total Amount of $1,000,000 for On-Call Plumbing, Mechanical, and HVAC Services at Genoveva Chavez Community Center through June 30, 2028. (Spencer Schwartz, Public Works Project Manager; smschwartz@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 01/06/2025
Finance Committee: 01/13/2025
Governing Body: 01/15/2025

e. Request for Approval of the State of New Mexico Department of Finance and Administration General Fund 93100 Capital Appropriation Project Grant Agreement 24-I3145 in the Total Amount of $175,000 for Renovations to El Museo Cultural de Santa Fe Facility With a Reversion Date of June 30, 2028. (Tim Farrell, Public Works Property Development Manager; tgfarrell@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) to Allocate $175,000 from the 2024 Capital Appropriation to FY25 Revenue and Expenses for the Santa Fe Railyard.

Committee Review:
Public Works and Utilities Committee: 01/06/2025
Finance Committee: 01/13/2025
Governing Body: 01/15/2025

f. Request for Approval of the State of New Mexico Department of Finance and Administration General Fund 93100 Capital Appropriation Project Grant

Agreement 24-I4219, in the Total Amount of $126,950 for Renovations to El Museo Cultural de Santa Fe Facility With a Reversion Date of June 30, 2026. (Tim Farrell, Public Works Property Development Manager; tgfarrell@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) to Allocate $126,950 from the 2024 Capital Appropriation to FY25 Revenue and Expenses for the Santa Fe Railyard.

Committee Review:
Public Works and Utilities Committee: 01/06/2025
Finance Committee: 01/13/2025
Governing Body: 01/15/2025

g. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $4,109,145 from the Wastewater Utility Cash Balance to the Repair and Maintenance Expenditures to Fund a Contract with AAC Construction to Bring the Paseo Real Wastewater Reclamation Facility to Compliance from Violations of the Clean Water Act. (Paul F. Heerbrandt, Engineering Supervisor; pfheerbrandt@santafenm.gov)

Committee Review
Public Works and Utilities Committee: 01/06/2025
Finance Committee: 01/13/2025
Governing Body: 01/15/2025

h. Request for Approval of Amendment 1 to Legal Services Contract Item #23-0415 with Stein & Brockmann, P.A. to Increase Compensation by $324,562.50 for a New Total Amount of $389,475 and to Extend the Term to June 30, 2027 for Addressing Recent Legal Challenges Related to the Division's Work for the San Juan Chama Return Flow Pipeline Project. (Bill Schneider, Water Resources Coordinator; whschneider@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 01/06/2025
Finance Committee: 01/13/2025
Governing Body: 01/15/2025

i. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $286,560 to Increase WIP Construction Using Funds Budgeted in Miscellaneous Revenue During FY24. (Kelly Bynon, Administrative Manager, kabynon@santafenm.gov)

Committee Review:

Public Works and Utilities Committee: 01/06/2025
Finance Committee: 01/13/2025
Governing Body: 01/15/2025

j. Request for Approval of Construction Contract with Vital Consulting Group LLC in the Total Amount of $7,182,098.05 Including NMGRT to Complete a Two-Phased Demolition and Reconstruction of the Terminal Ramp at the Santa Fe Regional Airport for a Four-Year Term. (Sebastian Gallegos, Project Administrator; sfgallegos@santafenm.gov; James Harris, Airport Manager; jcharris@santafenm.gov)

Committee Review
Public Works and Utilities: 01/06/2025
Finance Committee: 01/13/2025
Governing Body: 01/15/2025

k. Request for Approval of the State of New Mexico Department of Finance and Administration Capital Appropriation Project Grant Agreement 24-I3144 in the Total Amount of $100,000 for the Railyard Performance Center Facility Improvements with a Reversion Date of June 30, 2028. (Tim Farrell, Public Works Property Development Manager; tgfarrell@santafenm.gov).

1. Request for Approval of a Budget Amendment Resolution (BAR) to Allocate $100,000 from the 2024 Capital Appropriation to FY25 Revenue and Expenses for the Santa Fe Railyard.

Committee Review:
Public Works and Utilities Committee: 01/06/2025
Finance Committee: 01/13/2025
Governing Body: 01/15/2025

l. Request for Approval of a State of New Mexico Department of Finance and Administration General Fund 93100 Capital Appropriation Project Agreement for $250,000 to Purchase and Install Self-Contained Breathing Apparatus (SCBA) for the Fire Department with a Reversion Date of June 30, 2026. (Sten Johnson, Assistant Fire Chief; sajohnson@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $250,000 from the DFA Grant into FY25 Fire Department Revenue and Safety Equipment Expenses.

Committee Review:
Public Works & Utilities Committee: 01/06/2025
Finance Committee: 01/13/2025
Governing Body: 01/15/2025

m. Request for Approval of a Wheeling Rate Agreement with Santa Fe County for Water "Wheeled" through the City's Water Transmission and Distribution Network to Reach the County Utility System. (Jesse Roach, Water Division Director; jdroach@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 01/06/2025
Finance Committee: 01/13/2025
Governing Body: 01/15/2025

n. CONSIDERATION OF RESOLUTION NO. 2025-___. (Mayor Alan Webber) A Resolution Adopting Annual Open Meetings Act Notice Requirements for 2025. (Andréa Salazar, City Clerk; asalazar@santafenm.gov)

Committee Review:
Governing Body (Introduced): 12/11/2024
Public Works and Utilities Committee: 01/06/2025
Quality of Life Committee: 01/08/2025
Finance Committee: 01/13/2025
Governing Body: 01/15/2025

8. Action Items: Discussion Agenda

9. Executive Session

10. Matters from Staff

11. Matters from the Committee

12. Matters from the Chair

13. Next Meeting:

14. 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, New Mexico

memo

Date: January 06, 2025

To: Public Works/Public Utilities Committee

From: John Del Mar, Water Division Engineer Supervisor JDM
Taylor Jurgens, Water Division Engineer TRJ

Via: John E. Dupuis, Public Utilities Director
Jesse D. Roach, Water Division Director JR

RE: Update on the Water Division's Asset Management Plan and Implementation.

ITEM:

The City of Santa Fe Water Division is implementing an improved asset management system to better manage the City's water infrastructure. In 2019, the Water Division initiated a formal Asset Management Plan as a response to requirements to receive Water Trust Board funding for the Nichols Dam improvements. The Water Division hired Brown and Caldwell and FCS Group to assist with documenting and evaluating a complete inventory of Water Division assets. A system-wide survey was conducted that resulted in an asset management report, a detailed plan for an improved asset management program, and specific requirements for asset management software.

In 2023 and early 2024, the Water Division, Wastewater Management Division, and Buckman Direct Diversion evaluated several asset management software vendors to identify which vendor provided the solution that was best suited for the City's needs. OpenGov was selected as the preferred vendor. The Public Works Department plans to join Public Utilities in implementing the OpenGov asset management software. This will provide consistency, increased collaboration, knowledge sharing, and cost efficiency across multiple departments within the City.

During the second half of 2024, the detailed scope of work for the new software and implementation was finalized so that the software may be procured via a cooperative procurement contract. The contract has been drafted and is in the review and approval process, with the goal of being submitted to committees and Governing Body in January 2025.

Once the contract is executed, the software implementation phase will begin. Implementation for Public Utilities is expected to take approximately 8 months. After implementation, the software will go live, and Public Utilities staff will begin using the software. OpenGov will be available for support and training after launch.

In addition to the new asset management software, the Water Division also plans to implement a new predictive water main failure software called VODA.ai in early 2025. This software uses machine learning to analyze historical water main break data and develop a risk model for existing mains that is used to predict which mains are most likely to fail in the near future. This software will be used to inform the Water Division's priority line replacement program.

Regular Meeting of the Public Works and Utilities Committee
December 2, 2024 at 5:00 PM
Council Chambers, City Hall
200 Lincoln Avenue
MINUTES

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1. Call to Order

The Regular Meeting of the Public Works and Utilities Committee Meeting was called to order by Chair Amanda Chavez at 5:00 PM, on Monday, December 2, 2024, in the Council Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

2. Roll Call

MEMBERS PRESENT
City Councilor, District 4 Amanda Chavez
City Councilor, District 3 Lee Garcia
City Councilor, District 2 Michael Garcia
City Councilor, District 1 Alma Castro
City Councilor, District 2 Carol Romero-Wirth

MEMBERS EXCUSED

OTHER PARTICIPANTS ATTENDING
Regina Wheeler, Public Works Department Director
John Dupuis, Public Utilities Department Director

3. Approval of Agenda

MOTION A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

VOTE The motion on a voice vote was unanimous.

4. Approval of Consent Agenda

MOTION A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as amended.

Removed Item 7 'O' to introduce an amendment.

VOTE The motion on a voice vote unanimous.

5. Public Comment

6. Presentations

a. Paseo Real Water Reclamation Facility Master Plan Update. (John Rehring, Carollo Engineers) - ,

7. Action Items: Consent Agenda

a. Request for Approval of the November 18, 2024 Public Works & Utilities Committee Meeting Minutes. (Xavier Martinez, Administrative Manager; xbmartinez@santafenm.gov)

Committee Review:

Public Works & Utilities Committee: 12/02/2024 -

MOTION A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

VOTE The motion on a voice vote.

b. Request for Approval of a Cooperative Project Agreement - Design Control No. S100830 with the New Mexico Department of Transportation for the Engineering Design of Arroyo Chamisos Trail Extension for the Total Amount of $300,000 through December 31, 2026. (Romella Glorioso-Moss, Projects Administrator; rsglorioso-moss@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $300,000 Using $256,320 of NMDOT Funding and $43,680 of Road Impact Fees to Design the Arroyo Chamisos Trail Extension Project.

Committee Review:
Public Works & Utilities Committee: 12/02/2024
Finance Committee: 12/09/2024
Governing Body: 12/11/2024

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Committee Review:

A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

c. Request for Approval of a Professional Services Contract with Capital Program Management Services LLC Not to Exceed $4,327,500 including NMGRT for On-Call Project Management Services for a Four Year Term. (Regina Wheeler, Public Works Director; rawheeler@santafenm.gov)

Committee Review:
Public Works & Utilities Committee: 12/02/2024
Finance Committee: 12/09/2024
Governing Body: 12/11/2024 -

A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

d. Request for Approval of a Professional Services Contract with Wilson & Company Not to Exceed $4,327,500 including NMGRT for On-Call Project Management Services for a Four Year Term. (Regina Wheeler, Public Works Director; rawheeler@santafenm.gov)

Committee Review:

Public Works & Utilities Committee: 12/02/2024

Finance Committee: 12/09/2024

Governing Body: 12/11/2024

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A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

e. Request for Approval of a Professional Services Contract with Leroy N. Pacheco Not to Exceed $4,327,500 including NMGRT for On-Call Project Management Services for a Four Year Term. (Regina Wheeler, Public Works Director; rawheeler@santafenm.gov)

Committee Review:

Public Works & Utilities Committee: 12/02/2024

Finance Committee: 12/09/2024

Governing Body: 12/11/2024

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A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

f. Request for Approval of a Governmental Services Agreement with the State of New Mexico, Energy, Minerals and Natural Resources Department in the Total Amount of $550,000 to Establish the Balanced Resources Acquisition and Information Network (BRAIN), a Consolidated Energy Information Tool. (Caryn Grosse, Public Works Project Manager; clgrosse@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) to Allocate Grant Proceeds of $550,000 to FY25 Revenue and Expenses for the BRAIN Project.

Committee Review:
Public Works & Utilities Committee: 12/02/2024
Finance Committee: 12/09/2024
Governing Body: 12/11/2024 -

A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

g. Request for Approval of a Budget Amendment Resolution (BAR) to Allocate Road Impact Fees in the Total Amount of $489,000 to FY 2025 WIP Construction for Construction Engineering and Management Services of Agua Fria Street and Cottonwood Drive Roundabout Project. (Romella Glorioso-Moss, Capital Projects Manager; rsglorioso-moss@santafenm.gov)

Committee Review:

Public Works & Utilities Committee: 12/02/2024

Finance Committee: 12/09/2024

Governing Body: 12/11/2024

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A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

h. Request for Approval of a Budget Amendment Resolution (BAR) to Allocate Road Impact Fees in the Total Amount of $112,000 to FY 2025 WIP Design for the Engineering Design of the Henry Lynch Reconstruction Project (Romella Glorioso-Moss, Capital Projects Manager; rsglorioso-moss@santafenm.gov)

Committee Review:

Public Works & Utilities Committee: 12/02/2024

Finance Committee: 12/09/2024

Governing Body: 12/11/2024

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A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

i. Request for Approval of a State Wide Price Agreement # 40-00000-23-00045 with Wagner Equipment Company for the Total Amount of $305,336.02 for the Purchase, Installation and Testing of the Administration Generator for a Term of 60 Days. (Michael Dozier, Wastewater Division Director; mldozier@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $305,336.02 from the Wastewater Enterprise Cash Fund to Wastewater Equipment & Machinery Non-Exempt Account.

Committee Review:
Public Works and Utilities Committee: 12/02/2024
Finance Committee: 12/09/2024
Governing Body: 12/11/2024 -

A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

j. Request for Approval of Amendment No. 1 to Professional Services Contract Item # 24-0299 with Hazen & Sawyer to Increase Compensation by $2,666,930 for a New Total Amount of $5,384,930 to Expand Existing Tasks Within the Original Scope of Work to Bring the Paseo Real Wastewater Reclamation Facility to Compliance from Violations of the Clean Water Act. (Michael Dozier, Wastewater Division Director; mldozier@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $2,666,930 from the Wastewater Enterprise Cash Fund to the Wastewater WIP Construction Account.

Committee Review:
Public Works & Utilities Committee: 12/02/2024
Finance Committee: 12/09/2024
Governing Body: 12/11/2024 -

A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

k. Request for Approval of Amendment No. 1 to Item #24-0297 with A.A.C. Construction to Increase the Compensation by $4,109,144.16 for a New Total Amount of $6,574,981.20 to Expand Existing Tasks Within the Original Scope of Work to Bring the Paseo Real Wastewater Reclamation Facility to Compliance from Violations of the Clean Water Act. (Michael Dozier, Wastewater Division Director; mldozier@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $4,109,144.16 from the Wastewater Enterprise Cash Fund to the Wastewater WIP Construction Account.

Committee Review:
Public Works and Utilities Committee: 12/02/2024
FInance Committee: 12/09/2024
Governing Body: 12/11/2024 -

A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

l. Request for Approval of Amendment No. 2 to Item #23-0671 with FacilityBUILD, Inc. to Extend the Term to June 30, 2025 for Design and Construction of an Addition at the Mary Esther Gonzales Senior Center. (Caryn Grosse, Public Works Project Manager; clgrosse@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 12/02/2024
FInance Committee: 12/09/2024
Governing Body: 12/11/2024 -

A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

m. Request for Approval of Amendment No. 5 to Amended and Restated Lease Agreement Item #19-0872 with Santa Fe Recovery Center, Inc. for Buildings at 1600 S. St. Michael's Dr. to Extend the Term of the Lease for King Hall to September 1, 2025, and the Term of the Lease for the Student Apartments to February 1, 2025. (Daniel Hernandez, Director, Metropolitan Redevelopment Agency; dahernandez@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 12/02/2024
Quality of Life Committee: 12/04/2024
Finance Committee: 12/09/2024
Governing Body: 12/11/2024 -

A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

n. Request for Approval of Amendment No. 2 to Item #23-0548, Exclusive Negotiation Agreement with Santa Fe Arts Institute, to Extend the Term through April 30, 2025, to Negotiate Terms for Land and Building Disposition and Development of the Midtown Visual Arts Center Pursuant to the City's Request for Proposals. (Daniel Hernandez, Metropolitan Redevelopment Agency Director; dahernandez@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 12/02/2024
Quality of Life Committee: 12/04/2024
Finance Committee: 12/09/2024
Governing Body: 12/11/2024 -

A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

o. CONSIDERATION OF RESOLUTION NO. 2024___. (Councilor Amanda Chavez)
A Resolution Assigning Authorized Officers and Agents for Grant Agreement Number SAP 22-G2419-STB for the Plan, Design, and Construction of Improvements on Jemez Road. (Sean Moody, Capital Projects Manager; sxmoody@santafenm.gov)

Committee Review:
Governing Body (Introduced): 11/13/2024
~~Public Works and Utilities Committee: 11/18/2024~~ (Rescheduled to 12/02/2024 Public Works and Utilities Committee for Noticing Purposes)
Public Works and Utilities Committee: 12/02/2024
Finance Committee: 12/09/2024
Governing Body: 12/11/2024
-

Committee Review:

Requested to be removed in amendment to the Consent Agenda by Chair Chavez.

p. CONSIDERATION OF RESOLUTION NO. 2024-___. (Mayor Alan Webber)
A Resolution Approving Budget Amendments for the Buckman Direct Diversion Board and Santa Fe

Solid Waste Management Agency and Requesting that New Mexico Department of Finance and Administration Approve the City of Santa Fe's First Quarter Budget Amendments for Fiscal Year 2025. (Andy Hopkins, Budget Officer; ajhopkins@santafenm.gov)

Committee Review:
Governing Body Special Meeting (Introduced): 11/25/2024
Public Works and Utilities Committee: 12/02/2024
Quality of Life Committee: 12/04/2024
Finance Committee: 12/09/2024
Governing Body: 12/11/2024 - ,

A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

q. CONSIDERATION OF RESOLUTION NO. 2024___. (Mayor Alan Webber and Councilor Jamie Cassutt) A Resolution Enabling the Santa Fe County Improvement Special Assessment Program in the City of Santa Fe. (Johanna Nelson, Office of Economic Development Director; jcnelson@santafenm.gov and Casey Dalbor, Economic Development Associate; cjdalbor@santafenm.gov)

Committee Review:
Governing Body Special Meeting (Introduced): 11/25/2024
Public Works and Utilities Committee: 12/02/2024
Quality of Life Committee: 12/04/2024
Governing Body: 12/11/2024 - ,

A motion was made by City Councilor, District 1 Alma Castro, seconded by City Councilor, District 2 Carol Romero-Wirth, to approve as presented.

8. Action Items: Discussion Agenda

9. Executive Session

10. Matters from Staff

11. Matters from the Committee

12. Matters from the Chair

13. Next Meeting: January 6, 2025

14. Adjourn

The Public Works and Utilities Committee Meeting was Adjourned at 6:15pm.

CITY OF SANTA FE

Date: November 20, 2024

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

From: John Del Mar, Engineer Supervisor, Water Division
Clinton Peterson, Engineer Associate, Water Division

Via: John Dupuis, Public Utilities Department Director
Jesse Roach, Santa Fe Water Division Director

John Dupuis (Nov 22, 2024 14:50 MST)

Subject: BAR for WSP task order

Vendor Name: WSP

Munis Vendor Number: 2960

ITEM AND ISSUE:

Request for Approval of a Budget Amendment Resolution (BAR) in the amount of $183,874 from the Water Enterprise Cash Fund to Water WIP Design for Water-Related Engineering Services. (Clinton Peterson, Engineer Associate: cdpeterson@santafenm.gov)

CONTRACT NUMBER:

The FY25 Munis contract number is 3250009.

BACKGROUND AND SUMMARY:

The City of Santa Fe Public Works Department currently has an On-Call Professional Services Agreement (Item #24-0506, Munis Contract# 3250009) with WSP USA Inc (WSP) for on-call engineering services to be completed on a task order basis. The Water Division requests approval of this BAR to allocate funds for water-related engineering services to be completed on a task order basis under the existing Professional Services Agreement with WSP. The Water Division and Public Works have coordinated to share this On-Call Agreement for Water Division projects on a task order basis.

One project that has an immediate need that the Water Division intends to use WSP for is to complete engineering design services for water infrastructure improvements along Richards Avenue related to the Richards Ave Road Replacement/Extension project. Much of the existing water infrastructure along the northern side of Richards Avenue is in old condition, and the Richards Avenue Road Replacement/Extension project provides an opportunity to improve the water infrastructure in this area, including extending the water main across the arroyo to connect the two halves of Richards Avenue before the roadway construction paves over the area.

Prior Approvals and Supporting Information:

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-111, RFP

The City-wide professional services contract was originally procured by Public Works. The Water Division has been granted approval by Public Works to use this contract for a task order, which will be funded by the Water Division.

Chief Procurement Officer (CPO) / Designee: N/A No proc. BAR only N/A No proc. BAR only (Nov 25, 2024 16:57 MST) **Date:** Nov 25, 2024
CPO Comment/Exceptions: _____

FUNDING SOURCE:

Fund Name/Number: Water Enterprise Fund/505

Munis Org Name/Number: CIP / 5050395

Munis Object Name/Number: WIP Design / 572960

Budget Officer / Designee: Andy Hopkins **Date:** Nov 22, 2024
Budget Officer Comment/Exceptions: _____

ASSOCIATED APPROVALS:

Does this purchase require any of the following associated approvals: ☐ Yes | ☐ No
(ITT, Vehicles/Fleet, Facilities, Asset, Grant Review)

IT Components included? ☐ Yes | ☐ No
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Vehicles included? ☐ Yes | ☐ No
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Construction, Facilities, Furniture, Fixtures, Equipment included? ☐ Yes | ☐ No
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Capital Asset* or Project ☐ Yes | ☐ No**
Project Ledger #: _____
(*will this procurement result in a tangible item that costs more than $5,000?)
(**Capital Projects are new and improvement projects that are going to cost $10,000 or more)
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Is this a Grant Funded Purchase? ☐ Yes | ☐ No
Approval: _____ **Title:** _____ **Date:** _____
Comment/Exceptions: _____

ATTACHMENTS:

Procurement Document: SWPA/Existing Contract

Vendor's Proposal

Professional Services Contract

1. Budget Amendment Resolution (BAR)
2. Professional Services Contract (Item # 3250009)

City of Santa Fe, New Mexico
Memorandum

DATE: July 10, 2024

TO: Governing Body

VIA: Regina Wheeler
Regina Wheeler (Jul 16, 2024 10:18 MDT)
Regina Wheeler, Public Works Department Director

FROM: Romella Glorioso-Moss, PhD, CPM, Complete Streets Capital Projects Manager RGM

ACTION:
Request for Approval of Professional Services Agreement with WSP USA, Inc. to Provide On-Call General Engineering Services in an Amount Not to Exceed $5,409,375 including NMGRT for Four Years. (Romella Glorioso-Moss, Capital Projects Manager: rsglorioso-moss@santafenm.gov)

BACKGROUND AND SUMMARY:
Pursuant to New Mexico Procurement Code Section 1.4.1.31, RFP 24001 was issued with the purpose of establishing multiple on call contracts for professional general engineering services to support infrastructure projects including roadway, trail, drainage, bridge, facility, parks, utility, transit and others. The RFP process determined that awarding an on-call contract to WSP USA, Inc. is in the best interest and is advantageous to the City of Santa Fe. A total of 7 contracts are recommended for award as a result of this RFP. Having multiple professional service firms under contract provides capacity and expertise to deploy the City's extensive state and federal infrastructure funding. Having multiple vendors under on-call contract also facilitates the solicitation of multiple quotations on any particular piece of work and selection of best value provider for a particular task.

The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed $5,409,375 over 4 years. Execution of this agreement does not constitute any promise to purchase any amount of work. Funds for these services will be identified and budgeted, as needed, for each individual capital improvement project.

PROCUREMENT METHOD:
The procurement method is via RFP 24001.

CONTRACT NUMBER:
The FY25 Munis contract number is 3250009.

FUNDING SOURCE:
Fund Name/Number: Various
Munis Org Name/Number: Various
Munis Object Name/Number: Various
Project ID / String: Various

ATTACHMENTS
Professional Services Agreement
Procurement Checklist
Summary of Contract
Business Registration
Coverage of Insurance

Halona Crowe

Reviewed by Halona Crowe

Item #: 24-0506
Munis Contract #: 3250009
RFP#: 24001

CITY OF SANTA FE

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **WSP USA Inc.**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

RECITALS

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

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

The City and the Contractor hereby agree as follows:

1. Scope of Work

The Contractor shall provide the following services for the City:

The Professional Engineer (PE) shall provide On-Call General Engineering Services and Construction Management Services for the design and construction of roadway, trail, drainage, facility, utility and traffic design. Once a need is identified, the City's Director of Public Works will issue a written Task Order to the PE that will detail required services. Upon receiving the City's request for services, the PE shall provide the City with an estimate of staff hours required to do the work and each project will be negotiated on a project-by-project basis. The PE may also be required to do some of the work in phases. Where a project proceeds in phases based on the development model used by the City, the PE shall provide the work estimate for each phase. Contractor shall not commence work on a Task Order until a written Notice to Proceed is issued by the Director of Public Works.

Work estimates shall be based on producing the deliverables described in the development model below for the tasks or phase(s) in the Task Order.

1. PROJECT DEVELOPMENT PHASES

In the following, all NMDOT standards refer to the NMDOT "Tribal/Local Public Agency Handbook, 2019 or most current edition unless otherwise specified.

a. Phase 1 - Project Scoping

The PE will review available data, propose project scope, conduct scoping field review, and write scoping report in accordance with guidelines of the New Mexico Department of Transportation.

1. Phase 1 Activities:

   i. Understanding and documenting existing conditions, environmental, and right-of way needs
   ii. Identifying design parameters for the project
   iii. Documenting safety considerations
   iv. Describing proposed improvements
   v. Conducting a preliminary field review meeting
   vi. Developing a preliminary engineer's estimate

2. Phase 1 Deliverables
   a. Scoping Report

   The following defines the required contents of the Scoping Report. The PE should evaluate all items listed below but some elements may not apply based on the project type.

   i. Project Summary/General Description
      a) Project data
         - Control number
         - Type of work
         - Project purpose and need
         - Location description
         - Posted route
         - Milepost (coordinates and/or intersections)
         - Project length
         - NMDOT district
         - County
         - Roadway functional classification
         - Terrain type
         - Fiscal year (study, design, construction) and project Termination Date
         - Program (funding category)
      b) Site description (beginning of project to end of project)
      c) Survey requirements (location and/or property survey)
      d) Right-of-way requirements
      e) Environmental Level of Effort (ELOE)
      f) Estimated project development time (from scoping to letting) all within agreement contract time
      g) Estimated project construction schedule and budget

   ii. Existing Conditions (where applicable)

a) Typical road section
   - Driving lanes per direction
   - Auxiliary lanes (acceleration, deceleration, and turning lanes) and medians
   - Shoulders (including rumble strips/stripes) and/or curb and gutter
   - Surfacing tapers
   - Multi-modal facilities (including transit, pedestrian and bicycle facilities)

b) Roadside slopes
c) Geotechnical conditions
d) Surfacing type and condition
e) Horizontal alignment
f) Vertical alignment
g) Major and minor roadway intersections
h) Right-of-way width
i) Major structures (> 20-foot span)
j) Other structures (< 20-foot span, may include fencing, retaining walls, cattle guards, concrete box culverts, safety barriers, etc.)
k) Roadway lighting
l) Traffic control and management devices (traffic signals, intelligent transportation system (ITS) equipment, special traffic signs, etc.)
m) Utilities (inventory and owners)
n) Environmental factors
o) Posted speed limit and design speed
p) Driveway and entrances (inventory)
q) Level of service (traffic volume and fleet characteristics)
r) Facilities and compliance with the Americans with Disabilities Act (ADA)
s) Railroad facilities (identify, should include railroad right-of-way, crossings, etc.)
t) Erosion control and landscaping installations
u) School crossings
v) Safety considerations

iii. Proposed Improvements
a) Typical section (including surfacing type and thickness)
b) Major structures
c) Other structures
d) Horizontal alignment
e) Vertical alignment
f) Intersections
g) Turnouts
h) Safety
i) Drainage and erosion control
j) Design exceptions/ variances
k) Detours and traffic control
l) Warrants and signalization
m) Landscaping and irrigation
n) ADA/ pedestrian/ bicycle
o) Special issues or unique project elements

iv. Factors Affecting Project Development and Schedule
   a) Survey requirements
   b) Environmental requirements and certification
      - Archaeological requirements
      - Historic preservation requirements (include the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO)
      - Hazardous materials investigations
      - Right-of-way (ROW) considerations and certification
      - Utility relocations and/or hookups and utility certification
      - Outside agency involvement and coordination
      - Railroad facilities and certification
      - ITS facilities and certification

b. Conceptual Design
Contractor shall inquire with the Director of Public Works whether an Early Neighborhood Notification ("ENN") Meeting will be held for the project. If an ENN is to be held, Contractor shall develop a conceptual design based on the Project Scoping Report, and may be directed to present the conceptual design to the Public via the Early Neighborhood Notification (ENN) Meeting described below. Conceptual design can be simply a series of sketches, ideas and explorations, or it can go to considerable depth, including design illustrations, indicative plans, sections and elevations and 3D models of a development approach.

c. Early Neighborhood Notification (ENN) Meeting
ENN is required for certain types of city capital improvement projects requiring review by the governing body as follows:

i. Facility plans for municipal facilities or services, including wastewater, solid waste, potable water and airport facilities.
ii. New projects or projects to expand or extend service to new service areas included in the capital improvement plan or general plan.
iii. Any new road construction or reconstruction of an existing road that materially expands capacity.
iv. Projects funded out of capital impact fee funds.
v. Any new park or reconstruction or expansion of an existing park that exceeds one acre in size or one hundred and fifty thousand dollars ($150,000) in cost.
vi. Construction of a new building or structure at a park or placement of new lighting at a park that exceeds one hundred and fifty thousand dollars ($150,000) in cost.

See APPENDIX A for the ENN Requirements.

b. Phase II – Preliminary Design (30% Design)

Preliminary design defines the general project location and design concepts. It includes, but is not limited to, preliminary engineering and other activities and analyses, such as environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations,

hydrologic analysis, hydraulic analysis, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials, and other work needed to establish parameters for the final design. Preliminary design should focus on establishing the horizontal and vertical alignments, typical section, and drainage and structural needs to a level sufficient to establish the project footprint. Contractor shall develop a preliminary design to the standard of the NMDOT for a 30% level of completion.

1. Phase 2 Activities

The following activities should be initiated, if applicable, or required by the Scoping Report:

i. Complete Drainage Report
ii. Development of typical sections, grading plans, geometric alignments
iii. Bridge type/size/location studies, temporary structure requirements, staged bridge construction requirements
iv. Structural design, retaining wall design, noise wall design
v. Guardrail length/layout
vi. Existing property lines
vii. Title and deed research
viii. Soil borings
ix. Cross sections with flow line elevations
x. Ditch designs
xi. Intersection design/configuration
xii. Interchange design/configurations
xiii. Pavement design
xiv. Storm/sanitary sewer design
xv. Culvert design, identification of removal items
xvi. Quantity estimates
xvii. Pavement details/elevation tables
xviii. Preliminary traffic control plans to be maintained during construction
xix. Coordinate railroad impacts
xx. Coordinate ITS impacts and improvements
xxi. Identify utility owners, records research, and begin utility coordination for Subsurface Utility Engineering (SUE)
xxii. Continue documentation for environmental, cultural resource, and hazardous materials investigations, and obtain approvals
xxiii. Hold ENN meeting (APPENDIX A)

If additional right-of-way is needed, the following additional activities need to occur in order during Preliminary Design.

i. Complete property survey
ii. Based on the project footprint, cultural and biological resource impacts are identified and plans for avoidance or mitigation are prepared.
iii. If there are right-of-way impacts, the PE will schedule a meeting with the NMDOT's Right of Way Bureau and the Tribal/Local Public Agency Coordinator of North Region Design.
iv. Begin Title Search and Title Reports

2. Phase 2 Deliverables

Typically, preliminary design would require a final geotechnical report, a final drainage report, utility location and mapping, right-of-way design and legal descriptions, roadway plan and profiles, bridge and structure types and criteria, plan and profile sheets, a preliminary traffic control plan, a National Pollution Discharge Elimination System (NPDES), and an engineer's construction cost estimate.

The PE shall use the NMDOT format for plan sets with standard information to be completed to a level consistent with the design stage. For NMDOT series sheets standards please refer to "Tribal/Local Public Agency Handbook, 2019 or most current edition.

c. Phase III – Grade and Drain (60% Design)

The engineer shall address all comments on the 30% complete Preliminary Design by City Staff, including but not limited to Complete Streets, Parks and Open Spaces, Land Use, Public Utilities, and SFMPO, as well as comments by the Bicycle and Pedestrian Advisory Committee and comments from the NMDOT review meeting. All of the components in the 30% Preliminary Design phase are further developed and designed to a greater level of detail.

1. Phase III Activities
   - i. Design drainage improvements
   - ii. Finalize project footprint
   - iii. Complete quantity schedules (if not included in the preliminary plans) and ensure they reflect computed design quantities
   - iv. Prepare and submit design variance and/or exceptions (if applicable)
   - v. Continue with environmental approvals
   - vi. Continue right-of-way process
   - vii. Develop preliminary traffic control plans including a suggested sequence of construction.
   - viii. Submit engineer's estimate
   - ix. Prepare and submit draft contract book, including specifications, special provisions and Notice to Contractor (NTC)
   - x. Incorporate ITS sheets, if necessary
   - xi. Incorporate rail design or mitigation and coordinate rail agreements and special provisions, as required
   - xii. Submit all Public Interest Findings (PIF) requests, if applicable
   - xiii. Coordinate the Storm Water Pollution Prevention Plan (SWPPP) sheets and Temporary Erosion and Sediment Control Plan (TESCP) sheets with the City's River and Watershed Manager (if the project's disturbed area is greater than one acre)
   - xiv. Begin Utility Relocation documentation (if applicable) for utility certification

2. Phase III Deliverables
   Submit to the City's Project Manager the 60% design plan set for review at least 2 weeks in advance of review meeting.

d. Phase 1V - Plan-in-Hand (90% Design)

Comments from the 60% Design review meeting and Constructability Review, when applicable, are incorporated during the 90% Design phase. At 90% Design, the plans, quantities, and engineer's estimate should be nearly complete. Only minor design changes should be occurring at (or after) this design phase. During the 90% Design phase, construction phasing layouts and construction signing, and striping plans are finalized, and project certification requests are completed and requested from NMDOT's North Region Design Coordinator or T/LPA Coordinator.

1. Phase IV Activities
   - i. Finalize plans
   - ii. Finalize right-of-way coordination/certification
   - iii. Finalize utilities coordination/certification
   - iv. Finalize ITS coordination/certification
   - v. Finalize railroad coordination/certification
   - vi. Finalize environmental certification
   - vii. Complete work zone checklist
   - viii. Start plans, specifications, and estimates (PS&E) checklist
   - ix. Finalize project cost estimate, including testing, construction management, and utility relocation when applicable
   - x. Request Disadvantaged Business Enterprise Program (DBE) goal from the Region Coordinator, if applicable
   - xi. Finalize project specifications and contract book, including all federal requirements
   - xii. If project-specific special provisions are required, those must be submitted to the NMDOT's North Region Design Coordinator or T/LPA Coordinator for review and approval
   - xiii. If project-specific Notice to Contractors (NTCs) are required, those must be submitted to the NMDOT's North Region Design Coordinator or T/LPA Coordinator for review and approval

2. Phase IV Deliverables

   The 90% design plans shall include as appropriate: cover sheet, title sheet, typical roadway sections, quantity sheets, general notes, SWPPP Information sheet, TESCP sheets, plan and profile sheets, roadway, trail, interchange and intersection plans, structure placement sheets, special details, bridge plans and foundation recommendations, traffic control and detour plans, permanent signing and striping, signalization, lighting plans, grading plans, earthwork computations, landscape details and/or plans, incorporation of standard plans and those prepared by others, final detail estimate and proposal, supplemental specifications, notice to contractors, and special provisions as required and all other plans/specifications as may be required.

   The 90% design plan set shall further include five (5) required NMDOT certifications. Environmental, ROW, Utility, Railroad, and Intelligent Transportation System (ITS) certifications must be submitted to City's Project Administrator at least two (2) weeks prior the review meeting.

e. Phase V - Plans, Specifications, and Estimate (PS&E)

The PS&E phase incorporates the comments from the 90% Design review meeting and finalizes the plans, quantities, and engineer's estimate. The contract book and specifications are complete, and all certifications are obtained prior to holding the PS&E review.

1. PS&E Deliverables
   a. PS&E package (to be submitted to City Project Administrator at least one week before NMDOT's annual deadline of June 1st)
      i. 100% construction plans
      ii. Engineer's opinion of probable cost
      iii. Contract book
      iv. Environmental clearance and certification documentation
      v. SHPO's concurrence
      vi. Right-of-way certification documentation
      vii. Utility certification documentation
      viii. ITS certification documentation
      ix. Railroad certification documentation
      x. Work zone checklist
      xi. All other applicable maintenance agreements
      xii. PS&E checklist
      xiii. Approved Public Interest Findings (PIFs) and/or variances if applicable

   b. Project Production Package (to be submitted to City Project Administrator at least one week before NMDOT's annual deadline of June 15th)
      i. Stamped and sealed construction plans
      ii. Engineer's opinion of probable cost (including Construction Management if using federal funding to cover these expenses and utility relocation when applicable)
      iii. Contract book (may leave out wage decisions until ready to bid because they can change over time)
      iv. Environmental clearance and certification documentation, including signed environmental commitments sheet in the construction plans
      v. SHPO's or THPO's concurrence
      vi. Right-of-way certification documentation
      vii. Utility certification documentation
      viii. ITS certification documentation
      ix. Railroad certification documentation
      x. Work zone checklist
      xi. All other applicable maintenance agreements
      xii. Signed PS&E checklist
      xiii. Approved PIFs and/or variances if applicable

f. Phase VI - Construction Engineering and Management Services

Construction Engineering and Management Services begins when the City advertises, bids and awards the project.

Upon request, the PE shall review bids and/or offers and provide an opinion to the City's Central Purchasing Office as to whether the bids and/or offers fully address the Invitation to Bid and/or Request for Proposals, and shall recommend selection of a bidder or offeror with written justification for that recommendation.

When a contract is awarded by the City in relation to the project, the PE shall fully execute and participate in the following tasks to implement the construction of the Project in conformance with the plans and specifications:

1. Hold Transition Meeting with City Project Administrator and NMDOT/FHWA Staff to discuss the required project documentation, format for submittals, and procedures to be used to ensure adequate management of a federally-funded construction project.
2. Hold Preconstruction Conference.
3. Duties during construction:
    i. Daily documentation and maintain a project management diary
    ii. Verify all construction activities and documentation meet NMDOT and federal standards and policies
    iii. Supervise activities for government and third-party inspectors and office personnel
    iv. Administer change orders in compliance with the change order provisions stated in the Tribal/Local Public Agency Handbook (current edition).
    v. Coordinate all project activities
    vi. Maintain public relations
    vii. Address all problems and/or concerns related to project designs and plans.
    viii. Approve all project documentation and submittals (including source books, certificates of compliance, National Pollutant Discharge Elimination System (NPDES), payrolls, subcontracts, traffic control diary, quality control plan, and testing reports).
    ix. Enforce contractor's compliance with contract requirements (i.e., Buy America, Disadvantaged Business Enterprise (DBE), EEO, traffic control/safety, etc.)
    x. Administer monthly progress payments
    xi. Reject defective and/or non-compliant material and workmanship, in accordance with the contract
    xii. Interpret the plans and specifications
    xiii. Verify construction activities meet contractor schedule
    xiv. Designate a person familiar with Storm Water Pollution (SWPP) Plan Preparation and Maintenance to review the work of contractors and provide an opinion on compliance to the Public Works Director, when applicable. In order to be considered "familiar," that person would need to have attended the Associated Contractors of New Mexico (ACNM) class "Storm Water Qualified Person" or equivalent.
    xv. Approve the contractor's Quality Control Plan per Section 902, Quality Control, of the NMDOT Standard Specifications at least two weeks prior to the start of any work being performed that requires QC testing for acceptance. Once the Quality Control Plan is approved, PE shall verify that it is on file.
    xvi. Review and approve any proposed changes to the traffic control plan at least two weeks prior to implementation. Ensure the revisions have been designed in

accordance with 23 CFR § 630 Subpart J – Work Zone Safety and Mobility and 23 CFR § 630 Subpart K – Temporary Traffic Control Devices and are stamped by a current New Mexico Licensed Professional Engineer. If any part of the revised traffic control will be located on an NMDOT roadway, concurrence from the District Traffic Engineer is required prior to approval by the City project manager. Unapproved changes shall not be allowed in the field.

xvii. Ensure proper B2Gnow and LCPtracker reporting.
xviii. Review and approve progress payments.
xix. Prepare for Project Closure and Final Inspection.

4. Duties after construction

Prepare and submit the Final Package to NMDOT.

In all cases where the PE is responsible for acceptance of a deliverable, payment of invoices remains subject to acceptance by city staff pursuant to Section 3(D) above.

2. Standard of Performance; Licenses

A. The Contractor does hereby accept its designation as a professional service, rendering services related to general engineering and construction management services for the City, as set forth in this Agreement. The Contractor represents that Contractor possesses the personnel, experience, and knowledge necessary to perform the services described under this Contract.

B. The Contractor agrees to obtain and maintain throughout the term of this Contract, 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 services satisfactorily performed as per Task Order, such compensation not to exceed five million dollars ($5,000,000), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Contract totaling four hundred nine thousand three hundred seventy-five dollars ($409,375) shall be paid by the City to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed five million four hundred nine thousand three hundred seventy-five dollars (5,409,375). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Contract 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 Contract 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 Contract 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. Payment in future fiscal years is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.)

D. 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.

E. If the City fails to pay the contractor within twenty-one days after receipt of an undisputed request for payment, the City shall pay interest to the contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until the payment is issued. If the City receives an improperly completed invoice, the City shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and the owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete.

F. **Notice of Extended Payment Provision For Grant Funded Contracts**. This contract allows the owner to make payment within 45 days after submission of an undisputed request for payment.

4. Term

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Contract shall terminate **four (4) years from date of final signature** unless terminated pursuant to paragraph 5 (Termination) and paragraph 6 (Appropriations). Four (4) years is the limit to the Term of this Contract in accordance with NMSA 1978, Sections 13-1-150 through 152.

5. Termination

A. Grounds. The City may terminate this Agreement for convenience or cause. For contracts within their authority, the City Manager or their designee is authorized to provide the notice of termination, otherwise such notice of termination shall be provided by the Mayor or their designee as authorized by the Governing Body. 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) 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 6, "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.*

6. Appropriations

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Contract. If sufficient appropriations and authorization are not made by the Governing Body, this Contract 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 Contract to unilaterally reduce funding, the Contractor shall have the option to terminate the Contract or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

7. 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 Contract. 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.

8. Assignment

The Contractor shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract 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 Contract without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Contract, nor shall any subcontract obligate direct payment from the City.

10. Release

Final payment of the amounts due under this Contract shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Contract.

11. Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of this Contract 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 Contract shall become the property of the City and shall be delivered to the City no later than the termination date of this Contract. Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright or other claim of ownership 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 Contract, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Contract.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Contract, will continue to comply with, and that this Contract 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 are material representations of fact upon which the City relied when this Contract was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Contract, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article were erroneous on the effective date of this Contract 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 were erroneous on the effective date of this Contract 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 Contract to the contrary, the City may immediately terminate the Contract.

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 Contract 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 Contract, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

15. Entire Agreement.

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

16. Merger

This Contract 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 contract.

All terms and conditions of the **RFP #24001 On-Call General Engineering Services for Roadway, Trail, Bridge, Drainage, Facility, Utility and Traffic Design** and the Contractor's response to such document(s) are incorporated herein by reference and is included in the order of precedence.

No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

17. Penalties for violation of law

NMSA 1978, sections 13-1-28 through 13-1-199, 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 or immigration status except as necessary to comply with employment law, 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 Contract. If Contractor is found not to be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

19. Applicable Law

The laws of the State of New Mexico shall govern this Contract, 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, section 38-3-2. By execution of this Contract, 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 Contract.

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 Contract may be terminated by the City.

21. Professional Liability Insurance

Contractor shall maintain professional liability insurance throughout the term of this Contract 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 Contract.

22. Other Insurance

If the services contemplated under this Contract will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Contract, 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 Contract shall be the greater of (1) the minimum coverage and limits specified in this Contract, 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 Contract are sufficient to cover the obligations of Contractor hereunder.

D. Contractor shall maintain the above insurance for the term of this Contract 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 Contract's term and effect and retain them for a period of three (3) years from the date of final payment under this Contract. 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 Contract 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 Contract, 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 Contract. If any

action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Contract 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 Contract 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 Contract modifies or waives any provision of the New Mexico Tort Claims Act.

26. Invalid Term or Condition

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

27. Enforcement of Contract

A party's failure to require strict performance of any provision of this Contract 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 Contract 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 Contract 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: Regina Wheeler, Public Works Department Director, City of Santa Fe, P.O. Box 909 Santa Fe, NM 87504-0909, rawheeler@santafenm.gov.

To the Contractor: Dan Sims, Principal-in-Charge and Senior Vice President, 2440 Louisiana Blvd., Suite 400, Albuquerque, NM 87110, Dan.Sims@wsp.com.

29. Authority

If Contractor is other than a natural person, the individual(s) signing this Contract 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 a binding contract.

30. Non-Collusion

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

31. 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.

32. Equitable Remedies

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

33. Default and Force Majeure

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

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

CITY OF SANTA FE:

Alan Webber (Aug 19, 2024 17:04 MDT)

ALAN WEBBER, CITY MAYOR

DATE: Aug 19, 2024

CONTRACTOR:
WSP, USA Inc

Daniel Sims (Jul 3, 2024 11:31 MDT)

DAN SIMS
PRINCIPAL-IN-CHARGE &
SENIOR VICE PRESIDENT

DATE: Jul 3, 2024

CRS#: 01-195458-002

Registration #: _____

ATTEST:

GERALYN CARDENAS
INTERIM CITY CLERK XIV
GB MTG 08/14/2024

CITY ATTORNEY'S OFFICE:

Marcos Martinez (Jul 3, 2024 11:34 MDT)

MARCOS MARTINEZ
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

EMILY OSTER, FINANCE DIRECTOR

APPENDIX A

EARLY NEIGHBORHOOD NOTIFICATION

Early Neighborhood Notification (ENN) Applicability to City Capital Improvement Projects

ENN is required for certain types of *city capital improvement* projects requiring review by the *governing body* as follows:

(i) facility plans for municipal facilities or services, including wastewater, solid waste, potable water and airport facilities;
(ii) new projects or projects to expand or extend service to new service areas included in the *capital improvement plan* or *general plan* ;
(iii) any new road construction or reconstruction of an existing road that materially expands capacity; and
(iv) projects funded out of capital impact fee funds.
(v) any new park or reconstruction or expansion of an existing park that exceeds one acre in size or one hundred and fifty thousand dollars ($150,000) in cost; construction of a new building or structure at a park or placement of new lighting at a park that exceeds one hundred and fifty thousand dollars ($150,000) in cost.

The following types of *capital improvement* projects do not require ENN:

(i) *replacement* , repair or maintenance of underground facilities where such activity does not represent a material expansion of existing facilities;
(ii) road maintenance, repair, surfacing or resurfacing, striping, curb and gutter or sidewalk repair or maintenance, *sign* maintenance, signal repair, shoulder work, bridge or culvert maintenance work; and
(iii) special assessment districts covered by *state* law or *city* ordinance.

Summary Notices to Meet ENN Guidelines (not all of the agencies may be needed for every project):

20 days in advance:
Project Consultants submit to City Project Administrator Meeting Notice Letter for review and Approval.

15 days in advance:
City Project Administrator
Email: to Santa Fe City Council members and the mayor, Santa Fe MPO staff, City of Santa Fe Parks and Recreation Department, BPAC members, City of Santa Fe Land Use Department, interested individuals, neighboring condominium / apartment associations and neighborhood associations

City PrimeGov: Post notice of ENN meeting on PrimeGov

Social Media: City's Facebook – Coordinate with Community Engagement Department's Communications Manager (505) 469-0946

Project Consultants

Mail: Meeting notice (first class mail) to property owners and physical addresses within 300' of project boundary and neighborhood associations within 300' of project boundary

Posters: At least (1) (preferably 2, but subject to availability) 4'x5' City of Santa Fe Notification Board

Newspaper: Display advertisement in a local daily newspaper of general circulation stating the date, time and place of the public hearing

City Project Administrator

Contacts:

OPTIONAL: One week in advance:
Email: to Santa Fe City Council members and mayor, Santa Fe MPO staff, City of Santa Fe Parks and Recreation Department, BTAC members, City of Santa Fe Land Use Department, interested individuals, neighboring condominium or apartment associations and neighborhood associations

OPTIONAL: One day in advance:
Email: to Santa Fe City Council members and mayor, Santa Fe MPO staff, City of Santa Fe Parks and Recreation Department, BTAC members, City of Santa Fe land Use Department, interested individuals, neighboring condominium or apartment associations and neighborhood associations

Additional References

Section 14-3.1(F) of the Santa Fe City Code for a complete representation of all regulations pertaining to Early Neighborhood Notification

City of Santa Fe, New Mexico
Memorandum

DATE: April 24, 2024

TO: Travis Dutton-Leyda, CPO

VIA: JoAnn Lovato-Montano

FROM: Romella Glorioso-Moss, PhD, CPM *RGM*
Procurement Manager

RE: RFP#24001 Evaluation Committee Report

In accordance with the Request for Proposals for On-Call General Engineering Services for Roadway, Trail, Bridge, Drainage, Facility, Utility and Traffic Design (RFP# 24001) issued on February 8, 2024, the City received eleven (11) proposals from the following Offerors:

1. AECOM Technical Services, Inc. (AECOM)
2. Bohannan-Huston, Inc. (BHI)
3. Earth and Steel Design, LLC. (Earth & Steel)
4. Huitt-Zollars, Inc. (Huitt-Zollars)
5. Lee Engineering, LLC. (Lee Eng.)
6. Miller Engineers, Inc., d/b/a/ Souder, Miller & Associates (ME/SMA)
7. Molzen Corbin
8. Santa Fe Engineering Consultants, LLC. (SFEC)
9. WHPacific, an NV5 Company (WHPacific)
10. Wilson & Company, Inc. (Wilson)
11. WSP USA, Inc. (WSP)

The Evaluation Committee members are as follows:

- Dalmolin, Mike PE, Traffic Operations Engineer, Public Works – Complete Streets
- Isaacson, Zoë, River and Watershed Manager, Public Works – Parks and Open Space
- Jurgens, Taylor PE, Engineer, Public Utilities – Water
- Wolfenbarger, Jeanne PE, Traffic Engineer, Public Works – Complete Streets.

This Evaluation Committee Report summarizes all criteria used in scoring the response.

- March 11, 2024: Evaluation Committee met to review the Evaluation Committee duties and RFP process, and to receive the Offerors technical proposals.

- March 11-17, 2024: Each committee member reviewed and scored all the proposals individually.

- March 18, 2024: Procurement Manager and committee members held an in-person meeting to review and discuss individual score sheets and came to a consensus.

- April 4, 2024: Procurement Manager emailed SFEC for clarification on Appendix F and it was determined that Appendix F was not included in their proposals as required by the RFP.

- April 12, 2024: Evaluation committee report submitted to Central Purchasing for review.

SUMMARY:

Although Section IV.C. Business Specifications appeared before Section IV.B Technical Specification in RFP#24001, the Committee reviewed Offerors' compliance to Section IV.C. Business Specifications first to identify proposals who are disqualified and should not move forward for further evaluation.

Section IV. C. Business Specifications

C.1 Letter of Transmittal Form

Specifications:
The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX A. The form should be completed and must be signed by the person authorized to obligate the company.

Evaluation Factor:
Pass/Fail only. No points assigned.

Scores:

AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

Comments:
All Offerors submitted a Letter of Transmittal with their proposals. All Offerors passed this specification.

C.2 Campaign Contribution Disclosure Form

Specifications:
The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made (APPENDIX B). **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

Evaluation Factor:
Pass/Fail only. No points assigned.

Scores:

AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

Comments:
All Offerors submitted a signed Campaign Contribution Disclosure Form with their proposals. All Offerors passed this specification.

C.3 Non-Collusion Affidavit Form

Specifications:
The Offeror **must** complete an unaltered Non-Collusion Affidavit Form and submit a signed copy with the Offeror's proposal (APPENDIX C). **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

Evaluation Factor:
Pass/Fail only. No points assigned.

Scores:

AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

Comments:
All Offerors submitted a signed Non-Collusion Affidavit Form with their proposals. All Offerors passed this specification.

C.4 Conflict of Interest Statement for Consulting Firms

Specifications:
The Offeror **must** complete an unaltered Conflict of Interest Statement for Consulting Firms and submit a signed copy with the Offeror's proposal (APPENDIX D). **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

Evaluation Factor:
Pass/Fail only. No points assigned.

Scores:

AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

Comments:
All Offerors submitted a signed Conflict of Interest Statement with their proposals. All Offerors passed this specification.

C.5 Confidentiality and Non-Disclosure Agreement

Specifications:
The Offeror **must** complete an unaltered Confidentiality and Non-Disclosure Agreement and submit a signed copy with the Offeror's proposal (APPENDIX E). **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

Evaluation Factor:
Pass/Fail only. No points assigned.

Scores:

AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

Comments:
All Offerors submitted a signed Confidentiality and Non-Disclosure Agreement with their proposals. All Offerors passed this specification.

C.6 Sub-Consultants Offerors List

Specifications:
The Offeror **must** complete an unaltered Sub-Consultants Offerors List and submit a signed copy with the Offeror's proposal (APPENDIX F). **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

Evaluation Factor:
Pass/Fail only. No points assigned.

Scores:

AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
Pass	Pass	Pass	Pass	Pass	Pass	Pass	Fail	Pass	Pass	Pass

Comments:
All Offerors except the SFEC (Santa Fe Engineering Consultants, LLC) submitted a signed Sub-Consultants Offerors List with their proposals. SFEC was disqualified due to this fact.

Section IV.B Technical Specifications

Section IV.B.1 General Information (maximum 5 points)

Specifications:
Offeror **must** identify its principal member(s) or officer(s) who will be responsible for the administration of the contract; provide the name(s) and registration number(s) of the New Mexico Registered Professional Engineer who will be directly responsible and in charge of the work; and identify the name, address, and phone number of the office(s) where the work will be performed for the prime Offeror and all sub-consultants.

Evaluation Factor:
Points will be awarded based on the completeness of the Offeror's responses.

Scores:

AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
5	4.8	4.3	5	5	4.8	4.8	Disqualified	4.8	3.8	5

Comments:

1) **AECOM** (5 points) provided in detail, their principal officers and other engineers on staff to help complete a range of engineering tasks identified in the Scope of Work (SOW). AECOM's office locations and its subconsultants were also provided. The proposal is particularly strong listing the experience of principal officers with previous work with the City.

2) **BHI** (4.8 points) provided requested information about principal officers and work locations. However, it was weak in reference to the consideration of subconsultants that may be required to supplement in-house staff.

3) **Earth and Steel** (4.3 points) missed a couple of specifications resulting to a 0.5 point deduction. The proposal identified the principal officer but not the requested details, such as the location where the work will be performed or information on the subconsultants.

4) **Huitt-Zollars** (5 points) provided full details on principals who will be responsible for the administration of the contract. The Offeror provided the names and registration numbers of the New Mexico Registered Professional Engineer who will be directly responsible and in charge of the work. The Offeror also identified the names, addresses, and phone numbers of the sub-consultants.

5) **Lee Eng'g.** (5 points) provided all the information requested such names and registration numbers of the principal officers; name, address, and phone number of the principal office including all sub-consultants. Their response was complete and identified all required information in this specification.

6) **ME/SMA** (4.8 points) provided general information on the principal officers but not on subconsultants.

7) **Molzen-Corbin** (4.8 points) provided sufficient information but lacked detail.

8) **WHPacific** (4.8 points) provided information on its principals and subcontractors but not much detail was included.

9) **Wilson** (3.8 points) provided the requested information on its principal officers but not the requested details, such as the location where the work will occur or requested information on the subconsultants. The Offeror did not also provide details (name, address and telephone number) of offices where the work will be performed.

10) **WSP** (5 points) proposal provided all the details of general information requested for principal officers and their subconsultants.

Section IV.B.2 Organizational References (maximum 15 points)

Specifications:
Offeror **must** provide a list of three (3) references from similar projects for city, state or federal government clients within the last four (4) years (2020-2023).

Offeror shall include the following Business Reference information as part of its proposals:

a) Client name;
b) Project description;
c) Project dates (starting and ending);
d) Technical environment (i.e. Professional design or construction management services for roadways, trails, bridges, drainage, facility, utility, traffic, underpasses/overpasses, etc.)
e) Staff assigned to reference engagement that will be designated for work per this RFP; and
f) Client project manager name, telephone number, fax number and email address.

Offeror is required to submit APPENDIX H, Organizational Reference Questionnaire ("Questionnaire"), to the business references it lists. **The business references must submit the Questionnaire directly to the designee identified in APPENDIX H. The business references must not return the completed Questionnaire to the Offeror.** It is the Offeror's responsibility to ensure the completed forms are submitted on or before the date indicated in Section II. A, Sequence of Events, for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the Offeror's score in the evaluation process. Offerors are encouraged to specifically request that their Organizational References provide detailed comments.

Evaluation Factor:
Points will be awarded based upon an evaluation of the responses to a series of questions on the Organizational Reference Questionnaire (APPENDIX H). Offeror will be evaluated on references that show positive service history, successful execution of services and evidence of satisfaction by each reference. References indicating significantly similar services/scopes of work and comments provided by a submitted reference will add weight and value to a recommendation during the evaluation process.

Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will receive zero (0) points.

The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the City reserves the right to consider any and all information available to it (outside of the Organizational Reference information required herein), in its evaluation of Offeror responsibility per Section II.C.18.

Scores:

AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
13.6	13.6	0	9	9.8	13.5	14.5	Disqualified	14.5	14	13.8

Comments:

1) **AECOM** (13.6 points) received three references. The reference for the NM 456 emergency bridge project is exemplary. The NMDOT had a pre-manufactured bridge, and this Offeror was able to retrofit these existing bridge components to fit the project's specifications within 6 months. Such an approach saved a substantial amount of money and showed their adaptability.
   The other two references show the depth of this Offeror, from roadway improvements on NM 68 to inspection of bridge elements. The proposal outlined how this Offeror assumed control of the NM 68 project to correct deficiencies and shows their technical proficiency. However, the reference mentioned a few components were missed on the plan set. Both references did not provide rich detail to assess the firm's performance.

2) **BHI** (13.6 points) received three references. All of them indicated high satisfaction with this Offeror and several mentioned having an extensive service history with them. The range of technical expertise displayed by these three projects referenced are quite varied and include drainage, roadway, and bridge. In particular, the Sunport Boulevard Extension project really showed the Offeror's technical proficiency in all of the services requested. Scores were reduced due to the references providing very little detail and, in some cases, did not even provide any comment to justify the score provided. RFP requested firms encourage their references to provide detailed comments and thus points were reduced.

3) **Earth & Steel** (0 points) identified three references in their proposal (pp. 11-13). However, none of these references submitted the reference questionnaire to the Purchasing Division or to the Procurement Manager. Zero points were awarded as a result.

4) **Huitt-Zollars** (9 points) - The two references received for this Offeror provided almost no comment to justify high scores. The proposal lists a range of professional services, but the references do not provide any detail to demonstrate technical proficiency.

5) **Lee Eng'g.** (9.8 points) – Although three references were received for this Offeror, one did not respond to any of the questions at all. However, the two other references provided details to demonstrate their technical expertise in a range of roadway and traffic engineering services. Both references highly acclaim their services and rank them as the preferred on-call contract for traffic engineering services for the NMDOT and the City of Rio Rancho. Although this Offeror does not offer the full range of services identified in the SOW, such as bridges and drainage design services, this firm is ranked highly for meeting very specific and technical design services within traffic.

6) **ME/SMA** (13.5 points) - The three references for this Offeror were very complimentary and some continue to employ them on other projects. However, the language in two of the references were nearly word for word the same with some minor changes. For example, on Question 9 about which services were you least satisfied, the language is the exact same about project schedule.

7) **Molzen-Corbin** (14.5 points) - Two of the three references from the NMDOT and City of Albuquerque were effusive with praise and documented the long-standing relationship with this firm on multiple projects. The range of engineering services are also excellent, ranging from airport design, bridges, drainage, utility, etc. In particular that was impressive was the design details highlighting thoughtful design, including gravity flow when possible on the Santa Fe County project and sustainability rating on the I-25 interchange.

8) **WHPacific** (14.5 points) - Two of the three reference letters provided detailed comments and gave concrete examples of what separated this firm, such as the lack of change orders during construction owing to their "knowledge and expertise" during the design process. The other reference highlighted their knowledge of relevant manuals.

9) **Wilson** (14 points) - All the references highlighted how this Offeror has extensive histories and completed a lot of projects for several of them, including Los Alamos County, AMAFCA, and Rio Rancho. Other positives cited included how Wilson is able to complete a lot of the services in-house. However, the references also highlighted some weaknesses in technical writing and QA/QC processes.

10) **WSP** (13.8 points) received three references. Their references noted that their agency has worked with this Offeror on several projects and highlighted how they are one of the most accommodating firms and can handle large projects. The reference from the City of Albuquerque particularly how well executed the firm does with their complete street maintenance program, citing their ability to thoroughly research each corridor.

The Evaluation Committee did not contact any of the business references to validate any information submitted.

Section IV.B.3. Mandatory Specifications

IV.B.3.a. Specialized Design and Technical Competence (maximum 25 points)

Specifications:

Offeror **must** describe two (2) engineering design projects that highlight their specialized problem-solving techniques or approaches, innovative practices/ideas, and advantages its team brings or offers to the City.

Evaluation Factor:
Points will be awarded based on Offeror's innovativeness, creativity, and effectiveness in designing past projects.

Scores:

AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
24.4	22	20	18.3	21.3	20.3	24	Disqualified	21.5	23.3	22.5

Comments:

1) **AECOM** (24.4 points) showcased two projects showed very clearly the attention to detail and the innovative practices they can bring to solve problems. One highlight is the unique approach to lighting the underpass, using a combination of design alternations to bring as much natural light as possible while using light shield sculptures to integrate art while reducing vandalism. The integration of art into design can really help a project succeed within the City. The ability to mobilize such an eclectic staff to address a broad array brings a lot of value to the City.

2) **BHI** (22 points) demonstrated their ability to factor in their clients' input in decision-making. However, project examples given were simple and did not show their ability to be innovative, and creative.

3) **Earth and Steel** (20 points) described two engineering projects from work the principal members did as part of another firm. Therefore, it was unclear where division of responsibilities lies. Nevertheless, their project description highlights how both of the principal members contributed specialized problem-solving techniques.

4) **Huitt-Zollars** (18.3 points) described innovative practices and ideas, but they were not connected to the two projects highlighted.

5) **Lee Engineering** (21.3 points) listed two projects and had a supplemental section spotlighting unique and creative approaches to traffic engineering. Some of these unique and creative approaches include alternative intersection design, employment of big data to yield more nuanced understanding of traffic along I-40, and employment of "rest-in-red" signal operations. These innovative solutions were not linked to the two projects described in the proposal. These creative approaches offer potential benefits to the City but the firm will be limited to specific engineering services, such as traffic and roadway.

6) **ME/SMA** (20.3 points) in highlighting two projects showed some effective problem-solving, including receiving approval on meeting ADA requirements to the maximum extent feasible and

providing a graphic simulation of roadway design. However, they are quite simple, so it did not show creativity and innovativeness that RFP requires.

7) **Molzen-Corbin** (24 points) received the highest score for this question. The two project examples given were discussed succinctly and highlighted their innovativeness, creativity and advantages their team brings or offers to the City.

8) **WH Pacific** (21.5 points) described the two project examples given very well but no discussion on innovativeness and creativity. Project examples demonstrated the Offerors' ability to coordinate with multiple entities/stakeholders and involved complex project phasing and sequencing.

9) **Wilson** (23.3 points) demonstrated well their ability to take on very complex projects and see them through construction. Descriptions of the two project examples given were innovative and cutting edge. However, a few points were deducted because there was no discussion on hardships or difficulties encountered and how they were resolved.

10) **WSP** (22.5 points) described two projects but they lack specificity which makes it difficult to assess the firm's innovativeness or creativity and hence the advantages their team brings or offers to the City.

IV.B.3.b. Capacity and Capability of the Offeror to Perform the Scope of Work (maximum 25 points)

Specifications:
Offeror **must:**

i. provide information about the business that demonstrates the ability to provide sufficient professional competence, meet time schedules, accommodate cost considerations, and project administration requirements, including information that demonstrates the Offeror's ability to perform the services required for this project;

ii. include an organizational chart indicating key project team members, including any sub-consultants, and their specific roles on the project and/or area(s) of expertise, and clearly identifying the lead engineer who will be directly responsible for the project. The percentage of time each team member will spend or commit to providing services toward the project must be included in the organizational chart; and

iii. provide brief resumes for the lead engineer and key project team members, describing why each team member was selected for this proposal, highlighting relevant project experience and knowledge of City/NMDOT/FHWA procedures. If a subcontractor is affiliated with the prime contractor as an affiliated company, firm, or business, the proposal must indicate this. The proposal must also identify the Offeror's team's list of current projects with the City.

Evaluation Factor:
Points will be awarded based on the team members' relevance and extent of their experience, expertise and knowledge in engineering design of a roadway, trail, bridge, drainage, facility, utility and traffic;

and of their formal education, certifications and licenses. In addition, points will also be based on the amount of care and attention given to assembling the team members based on their specialized professional competence and Scope of Work.

Scores:

AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
24.8	23	18.5	22	21.8	20.3	23	Disqualified	21.5	23.3	22.5

Comments:

1) **AECOM** (24.8 points) outlined an extensive approach to demonstrate their ability to meet project schedules and accommodate cost considerations through an extensive list of tools to monitor the schedule and tasks as well as a deep well of project cost data from other projects.

   The Offeror gave an immense accounting of their technical expertise in all of the engineering services and how that would be tailored to meet the City's standards through different planning documents. In terms of the engineers leading the project, almost all had decades of experience.

   The proposal discussed in detail their cost control/estimating procedures, their Quality Management Plan/System to control QA/QC practices.
   Resumes showed their team is well-qualified.

   A small weakness is this section could have been written in a more concise way.

2) **BHI** (23 points) has extensive on-call experience. They have a long list of contracts with work relevant to RFP's SOW. They also provide specialty engineering services such as community development, planning and GIS which are important components to public engagement/participation. However, the Offeror's organizational chart did not have the percentages each member would be assigned to certain tasks and did not include the depth of the firm. Although the firm has extensive capacity in the range of engineering services, any subconsultant should have been listed even if it is not anticipated to be needed.

3) **Earth and Steel** (18.5 points) demonstrated a high-level of understanding of a project life-cycle but lacked specificity and details on how these projects are implemented. Principal members have a lot of experience in and around Santa Fe and with NMDOT. Staff resumes and organizational chart don't indicate very much depth of key project staff.

4) **Huitt-Zollars** (22 points) demonstrated strong multi-disciplinary experience with a large design staff. Graphics on schedule and cost control were helpful and reflect strong schedule and cost control measures. Both the organizational chart and resumes showed a lot of experienced staff. One weakness identified is since the firm does not have any projects with the City, they may not be familiar with City codes and other regulations and procedures.

5) **Lee Engineering** (21.8 points) showed in their organizational chart and resume sections that they have a capacity to handle most engineering services listed in the SOW. However, the organizational chart lists many engineering services with one capable staff. Some questions thus remain as to the depth of the firm to handle large projects. But this firm seems to have a strong capability in roadway design and traffic engineering services based on what was provided. The firm also has had several projects, and currently has several projects, with the City, showing their experience of City procedures. However, the proposal did not address the requested information on the firm's ability to accommodate cost considerations and keep project schedules.

6) **ME/SMA** (20.3 points) demonstrated in their organizational chart and resumes that they have the capacity to handle most engineering services listed in the SOW but the organization chart lists many engineering services with one capable staff. This leads to a question as to the capacity of the firm to handle large projects and multiple projects.

   Another weakness in the section was the parts dedicated to demonstrating the Offeror's ability to meet time schedules, accommodate cost schedules, etc. The response is too general and not enough concrete details were provided.

7) **Molzen-Corbin** (23 points) showed a lot of past experience with on-call contracts in New Mexico. It also showed multi-disciplinary experience in-house, including all areas of the SOW. The resumes show good experience in each discipline. One weakness identified was that the firm currently does not have any projects with the City and may not have extensive knowledge of City procedures due to this fact.

8) **WH Pacific** (21.5 points) demonstrated broad experience in several of the disciplines listed in the SOW. This firm has lots of experience with on-call contracts. The proposal provided concrete examples of their ability to meet cost and schedule components by providing tables of recent projects the firm has completed. The proposal detailed the range of professional competence, from traffic engineering, roadway design, to drainage. However, the same level of detail was not provided for some of the services in the RFP, such as bridges and facilities but the proposal listed resumes of some of the staff equipped to handle those kinds of tasks.

9) **Wilson** (23.3 points) stands out for its extensive knowledge of the City to the extent a special Microsoft Project file was jointly developed to track project schedules. That extensive City knowledge coupled with a broad range of engineers capable of all the engineering tasks support the firm's capabilities to the City. However, the proposal was weak in detailing and providing concrete examples to reduce construction cost and keep schedules.

10) **WSP** (22.5 points) showed the team's ability to support the City with local talent while also being able to lean on national expertise is an added benefit. The proposal's narrative also showed the Offeror has experience in several disciplines identified in SOW. The resumes reflect a team that is well-qualified and experienced in working with the City and NMDOT. A weakness in the section was the parts dedicated to demonstrating the firm's ability to meet time schedules, accommodate cost schedules, etc. The response is too general and not enough concrete details were provided.

IV.B.3.c Past Record of Performance (maximum 20 points)

Specifications:
Offeror **must** demonstrate through historical documentation that the Offeror has the ability to meet schedules and budgets, as well as user program goals, and final construction project costs. Project schedules should provide information about the progress of work as related to owner schedules and goals as well as the overall success of projects and client satisfaction. The proposal must describe two (2) past projects, specifying relevance to the current scope of work and include client references (names, addresses, email address and telephone numbers) for each project. Also, please submit APPENDIX G "Project/Contract Listing Form".

Evaluation Factor:
Points will be awarded based upon an evaluation of the documented organizational experience, knowledge and resources that may be employed for the project. Points will also be awarded based on Contractor's meeting project schedule agreed upon at the award of the contract. Considerations will be given if the project delay was caused by the City or NMDOT (APPENDIX G). Further, points will be awarded based on Offeror's candid and well-thought-out response to successes and failures, as well as the ability of the Offeror to learn from its failures and grow from its successes.

Scores:

AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
19	16.8	10.8	16.8	18	13.8	17.5	Disqualified	17.8	16.8	17.5

Comments:

1) **AECOM** (19 points) provided two projects which highlighted the firm's capacity to act under duress and deliver projects by the required deadlines. The range of services provided further illustrates the capacity of the firm to act and deliver any type of engineering services listed in the SOW. However, the response, although quite detailed, did not provide enough discussion on cost and budget and lessons learned from successes and failures and how that will help the firm grow.

2) **BHI** (16.8 points) demonstrated the ability to meet the City's design deadlines, however no documentation was provided on project schedules, budgets, and no discussions on lessons learned from project successes and failures.

3) **Earth and Steel** (10.8 points) No historical documentation was provided to justify the Offeror's ability to meet schedules and budgets. Although the Offeror did not provide two projects the proposal did highlight the Offeror's approach to keeping a project schedule and containing costs, but some documentation was required.

4) **Huitt-Zollars** (16.8 points) highlighted two projects that were delayed and elaborated on the role additional scope can have on wrecking on a client's project timeline. In fact, the delay was over two years in both projects. The Offeror did not identify any lessons learned, if there were any, from these delays and how the firm will grow as a result.

The Offeror also failed to discuss whether project costs were attempted to be contained. Both projects were delayed for months while "securing funding" from the City. That raises the questions of whether the projects were funded in the first place or additional funding was required due to scope changes.

The lack of information made it hard for the Committee to assess Offeror's response to this question other than the Offeror has some experience and resources to deliver the roadway and trail projects described.

5) **Lee Engineering** (18 points) highlighted two traffic engineering projects, both of which undertook unique and creative approaches. For the Airport Road signal timing optimization project, the firm impressively adopted the scope/fee proposal to adjust to budget cuts, optimizing the level of documentation accordingly. With this project being in the middle of the pandemic, the firm had to adjust the project and adapt their approach to lower volumes. In terms of engineering approaches, the "rest-in-red" concept is unique and really meets the project goals in unique ways. These two projects are focused only on traffic engineering services in the SOW and some approaches from other types of engineering services would have further bolstered their score.

6) **ME/SMA** (13.8 points) provided little-to-no discussion on actual vs. projected scheduled completion and actual vs. final project costs. One of the project examples showed experience in coordinating with multiple City departments and the public. The proposal did not also detail any lessons learned from successes or failures and how it will help the firm grow.

7) **Molzen-Corbin** (17.5 points) not only highlighted two projects but provided their systematic approach to meeting budgets and schedules. A cost and schedule performance table were provided, providing data to support their ability to meet client goals. Some of these projects cost a bit more than the estimate but the projects were always completed on time. The two projects showcase the range of services in the firm, from a large roadway to lift station. One mechanism in the lift station the firm employed to control costs to meet the budget was bid additives to provide flexibility in awarding the project. However, there was no discussion of discrepancies between bid estimates and actual bid amounts. Also not discussed were their project successes and failures and how that will help the firm grow.

8) **WH Pacific** (17.5 points) demonstrated broad experience in several of the disciplines listed in the SOW. They have a lot of experience with on-call contracts. The 2 projects described laid out the capability of this Offeror to handle an array of projects with a variety of stakeholders. One highlight was the complexity NM 566 bridge replacement over BNSF railroad and adjacent to the Navajo Nation. The Lovingston road diet project highlighted an award for innovative design but did not detail in which ways the design was innovative to garner that award. The proposal further did not detail any lessons learned from successes or failures and how it will help the firm grow.

9) **Wilson** (16.8 points) demonstrated their ability to work in a tight window. Their ability to anticipate the critical path and potential long lead items as well as find solutions to prevent causing a delay in the project was key to their project success. Discussions on how project schedule and costs were controlled as well as any lessons learned were missing. Highlighting different projects than what were previously described could have been an opportunity.

10) **WSP** (17 points) featured two projects that are located within the City and displayed the Offeror's capabilities to deliver a range of projects. The culvert replacement project particularly highlighted the firm's capacity to deliver an expedited design to meet the city's needs after the collapse of the previous culvert, thus shutting down a roadway for months. The design team also showed some capacity to change after staking the proposed structure in the field.

However, the Offeror did not take time to elaborate on the project schedule established and how their team met that schedule. Further, on the Guadalupe St. Bridge Preservation, a project cost is detailed but no information is provided as to whether this met the project's budget, thus the Committee was unable to fully judge the Offeror's ability to meet budgets.

IV.B.3.d Proximity to or Familiarity with the City of Santa Fe (maximum 5 points)

Specifications:
Offeror **must** identify its familiarity with the City of Santa Fe and its understanding of the scope of work. Offerors must demonstrate through narrative, graphics or maps the firm's ability to respond quickly to on- and off-site requirements for engineering and construction management services and administration of a City project which will be awarded via this RFP. The Offeror must also indicate previous knowledge or experience regarding the City, and any current work or associated consultants who could enhance the firm's ability to provide timely responses or special expertise to a City project needs.

Evaluation Factor:
Points will be awarded based on the Offeror's familiarity with the City's procedural, procurement and regulatory design requirements; thorough understanding of the Scope of Work; and how quickly they can respond to City request/need.

Scores:

AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
4.8	4.8	4.5	4	4.5	4.8	4.5	Disqualified	4.8	4.8	5

Comments:

1) **AECOM** (4.8 points) has a staff office in Santa Fe for quick response times. They also have several years of past experience working with the City of Santa Fe, thus have excellent knowledge of procedural, procurement, and regulatory design requirements.

2) **BHI** (4.8 points) demonstrated knowledge and work throughout Santa Fe. No staff located directly in Santa Fe but still within an hour in Albuquerque.

3) **Earth and Steel** (4.5 points) is located within Santa Fe, leading to good response time. Narrative is limited to familiarity with City regulations, procedures, and processes.

4) **Huitt-Zollars** (4 points) has prior experience with the City and demonstrated clear understanding of the SOW. However, the office is located 1 hour from Santa Fe.

5) **Lee Engineering** (4.5 points) currently has several projects with the City and is located within an hour of Santa Fe.

6) **ME/SMA** (4.8 points) has a satellite office in Santa Fe that provides close proximity. Acknowledgment of historical and cultural significance which requires unique solutions is a particular strength of the proposal.

7) **Molzen-Corbin** (4.5 points) demonstrated a lot of previous experience with multiple departments in City but they do not have an office in Santa Fe. Their office is in Albuquerque.

8) **WH Pacific** (4.8 points) demonstrated a good understanding of the SOW and highlighted several projects with City of Santa Fe. Their staff is based mainly in Albuquerque.

9) **Wilson** (4.8 points) has an extensive project history in City and knows the City's procedural, procurement, and regularly design requirements.

10) **WSP** (5 points) has several staff within the State, including an office in Santa Fe. They also showed they have several years of project experience with City of Santa Fe.

IV.B.3.e New Mexico Produced Work (maximum 5 points)

Specifications:
Offeror **must** indicate the volume of work to be produced in New Mexico by a New Mexico firm or firms. The Offeror must identify any out-of-state consultant(s) or business relationships that will be involved on any City project that will be awarded via this RFP, and the extent of services to be provided by that firm or firms.

Evaluation Factor:
Points will be awarded based on the percentage of work produced in New Mexico using the following formula:

0% - 20% - 1 point
21% - 40% - 2 points
41% - 60% - 3 points
61% - 80% - 4 points
81% - 100% - 5 points

Scores:

AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
5	0	5	5	5	0	5	Disqualified	5	5	5

Comments:

1) **AECOM** (5 points) – 90% of work will be produced in New Mexico.

2) **BHI** (0 point) – Evaluation Committee did not award any points because the Offerors' response is not direct and subject to interpretation. The Offeror tried to answer this question indirectly by stating their firm is a NM-owned and –based so they anticipate completing all the work in NM.

3) **Earth and Steel** (5 points) – 100% of work will be produced in New Mexico.

4) **Huitt-Zollars** (5 points) – 100% of work will be produced in New Mexico.

5) **Lee Engineering** (5 points) – 100% of work will be produced in New Mexico.

6) **ME/SMA** (0 point) – The Evaluation Committee did not award any points because the Offeror 's response is quite vague; stating a "substantial" portion of the work will be completed in NM.

7) **Molzen-Corbin** – 100% of work will be produced in New Mexico.

8) **WHPacific** – 100% of work will be produced in New Mexico.

9) **Wilson** – 100% of work will be produced in New Mexico.

10) **WSP** – 100% of work will be produced in New Mexico.

IV.B.3.f Volume of Work Currently Being Performed (0 to 5 point deduction). For Munis scores, see change in the scoring method below.**

Specifications:
Offeror **must** provide information on the status of any project that has been awarded by the City in the past four (4) years and is, on the date of the submittal, less than 75% complete by completing the "Contract/Project Listing Form" (APPENDIX G). The reason for any project delays must be identified.

Evaluation Factor:
Points shall be deducted for projects awarded that are less than 75% complete on the date the proposals are due. The following formula on fees shall be utilized in assessing scores:

Contract Balance Amount* Per Project	
$ Less than - $500,000	minus 0 point
$500,001 - $750,000	minus 1 point
$750,001 - $1,000,000	minus 2 points
$1,000,001- over	minus 3 points

*Contract Balance Amount is defined as:

i. Single Phase Contracts: Amount of contract including supplemental agreements that have been negotiated and that are covered under a signed contract, minus all paid invoices, if any (per project).

ii. Multi-Phase Contracts: Amount of contract including all subsequent phases and supplemental agreements that have been negotiated and that are covered under a signed contract, minus all paid invoices, if any (per project).

The maximum total point deduction for this section (sum of all ongoing contracts) will be 5 points. Deduction points will be calculated on the date the proposals are due. The Offeror must invoice against ongoing contracts not less than five (5) business days prior to proposal due date to allow sufficient time for posting to Deduction Point listing. No points will be deducted if the delay was caused by either the City or NMDOT. For example, if work has to stop due to delay in amending the term of the funding agreement.

**** When recording scores in Munis, it was determined that Munis won't accept a negative score, therefore the scoring methodology was adjusted to positive scores in Munis as follows:**

Maximum score is 5 points.

Contract Balance Amount per Project

	RFP Scoring	**Munis Scoring**
$ Less than - $500,000	**minus 0 point**	**add 5 points**
$500,001 - $750,000	**minus 1 point**	**add 4 points**
$750,001 - $1,000,000	**minus 2 points**	**add 3 points**
$1,000,001- over	**minus 3 points**	**add 2 points**

Using the above methodology, Offeror's scores are:

Scores:

	AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.	ME/ SMA	Molzen-Corbin	SFEC	WH Pacific	Wilson	WSP
RFP Scoring	-4	0	0	0	0	0	0	Disqualified	0	-2	0
Munis Scoring	1	5	5	5	5	5	5	Disqualified	5	3	5

Comments:

1) **AECOM** (-4) is working on 2 projects with the City with a remaining balance in the range of $750,001 - $1,000,000. Using the scoring method in the RFP, AECOM has a deduction of -4. In Munis, the score is 1 (maximum score of 5 minus 4).

2) **BHI** (0 point) currently has no project with the City with a remaining balance of over $500,000. Hence, no points were deducted.

3) **Earth & Steel** (0 point) is not working on any project with the City. Hence, no points were deducted.

4) **Huitt-Zollars** (0 point) does not have any projects with the City at the time of proposal submittal. Hence, no points were deducted.

5) **Lee Eng'g.** (0 point) does not have any projects with the City with a remaining balance of over $500,000. Hence, no points were deducted.

6) **ME/SMA** (0 point) does not have any projects with the City with a remaining balance of over $500,000. Hence, no points were deducted.

7) **Molzen Corbin** (0 point) does not have any projects with the City with a remaining balance of over $500,000. Hence, no points were deducted.

8) **WHPacific** (0 point) does not have any projects with the City with a remaining balance of over $500,000. Hence, no points were deducted.

9) **Wilson** (-2 points) has one project with the City with a remaining balance in the range of $750,001 - $1,000,000. Using the RFP scoring method, they had a 2-point deduction. In Munis, the final score is 3 (maximum score of 5 minus 2).

10) **WSP** (0 point) does not have any project with the City with a remaining balance of over $500,000. Hence, no points were deducted.

On-Call General Engineering Services for Roadway, Trail, Bridge, Drainage, Facility, Utility and Traffic Design

RFP# 24001 Evaluation Summary

Table 1. Evaluation Summary for AECOM, BHI, Earth & Steel, Huitt-Zollars and Lee Eng'g.

RFP Section IV	Evaluation Factors	Maximum Points Available	AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.
B.	**Technical Specifications**						
B.1.	General Information	5	5	4.8	4.3	5	5
B.2.	Organizational References	15	13.6	13.6	0	9.0	9.8
B.3.	Mandatory Specifications						
B.3.a.	Specialized Design and Technical Competence	25	24.4	22	20	18.3	21.3
B.3.b.	Capacity and Capability of the Offeror to Perform the Scope of Work	25	24.8	23	18.5	22	21.8
B.3.c.	Past Record of Performance	20	19	16.8	10.8	16.8	18
B.3.d.	Proximity to or Familiarity with the City of Santa Fe	5	4.8	4.8	4.5	4	4.5
B.3.e.	New Mexico Produced Work	5	5	0	5	5	5
B.3.f.	Volume of Work Currently Being Performed	0-5 Point Deduction	-4	0	0	0	0
C.	**Business Specifications**						
C.1.	Letter of Transmittal	Pass/Fail	Pass	Pass	Pass	Pass	Pass
C.2.	Campaign Contribution Disclosure Form	Pass/Fail	Pass	Pass	Pass	Pass	Pass
C.3.	Non-Collusion Affidavit Form	Pass/Fail	Pass	Pass	Pass	Pass	Pass
C.4.	Conflict of Interest	Pass/Fail	Pass	Pass	Pass	Pass	Pass

RFP Section IV	Evaluation Factors	Maximum Points Available	AECOM	BHI	Earth & Steel	Huitt-Zollars	Lee Eng'g.
	Statement for Consulting Firms						
C.5.	Confidentiality and Non-Disclosure Agreement Form	Pass/Fail	Pass	Pass	Pass	Pass	Pass
C.6.	Sub-Consultants Offeror's List	Pass/Fail	Pass	Pass	Pass	Pass	Pass
	TOTAL POINTS	**100 maximum points**	**92**	**85**	**63**	**80**	**85**

Table 2. Evaluation Summary for ME/SMA, Molzen Corbin, SFEC, WHPacific, Wilson and WSP

RFP Section IV	Evaluation Factors	Maximum Points Available	ME/SMA	Molzen Corbin	SFEC	WHPacific	Wilson	WSP
B.	**Technical Specifications**							
B.1.	General Information	5	4.8	4.8	NA	4.8	3.8	5
B.2.	Organizational References	15	13.5	14.5	NA	14.5	14	13.8
B.3.	Mandatory Specifications							
B.3.a.	Specialized Design and Technical Competence	25	20.3	24	NA	22.3	23.3	21
B.3.b.	Capacity and Capability of the Offeror to Perform the Scope of Work	25	20.3	23	NA	21.5	23.3	22.5
B.3.c.	Past Record of Performance	20	13.8	17.5	NA	17.8	16.8	17.5
B.3.d.	Proximity to or Familiarity with the City of Santa Fe	5	4.8	4.5	NA	4.8	4.8	5
B.3.e.	New Mexico Produced Work	5	0	5	NA	5	5	5
B.3.f.	Volume of	0-5 Point	0	0	NA	0	-2	0

RFP Section IV	Evaluation Factors	Maximum Points Available	ME/SMA	Molzen Corbin	SFEC	WHPacific	Wilson	WSP
	Work Currently Being Performed	Deduction						
C.	**Business Specifications**							
C.1.	Letter of Transmittal	Pass/Fail	Pass	Pass	Pass	Pass	Pass	Pass
C.2.	Campaign Contribution Disclosure Form	Pass/Fail	Pass	Pass	Pass	Pass	Pass	Pass
C.3.	Non-Collusion Affidavit Form	Pass/Fail	Pass	Pass	Pass	Pass	Pass	Pass
C.4.	Conflict of Interest Statement for Consulting Firms	Pass/Fail	Pass	Pass	Pass	Pass	Pass	Pass
C.5.	Confidentiality and Non-Disclosure Agreement Form	Pass/Fail	Pass	Pass	Pass	Pass	Pass	Pass
C.6.	Sub-Consultants Offeror's List	Pass/Fail	Pass	Pass	Fail	Pass	Pass	Pass
	TOTAL POINTS	**100 maximum points**	**77**	**93**	**NA**	**91**	**89**	**90**

Based on the Evaluation of the proposals submitted, as detailed above, the Evaluation Committee respectfully recommends awarding all Offerors that received a total score of 85 points and above, an on-call contract. The Offerors are: Molzen-Corbin (93), AECOM (92), WH Pacific (91), WSP (90), Wilson (89), BHI (85), and Lee Engineering (85). Awarding on-call contracts to the recommended Offerors are in the best interest and is most advantageous to the City of Santa Fe.

Evaluation Committee Members:

Michael Dalmolin — 05/23/2024

Dalmolin, Mike PE, Traffic Operations Engineer
Public Works – Complete Streets — Date

Zoe Isaacson — 05/23/2024

Isaacson, Zoë River and Watershed Manager
Public Works – Parks and Open Space — Date

Taylor Jurgens — 5/24/2024

Jurgens, Taylor PE, Engineer
Public Utilities – Water — Date

Jeanne Wolfenbarger — 05/28/2024

Wolfenbarger, Jeanne PE, Traffic Engineer
Public Works – Complete Streets — Date

Procurement Manager

Romella Glorioso-Moss — 05/31/2024

Glorioso-Moss, Romella PhD, CPM
Complete Streets Capital Projects Manager
Public Works – Complete Streets — Date

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: WSP USA, Inc.

Procurement Title: Professional Services 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 Staff Name Romella Glorioso-Moss

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:

Romella Glorioso-Moss | Capital Projects Manager | 07/10/2024

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

JoAnn D Lovato Montano
JoAnn D Lovato Montano (Jul 25, 2024 15:13 MDT)

Procurement Manager | Jul 25, 2024

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

Summary of Contract, Agreement, Amendment & Lease

All applicable fields to be completed by department (complete 1.b only if you are processing an amendment):

1.a Munis Contract: 3250009 Procurement # (RFP/ITB# If any): 24001

Contractor: WSP USA, Inc

Procurement Method: *Small Purchase* ☐ *RFP* ☑ *ITB* ☐ *Sole Source* ☐ *GSA* ☐ *Cooperative* ☐ Exempt ☐

Description/Title: PSA for On-Call General Engineering Services & Construction Management Services in the Total amount of $5,409,375 (inclusive of NMGRT)

Contract: ○ Agreement: ◉ Lease/Rent: ○ Amendment: ○

Term Start Date: TBD Term End Date: 4 Years Total Contract Amount: $5,409,375

☐ Approved by Council *(If over the City Manager's approval threshold, you must go through GB)* TBD

Contract / Lease:

1.b Amendment #: _____ to the Original Contract/Lease # _____

Increase/(Decrease) Amount $: _____

Extend Expiration Date to: _____

☐ Approved by Council *(If the original went through GB, all amendments must go through GB regardless of the amendment reason)* Date: _____

Amendment is for:

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

3. Procurement History: RFP

JoAnn D Lovato Montano — Jul 25, 2024

JoAnn D Lovato Montano (Jul 25, 2024 15:13 MDT)

Purchasing Officer Review: Date:

Comment & Exceptions: RFP# 24001

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

Andy Hopkins — Jul 24, 2024

Budget Officer Approval: Date:

Comment & Exceptions:

5. Grant History (if applicable): Various

Grants Administrator Approval: _____ **Date** _____

Staff Contact who Completed This Form: Amanda Archuleta Phone #: 505-955-6631

To be recorded by City Clerk: Email: ajarchuleta@santafenm.gov

Clerk #_____

Date of Execution: _____

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

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 7/10/2024

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 Arthur J. Gallagher Risk Management Services, LLC 300 Madison Avenue, 28th Floor New York NY 10017	**CONTACT NAME:** AJG Sevice Team **PHONE (A/C, No, Ext):** 212-994-7020 **FAX (A/C, No):** 212-994-7074 **E-MAIL ADDRESS:** GGB.WSPUS.CertRequest@ajg.com
	INSURER(S) AFFORDING COVERAGE / **NAIC #** **INSURER A :** QBE Specialty Insurance Company / 11515
INSURED WSPGLOB-01 WSP USA Inc. One Penn Plaza New York, NY 10119	**INSURER B :** **INSURER C :** **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 1160851828 **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	
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ $ $ $ $ $ $
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ $ $ $ $
	☐ **UMBRELLA LIAB** ☐ OCCUR ☐ **EXCESS LIAB** ☐ CLAIMS-MADE ☐ DED ☐ RETENTION $						EACH OCCURRENCE AGGREGATE 	$ $ $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBEREXCLUDED? ☐ **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					☐ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $
A	Professional Liability CLAIMS-MADE			QPL0022630	11/1/2023	10/31/2024	Per Claim Aggregate	$2,000,000 $2,000,000

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

THIRTY (30) DAYS NOTICE OF CANCELLATION

RFP 24001 On-Call General Engineering Services: Roadway, Trail, Bridge, Drainage, Facility, Utility, and Traffic Design

CERTIFICATE HOLDER

The City of Santa Fe; Public Works Department, Santa Fe County
PO. Box 909
Santa Fe NM 87504-0909

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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City of Santa Fe

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

BUSINESS REGISTRATION

Business Name: WSP USA INC.
DBA: WSP USA INC.

Business Location: 150 WASHINGTON AVE
SANTA FE, NM 87501

CRS Number: 01195458002

Owner: WSP USA INC

License Number: 230545

License Type: Business License - Renewable

Issued Date: August 03, 2023

Classification: Business Registration - Standard

Expiration Date: August 03, 2024

Fees Paid: $35.00

WSP USA INC.
2019 W GALISTEO ST UNIT M-1
SANTA FE, NM 87505

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

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

TO BE POSTED IN A CONSPICUOUS PLACE

Signature: XAVIER VIGIL (Aug 19, 2024 16:50 MDT)

Email: xivigil@santafenm.gov

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

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

DEPARTMENT / DIVISION NAME	DATE
Public Utilities Department / Water Division	11/20/2024

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
Wtr Capital Proj, WIP Design	5050395	572960		183,874	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
				$ 183,874	$ -

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

Please see attached Memo.

The City of Santa Fe Public Works Department currently has an On-call Professional Services Agreement (Item #24-0506, Munis# 3250009) with WSP USA Inc (WSP) for On-call Professional Services Engineering services, assigned and completed on a task order basis. Public Works has agreed Public Utilities may utilize the contract for their use as long as Water Division provides adequate funding for their work. Public Utilities requests approval of this BAR to allocate funds for water-related engineering services to be completed as necessary under the existing On-call Professional Services Agreement with WSP.

{Complete section below if BAR results

Fund(s) Affected	Fund Balance Increase/(Decrease)
505	(183,874)
TOTAL:	**(183,874)**

Clinton Peterson — 11/20/2024
Prepared By *{print name}* — Date

Division Director Signature *{optional}* — Date

John Dupuis (Nov 22, 2024 14:50 MST) — Nov 22, 2024
Department Director Signature - John Dupuis — Date

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins — Nov 22, 2024
Budget Officer — Date

Emily K. Oster — Nov 26, 2024
Finance Director *{≤ $5,000}* — Date

Randy Randall (Nov 26, 2024 22:41 CST) — Nov 26, 2024
City Manager *{≤ $60,000}* — Date

Att 1 - Water-Eng_BAR WSP_Richards Ave

Final Audit Report 2024-11-27

Created:	2024-11-21
By:	JAMES EDWARDS (jwedwards@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA90y4dL2rbSewdyHrByWP0DuUQRxlgQJr

"Att 1 - Water-Eng_BAR WSP_Richards Ave" History

Document created by JAMES EDWARDS (jwedwards@santafenm.gov)
2024-11-21 - 7:35:23 PM GMT- IP address: 97.182.23.177

Document emailed to John Dupuis (jedupuis@santafenm.gov) for signature
2024-11-21 - 7:42:30 PM GMT

Document e-signed by John Dupuis (jedupuis@santafenm.gov)
Signature Date: 2024-11-22 - 9:50:24 PM GMT - Time Source: server- IP address: 63.232.20.2

Document sent to ALEXIS LOTERO (aclotero@santafenm.gov) and ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov) for signature. One of them to sign
2024-11-22 - 9:50:31 PM GMT

Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2024-11-22 - 10:10:11 PM GMT- IP address: 104.47.65.254

Document e-signed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
Signature Date: 2024-11-22 - 10:11:15 PM GMT - Time Source: server- IP address: 63.232.20.2

Document sent to JoAnn Lovato (jdlovato@santafenm.gov) and Travis Dutton-Leyda (tkduttonleyda@santafenm.gov) for signature. One of them to sign
2024-11-22 - 10:11:22 PM GMT

Email viewed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
2024-11-23 - 1:54:03 PM GMT- IP address: 172.226.137.13

Email viewed by JoAnn Lovato (jdlovato@santafenm.gov)
2024-11-25 - 6:15:10 PM GMT- IP address: 63.232.20.2

Signer JoAnn Lovato (jdlovato@santafenm.gov) entered name at signing as N/A No proc. BAR only
2024-11-25 - 11:57:43 PM GMT- IP address: 73.228.7.52

Powered by Adobe Acrobat Sign

Document e-signed by N/A No proc. BAR only (jdlovato@santafenm.gov)
Signature Date: 2024-11-25 - 11:57:45 PM GMT - Time Source: server- IP address: 73.228.7.52

Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature
2024-11-25 - 11:57:51 PM GMT

Email viewed by EMILY OSTER (ekoster@santafenm.gov)
2024-11-27 - 0:54:27 AM GMT- IP address: 104.47.64.254

Document e-signed by EMILY OSTER (ekoster@santafenm.gov)
Signature Date: 2024-11-27 - 0:57:28 AM GMT - Time Source: server- IP address: 63.232.20.2

Document sent to LAYLA ARCHULETTA-MAESTAS (lsarchulettamaestas@santafenm.gov) and Randy Randall (rrandall@santafenm.gov) for signature. One of them to sign
2024-11-27 - 0:57:35 AM GMT

Email viewed by Randy Randall (rrandall@santafenm.gov)
2024-11-27 - 4:40:08 AM GMT- IP address: 140.248.30.0

Document e-signed by Randy Randall (rrandall@santafenm.gov)
Signature Date: 2024-11-27 - 4:41:52 AM GMT - Time Source: server- IP address: 68.105.56.157

Agreement completed.
2024-11-27 - 4:41:52 AM GMT

CITY OF SANTA FE

Date: November 18, 2024

To: Governing Body

Via: Regina Wheeler, Public Works Department Director RW (Nov 19, 2024 09:35 MST)
Sam Burnett, Facilities Division Director JOHN BURNETT (Nov 18, 2024 20:13 MST)

From: Spencer Schwartz, Project Manager Spencer Schwartz

Subject: Southside Library RTU Replacement

Vendor Name: B&D Industries

Vendor Number: 3970

ACTION:
Request for Approval of a General Services Contract with B&D Industries in the Total Amount of $477,016.30 for Replacement of Heating and Cooling Units at the Southside Library With Term Ending June 30, 2026; (Spencer Schwartz, Public Works Project Manager; smschwartz@santafenm.gov).

BACKGROUND AND SUMMARY:
The four heating, ventilation and cooling (HVAC) units on the Southside Library have exceeded their useful life, no longer perform adequately, and are identified within the Facilities Division's asset database as priorities for replacement to prevent an interruption of services at this facility. The replacement of these HVAC units will ensure continued service for patrons, maintain air quality, and reduce the need for emergency repairs. The new units will also improve the buildings efficiency by reducing energy consumption.

Construction will be coordinated with the Library Division and is estimated to take four weeks. Construction is planned to minimize disruptions and will not impact library operations. Funding for this project was provided in the FY25 one time allocation from fund balances for deferred maintenance to facilities.

PROCUREMENT METHOD:
NM Statewide Price Agreement (SWPA) #30-00000-23-00084 which expires on July 4, 2025.

ATTACHMENTS
General Services Contract
Vendor Proposal
Certificate of Liability Insurance
Statewide Price Agreement (SWPA) #30-00000-23-00084

Chief Procurement Officer Approval: _____ **Date:** Nov 21, 2024
Comment/Exceptions: NMSA 1978, Section 13-1-129

Supporting Information:

CONTRACT NUMBER:
The FY25 Munis contract number is 3250233

$$$$$ SOURCE/REVENUE: ☒ Expense ☐ Revenue

The funding source is:
Fund Name/Number: FACILITIES/320
Munis Org Name/Number: Facilities CIP/3209980
Munis Object Name/Number: WIP Construction/572970

If the project is grant funded? List grant award number*:* _____

Grant Manager / Accounting Officer Approval: _____ **Date:** _____
Comment/Exceptions: _____

Project Ledger #: _____

Budget Officer Approval: Andy Hopkins **Date:** Nov 21, 2024
Comment/Exceptions: _____

CAPITAL ASSET (will this procurement result in a tangible item that costs more than $5,000?):
☒ Yes | ☐ No

 # (if known): _____

Repair or Replacement of Existing Equipment:
☒ Yes | ☐ No
If yes -> ☐ Repair | ☒ Replacement

Please explain: _____

Capital Project:
(New and improvement projects that are going to cost $10,000 or more)
☒ Yes | ☐ No

Project Ledger #: FMD2532003

Asset Manager Approval: _____ **Date:** _____
Comment/Exceptions: _____

Department Approvals:
IT Components: ☐ **Yes** | ☒ **No**
Vehicles: ☐ **Yes** | ☒ **No**
Facilities, Furniture, Fixtures, Equipment: ☒ **Yes** | ☐ **No**

Approval:_____ **Title:**_____ **Date**:_____
Approval: Sam Burnett _____ **Title:** Facilities Div. Director **Date**: Nov 18, 2024
Comment & Exceptions:_____

Department Contract Administrator Contact Info:
Elizabeth L. Kahahane
elkahahane@santafenm.gov
M: (505)795-2439
O: (505) 955-5934

Item #: _____
Munis Contract #: 3250233
SWPA #: 30-00000-23-00084

CITY OF SANTA FE

CONSTRUCTION CONTRACT

THIS CONTRACT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **B&D Industries, 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 procured this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount; and

The City and the Contractor hereby agree as follows:

1. Scope of Work

A. The Contractor shall perform the following work:

The Contractor shall perform all the work required by the Contract Documents to replace 4 Roof Top Units serving the City of Santa Fe Southside Library (6599 Jaguar Drive, Santa Fe, NM 87507) with like-for-like replacements, per the proposal (Exhibit A), attached hereto and made a part thereof, and in accordance with all the provisions of the contract with SWPA, as described in the Contract Documents.

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.

B. Project: Replacement of 4 Roof Top Units serving the Southside Library

C. City Department: Public Works

D. Distribution:

City:
Spencer Schwartz
Project Administrator
City of Santa Fe Public Works
2651 Siringo Road, Building E
PO Box 909

Santa Fe, NM 87504-0909
smschwartz@santafenm.gov
505-955-5929

Contractor:
Kris Trujillo
Area Manager
B & D Industries
9720 Bell Ave. SE
Albuquerque, NM 87123
krist@banddindustries.com
505-379-1760

Engineer Not Applicable
Architect Not Applicable

2. Compensation

A. The City shall pay to the Contractor in full payment for services satisfactorily performed and not to exceed four hundred seventy-seven thousand sixteen dollars and thirty cents ($477,016.30), including gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Contract shall be paid by the City to the Contractor, as follows:

The Unit Bid Contract Total is determined as follows:

Base Bid	$465,173.53
Gross Receipts Tax (8.1875%)	$ 11,842.77
Base Bid plus NMGRT	$477,016.30

The total amount payable to the Contractor under this Contract, including Alternates (if needed) gross receipts tax and expenses, shall not exceed four hundred seventy-seven thousand sixteen dollars and thirty cents (**$477,016.30**). **This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Contract 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 Contract 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 Contract 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 twenty-one days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.

D. If the City fails to pay the contractor within twenty-one days after receipt of an undisputed request for payment, the City shall pay interest to the contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until the payment is issued. If the City receives an improperly completed invoice, the City shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and the owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete.

E. **Notice of Extended Payment Provision for Grant Funded Contracts**. This contract allows the City to make payment within 45 days after submission of an undisputed request for payment for contracts funded by grant money consistent with NMSA 1978, sec. 57-28-5(B).

3. Term

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This contract shall terminate **June 30, 2026**. The City reserves the right to renew this contract on an annual basis by mutual agreement not to exceed a total of ten (10) years in accordance with NMSA 1978, Sections 13-1-150 through 152.

4. Termination

A. Grounds. The City may terminate this Contract for convenience or cause. For contracts within their authority, the City Manager or their designee is authorized to provide the notice of termination, otherwise such notice of termination shall be provided by the Mayor or their designee as authorized by the Governing Body. The Contractor may only terminate this Contract based upon the City's uncured, material breach of this Contract.

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 Contract 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 Contract 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 Contract, the Contractor is suspended or debarred by the City; or (iii) the Contract is terminated pursuant to Paragraph 5,

"Appropriations," of this Contract.

C. Liability. Except as otherwise expressly allowed or provided under this Contract, 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 Contract. 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 CONTRACT.*

5. Appropriations

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Contract. If sufficient appropriations and authorization are not made by the Governing Body, this Contract 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 Contract to unilaterally reduce funding, the Contractor shall have the option to terminate the Contract 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 construction 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 Contract. 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 Contract or assign any claims for money due or to become due under this Contract 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 Contract without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Contract, nor shall any subcontract obligate direct payment from the City.

10. Release

Final payment of the amounts due under this Contract shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Contract.

11. Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of this Contract 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 Contract shall become the property of the City and shall be delivered to the City no later than the termination date of this Contract. Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright or other claim of ownership 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 Contract, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Contract.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Contract, will continue to comply with, and that this Contract 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 Contract was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Contract, 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 Contract 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 Contract 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 Contract to the contrary, the City may immediately terminate the Contract.

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

14. Amendment

A. This Contract 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 Contract 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 Contract, 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) Contract compensation, as outlined in Article 2; or
5) Contract 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 Contract, and become binding as a part of the original Contract.

16. Merger

This Contract 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 contract.

This Contract is issued against the state or agency Master Agreement, established and maintained by the State of New Mexico General Services Department, Purchasing Division, SWPA 30-00000-23-00084, and through this language hereby incorporates this Contract by reference and is included in the order of precedence.

No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

17. Penalties for violation of law

NMSA 1978, sections 13-1-28 through 13-1-199, 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 Contract. If Contractor is found not to be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

19. Applicable Law

The laws of the State of New Mexico shall govern this Contract, 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, section 38-3-2. By execution of this Contract, 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 Contract.

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 Contract may be terminated by the City.

21. Other Insurance

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

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

policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

B. **Broader Coverage and Limits**. The insurance requirements under this Contract shall be the greater of (1) the minimum coverage and limits specified in this Contract, 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 Contract are sufficient to cover the obligations of Contractor hereunder.

C. Contractor shall maintain the above insurance for the term of this Contract 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.

22. 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 Contract's term and effect and retain them for a period of three (3) years from the date of final payment under this Contract. 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 Contract shall not foreclose the right of the City to recover excessive or illegal payments

23. 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 Contract, 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 Contract. 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 Contract 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.

24. New Mexico Tort Claims Act

Any liability incurred by the City of Santa Fe in connection with this Contract 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 Contract modifies or waives any provision of the New Mexico Tort Claims Act.

25. Invalid Term or Condition

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

26. Enforcement of Contract

A party's failure to require strict performance of any provision of this Contract 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 Contract 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.

27. Notices

Any notice required to be given to either party by this Contract 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:
Spencer Schwartz
Project Administrator
City of Santa Fe Public Works
2651 Siringo Road, Building E
PO Box 909
Santa Fe, NM 87504-0909
smschwartz@santafenm.gov
505-955-5929

To the Contractor:
Kris Trujillo
Area Manager
B & D Industries
9720 Bell Ave. SE
Albuquerque, NM 87123
krist@banddindustries.com
505-379-1760

28. Authority

If Contractor is other than a natural person, the individual(s) signing this Contract 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.

29. 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.

30. 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.

31. 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.

32. General and Special Provisions

A. Terms used in this Contract 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 comply with the law.

C. This Contract shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Contract.

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 Contract 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 Contract.

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 Contract 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 Contract are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Contract.

I. Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Contract shall be attached to this Contract at the time of execution and are hereby incorporated by reference as though set forth in full in this Contract to the extent they are consistent with its conditions and terms.

J. Separability. If any clause or provision of this Contract is illegal, invalid or unenforceable under present or future laws effective during the term of this Contract, then and in that event, it is the intention of the parties hereto that the remainder of this Contract shall not be affected thereby.

K. 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.

L. 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.

M. Pursuant to NMSA 1978, section 13-1-191, reference is hereby made to the Criminal Laws of New Mexico (including NMSA 1978, sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (NMSA 1978, sections 13-1-28 through 13-1-199) imposes civil and criminal penalties for its violation.

N. Pursuant to NMSA 1978, section 13-4-11. 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 Contract as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

_____
ALAN WEBBER, MAYOR

DATE: _____

CONTRACTOR:

CLINTON BEALL, PRESIDENT

DATE: 11.01.2024

NMBTIN: 01-716872-00-4

ATTEST:

_____
GERALYN CARDENAS, INTERIM CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault
Kevin L. Nault (Nov 6, 2024 10:10 MST)

ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

FINANCE DIRECTOR

NEW MEXICO
9720 Bell Ave SE
Albuquerque, NM 87123
Phone: (505) 299-4464
24-Hour Service: (505) 559-2585
Fax: (505) 298-2114

BRANCH OFFICES

NEW MEXICO
303 Texas Ave.
Eunice, NM 88231
Phone: (575) 394-1182
Fax: (505) 298-2114

2885 Industrial Rd.
Santa Fe, NM 87505
Phone: (505) 299-4464
24-Hour Service: (505) 559-2585
Fax: (505) 559-2589

Warehouse, Prefab and Sheet Metal Fab Shop
3712 Edith Blvd NE
Albuquerque, NM 87107

ARIZONA
3001 South 35th Street #C10
Phoenix, AZ 85034
Phone: (480) 632-4002
24-Hour Service: (480) 901-4880

NEW YORK
65 Washington Street,
Rensselaer, NY 12144
Phone: (518) 400-7412

9/19/2024 Quote No. 04-24-055

Attn: Shaun Montoya
Sbmontoya@santafenm.gov

Contract *30-00000-23-00084*

Re: COSF Southside Library RTUs *Replacement*

Thank you for the opportunity to provide a price for this project.

Journeyman 432 @ $101.18:	$ 43,709.76
Apprentice 288 @ $79.88	$ 23,005.44
York RTUs – Pass through	$288,425.00
Misc Material - Pass through	$ 7,747.85
Permits – Pass through	$ 812.01
Crane Services @ 8%	$ 31,937.80
ACS Controls @ 8%	$ 9,266.40
EB&I @ 8%	$ 15,089.76
General Conditions @ 10%	$ 41,998.98
Bond:	$ 3,180.53
Subtotal:	**$465,173.53**
Tax:	$ 11,842.77
Grand Total	**$477,016.30**

Base Bid Scope:

- LOTO panels feeding current RTUs to be replaced
- Shut off gas valves feeding RTUs
- Disconnect gas, duct, and power to RTUs
- Disconnect UVC lights, door switches and Rapid Install Kits – to be used in new RTUs
- Remove UVC view ports – to be used in new RTUs
- Utilize a crane to remove RTUs – dispose of off-site
- Utilize a crane install (4) new York RTUs
- Connect (4) RTUs with a curb adapter
- Add new fused disconnect switches to RTUs
- Provide new liquid tight flex conduit and fittings for new disconnect switches
- Re-install UVC RIK kits and lights – test for functionality
- Install UVC viewport
- Connect gas line with new flex to RTUs
- Reconnect power and remove LOTO on panels
- Install new copper condensate lines to nearest roof drain
- **Controls** - B&D to subcontract ACS for connecting controls back to new RTUs
- **Crane** – B&D to utilize Crane services for RTU installations
- **TAB** – Test and Balance static pressure before demolition, and TAB static pressure of new units for proper air distribution throughout facility.

NEW MEXICO
9720 Bell Ave SE
Albuquerque, NM 87123
Phone: (505) 299-4464
24-Hour Service: (505) 559-2585
Fax: (505) 298-2114

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Fax: (505) 559-2589

Warehouse, Prefab and Sheet Metal Fab Shop
3712 Edith Blvd NE
Albuquerque, NM 87107

ARIZONA
3001 South 35th Street #C10
Phoenix, AZ 85034
Phone: (480) 632-4002
24-Hour Service: (480) 901-4880

NEW YORK
65 Washington Street,
Rensselaer, NY 12144
Phone: (518) 400-7412

Inclusions and assumptions:

1. 4 York Sun Select R454B RTUs – *10 Week lead time*
2. Equipment start up per manufacturer recommendations
3. One (1) year warranty
4. RTUs will be taken off 2 at a time to avoid the whole building not having HVAC
5. B&D to give COSF an adequate schedule of any outages well in advance of performing work

Exclusions:

1. Temp power or HVAC
2. New UVC lights
3. Asbestos removal
4. Structural work
5. New roof penetrations
6. Roofing or roof patching
7. Plan review, and utility fees
8. General site conditions
9. Seismic bracing
10. BIM, CAD or 3D modeling
11. Rental of temp. generator
12. Removal of spoils from site due to excavation
13. Coring of concrete, asphalt, etc.
14. Architect design and engineering services
15. Lead paint removal
16. Unforeseen site conditions that are irregular or unusual circumstances and may incur additional cost such as harder than usual digging conditions, hidden items, etc.
17. Repair of existing code violations, or upgrades other than those mentioned here-in
18. Any scope of work not specifically addressed in this narrative or not shown on the bid documents

If you have any questions or concerns, please feel free to email or call.

Best Regards,

Jordan Turpen
M&P Estimator
B&D Industries, Inc.
505-235-3879 (Cell)
jturpen@banddindustries.com

This cost proposal is valid for 30 days following issuance by B&D Industries, Inc. If the proposal is accepted after 30 days, B&D reserves the right to revise the price in accordance with commodity pricing changes including, but not limited to, copper, conduit and steel materials. If awarded, B&D reserves the right to review all contract documents associated with the project.

Signed - Construction_Contract_BandD_SSLibraryRTUs-Final CAO with Exhibit A

Final Audit Report 2024-11-06

Created:	2024-11-06
By:	Amy Cawthon (amcawthon@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAPyfCXLniU8V8w9_Gvj6aiV7rOp8hYUdL

"Signed - Construction_Contract_BandD_SSLibraryRTUs-Final CAO with Exhibit A" History

Document created by Amy Cawthon (amcawthon@santafenm.gov)
2024-11-06 - 4:37:01 PM GMT- IP address: 63.232.20.2

Document emailed to klnault@santafenm.gov for signature
2024-11-06 - 4:37:38 PM GMT

Email viewed by klnault@santafenm.gov
2024-11-06 - 5:10:23 PM GMT- IP address: 104.47.65.254

Signer klnault@santafenm.gov entered name at signing as Kevin L. Nault
2024-11-06 - 5:10:39 PM GMT- IP address: 63.232.20.2

Document e-signed by Kevin L. Nault (klnault@santafenm.gov)
Signature Date: 2024-11-06 - 5:10:41 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.
2024-11-06 - 5:10:41 PM GMT

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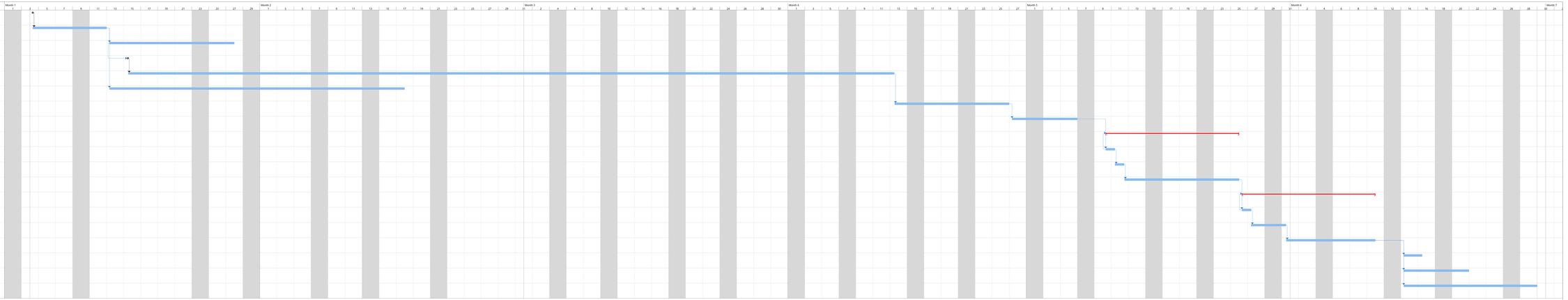
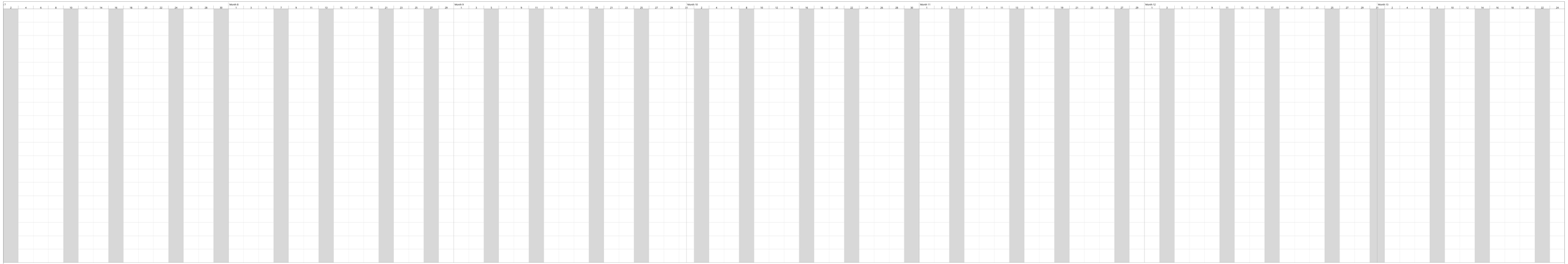
ID	Task Name	Duration
1	Contract Execution	0 days
2	Contract Initiation	4 days
3	Subcontracting	8 days
4	RTU's Ordered	0 days
5	RTU's Lead Time	10 wks
6	Material Procurement	16 days
7	RTU's Shipping	6 days
8	Mobilization	4 days
9	RTU #1 and #2 HVAC Outage	8 days
10	Disconnect RTU#1 and RTU#2	1 day
11	Crane Pick#1	1 day
12	Reconnect RTU#1 and RTU#2	6 days
13	RTU #3 and #4 HVAC Outage	8 days
14	Disconnect RTU#3 and RTU#4	1 day
15	Crane Pick#2	1 day
16	Reconnect RTU#3 and RTU#4	6 days
17	Demobilization	2 days
18	Punchlist	4 days
19	Closeout	8 days



Project: COSF - Southside Libra
Date: Thu 11/1/24

Task · Split · Milestone · Summary · Project Summary · Inactive Task · Inactive Milestone · Inactive Summary · Manual Task · Duration-only · Manual Summary Rollup · Manual Summary · Start-only · Finish-only · External Tasks · External Milestone · Deadline · Progress · Manual Progress



Project: COSF - Southside Libra
Date: Thu 11/1/24

Task | Split | Milestone | Summary | Project Summary | Inactive Task | Inactive Milestone | Inactive Summary | Manual Task | Duration-only | Manual Summary Rollup | Manual Summary | Start-only | Finish-only | External Tasks | External Milestone | Deadline | Progress | Manual Progress

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/29/2023

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: Carrie Butler PHONE (A/C, No, Ext): (505) 262-9412 9412 FAX (A/C, No): (866) 487-3972 E-MAIL ADDRESS: Carrie.Butler@hubinternational.com
INSURED B & D Industries, Inc. 9720 Bell Ave SE Albuquerque, NM 87123	INSURER A : Valley Forge Insurance Company — 20508 INSURER B : National Fire Insurance Company of Hartford — 20478 INSURER C : The Continental Insurance Company — 35289 INSURER D : Builders Trust of New Mexico INSURER E : INSURER F :

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:	X	X	6016149399	12/31/2023	12/31/2024	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 $ 1,000,000 $ 15,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
B	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY	X	X	6016149371	12/31/2023	12/31/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
C	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10,000	X	X	6016149404	12/31/2023	12/31/2024	EACH OCCURRENCE AGGREGATE Aggregate	$ 5,000,000 $ $ 5,000,000
D	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	X	WC100-0005672-2024A	1/1/2024	1/1/2025	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 2,000,000 $ 2,000,000 $ 2,000,000

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

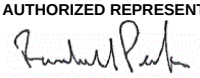
CERTIFICATE HOLDER

City of Santa Fe
200 Lincoln Ave
Santa Fe, NM 87501

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
25 Vendors

Number: **30-00000-23-00084**

Amendment No.: **Three**

Term: **July 5, 2023 - July 4, 2025**

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

Invoice:
As Requested

Procurement Specialist: **Mikayla Trujillo**

Telephone No.: **(505) 469-1092**

Email: **Mikayla.Trujillo@gsd.nm.gov**

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

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

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from July 5, 2024 to July 4, 2025 at the same price, terms and conditions, except Vendor (AH) Comfort System USA Southwest, Inc. who chose not to extend.

See attached price increases for Vendor (AF) B & D Industries.

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

Dorothy Mendonca

Date: 7/8/2024

Dorothy Mendonca
New Mexico State Purchasing Agent

DocuSign Envelope ID: 502ABA98-7835-4E98-ABAE-7DE071C16230

Vendor (AF) B & D Industries Price Increases

Item	Unit	Description	Current Rate	New Rate
001	Hour	**Journeymen/Foreman/Experienced Technician - Worker, regular hours**		
		Zone 1	$95.00	**$101.18**
		Zone 2	$95.00	**$101.18**
		Zone 3	$95.00	**$101.18**
		Zone 4	$95.00	**$101.18**
		Zone 5	$95.00	**$101.18**
		Zone 6	$95.00	**$101.18**
002	Hour	**Journeymen/Foreman/Experienced Technician - Worker, after hours**		
		Zone 1	$125.00	**$133.13**
		Zone 2	$125.00	**$133.13**
		Zone 3	$125.00	**$133.13**
		Zone 4	$125.00	**$133.13**
		Zone 5	$125.00	**$133.13**
		Zone 6	$125.00	**$133.13**
003	Hour	**Apprentice/Experienced - Worker, regular hours**		
		Zone 1	$70.00	**$74.55**
		Zone 2	$70.00	**$74.55**
		Zone 3	$70.00	**$74.55**
		Zone 4	$70.00	**$74.55**
		Zone 5	$70.00	**$74.55**
		Zone 6	$70.00	**$74.55**
004	Hour	**Apprentice/Experienced - Worker, after hours**		
		Zone 1	$90.00	**$95.86**
		Zone 2	$90.00	**$95.86**
		Zone 3	$90.00	**$95.86**
		Zone 4	$90.00	**$95.86**
		Zone 5	$90.00	**$95.86**
		Zone 6	$90.00	**$95.86**
005	Hour	**Laborer, regular hours worked**		
		Zone 1	$55.00	**$57.33**
		Zone 2	$55.00	**$57.33**
		Zone 3	$55.00	**$57.33**
		Zone 4	$55.00	**$57.33**
		Zone 5	$55.00	**$57.33**
		Zone 6	$55.00	**$57.33**
006	Hour	**Laborer, after hours worked**		
		Zone 1	$70.00	**$72.97**
		Zone 2	$70.00	**$72.97**
		Zone 3	$70.00	**$72.97**
		Zone 4	$70.00	**$72.97**
		Zone 5	$70.00	**$72.97**
		Zone 6	$70.00	**$72.97**

DocuSign Envelope ID: 502ABA98-7835-4E98-ABAE-7DE071C16230

Item	Unit	Description	Current Rate	New Rate
		Projects OVER Sixty Thousand ($60,000.00)		
007	Hour	**Journeymen/Foreman/Experienced Technician - Worker, regular hours**		
		Zone 1	$95.00	**$101.18**
		Zone 2	$95.00	**$101.18**
		Zone 3	$95.00	**$101.18**
		Zone 4	$95.00	**$101.18**
		Zone 5	$95.00	**$101.18**
		Zone 6	$95.00	**$101.18**
008	Hour	**Journeymen/Foreman/Experienced Technician - Worker, after hours**		
		Zone 1	$125.00	**$133.14**
		Zone 2	$125.00	**$133.14**
		Zone 3	$125.00	**$133.14**
		Zone 4	$125.00	**$133.14**
		Zone 5	$125.00	**$133.14**
		Zone 6	$125.00	**$133.14**
009	Hour	**Apprentice/Experienced - Worker, regular hours**		
		Zone 1	$75.00	**$79.88**
		Zone 2	$75.00	**$79.88**
		Zone 3	$75.00	**$79.88**
		Zone 4	$75.00	**$79.88**
		Zone 5	$75.00	**$79.88**
		Zone 6	$75.00	**$79.88**
010	Hour	**Apprentice/Experienced - Worker, after hours**		
		Zone 1	$95.00	**$101.18**
		Zone 2	$95.00	**$101.18**
		Zone 3	$95.00	**$101.18**
		Zone 4	$95.00	**$101.18**
		Zone 5	$95.00	**$101.18**
		Zone 6	$95.00	**$101.18**
011	Hour	**Laborer, regular hours worked**		
		Zone 1	$55.00	**$57.33**
		Zone 2	$55.00	**$57.33**
		Zone 3	$55.00	**$57.33**
		Zone 4	$55.00	**$57.33**
		Zone 5	$55.00	**$57.33**
		Zone 6	$55.00	**$57.33**
012	Hour	**Laborer, after hours worked**		
		Zone 1	$70.00	**$72.97**
		Zone 2	$70.00	**$72.97**
		Zone 3	$70.00	**$72.97**
		Zone 4	$70.00	**$72.97**

DocuSign Envelope ID: 502ABA98-7835-4E98-ABAE-7DE071C16230

Item	Unit	Description	Current Rate	New Rate
		Zone 5	$70.00	**$72.97**
		Zone 6	$70.00	**$72.97**
013	Hour	**Diagnosis, project estimates, troubleshooting**	$95.00	**$101.18**
014	%	**Percentage Off Retail For all Parts and Materials**	0%	**No Change**
015	Day	**Daily per diem rate for overnight stay as needed including dinner and breakfast per person**	$150.00	**No Change**
016	Mileage	**One way per mile cost, per vehicle**	$0.62	**No Change**

Certificate Of Completion

Envelope Id: 502ABA9878354E98ABAE7DE071C16230
Status: Completed
Subject: Please DocuSign: 30-00000-23-00084 HVAC and Plumbing Services A003
Source Envelope:
Document Pages: 4
Signatures: 1
Envelope Originator:
Certificate Pages: 5
Initials: 2
Mikayla Trujillo
AutoNav: Enabled
1100 S Saint Francis Dr
EnvelopeId Stamping: Enabled
Santa Fe, NM 87502
Time Zone: (UTC-07:00) Mountain Time (US & Canada)
mikayla.trujillo@gsd.nm.gov
IP Address: 164.64.62.10

Record Tracking

Status: Original
7/3/2024 2:33:50 PM
Holder: Mikayla Trujillo
mikayla.trujillo@gsd.nm.gov
Location: DocuSign
Security Appliance Status: Connected
Pool: StateLocal
Storage Appliance Status: Connected
Pool: General Services Department
Location: DocuSign

Signer Events	Signature	Timestamp
Tami Concha tami.concha@gsd.nm.gov Const. Supervisor New Mexico General Services, State Purchasing Division Security Level: Email, Account Authentication (None), Login with SSO **Electronic Record and Signature Disclosure:** Accepted: 6/28/2024 7:02:43 AM ID: a9ed2d91-f227-45ce-9f3e-898ece78fea0	 Signature Adoption: Pre-selected Style Using IP Address: 68.84.148.80	Sent: 7/3/2024 2:36:05 PM Viewed: 7/5/2024 10:24:43 AM Signed: 7/5/2024 10:30:36 AM
Mikayla Trujillo mikayla.trujillo@gsd.nm.gov Procurement Specialist II GSD/SPD Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 7/5/2024 10:30:37 AM Viewed: 7/8/2024 8:07:48 AM Signed: 7/8/2024 8:07:51 AM
Dorothy Mendonca dorothy.mendonca@gsd.nm.gov SPD Division Director / State Purchasing Agent General Services Department Signing Group: 35000 - State Purchasing Agent Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/14/2023 7:24:59 AM ID: 51f6380f-50f7-4227-afb5-572b373dfb7c	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 7/8/2024 8:07:54 AM Viewed: 7/8/2024 9:08:12 AM Signed: 7/8/2024 9:08:16 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	7/3/2024 2:36:05 PM
Certified Delivered	Security Checked	7/8/2024 9:08:12 AM
Signing Complete	Security Checked	7/8/2024 9:08:16 AM
Completed	Security Checked	7/8/2024 9:08:16 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.

Memo_SouthsideLibrary_RTU_BD_10 28 2024_SS1 JB1 EK1 SB1 RW revised

Final Audit Report 2024-11-19

Created:	2024-11-18
By:	Elizabeth Kahahane (elkahahane@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAkO50MoTXAAvnAA0cOSgZhXyIusocI6Kr

"Memo_SouthsideLibrary_RTU_BD_10 28 2024_SS1 JB1 EK1 SB1 RW revised" History

Document created by Elizabeth Kahahane (elkahahane@santafenm.gov)
2024-11-18 - 9:02:22 PM GMT- IP address: 63.232.20.2

Document emailed to Spencer Schwartz (smschwartz@santafenm.gov) for signature
2024-11-18 - 9:07:08 PM GMT

Email viewed by Spencer Schwartz (smschwartz@santafenm.gov)
2024-11-18 - 9:22:14 PM GMT- IP address: 104.47.64.254

Document e-signed by Spencer Schwartz (smschwartz@santafenm.gov)
Signature Date: 2024-11-18 - 9:22:56 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to JOHN BURNETT (jsburnett@santafenm.gov) for signature
2024-11-18 - 9:23:00 PM GMT

Email viewed by JOHN BURNETT (jsburnett@santafenm.gov)
2024-11-19 - 3:12:48 AM GMT- IP address: 73.228.3.65

Document e-signed by JOHN BURNETT (jsburnett@santafenm.gov)
Signature Date: 2024-11-19 - 3:13:21 AM GMT - Time Source: server- IP address: 73.228.3.65

Document emailed to rawheeler@santafenm.gov for signature
2024-11-19 - 3:13:23 AM GMT

Email viewed by rawheeler@santafenm.gov
2024-11-19 - 4:33:52 PM GMT- IP address: 104.47.64.254

Signer rawheeler@santafenm.gov entered name at signing as RW
2024-11-19 - 4:35:10 PM GMT- IP address: 174.205.165.38

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Document e-signed by RW (rawheeler@santafenm.gov)

Signature Date: 2024-11-19 - 4:35:12 PM GMT - Time Source: server- IP address: 174.205.165.38

Agreement completed.

2024-11-19 - 4:35:12 PM GMT

Memo_SouthsideLibrary_RTU_BD_10 28 2024_SS1 JB1 EK1 SB1 RW revised SIGNED

Final Audit Report 2024-11-26

Created:	2024-11-21
By:	JAMES EDWARDS (jwedwards@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAw_0JTBg8I-FcHLuwwua-eHiVFO4rgScJ

"Memo_SouthsideLibrary_RTU_BD_10 28 2024_SS1 JB1 EK1 SB1 RW revised SIGNED" History

Document created by JAMES EDWARDS (jwedwards@santafenm.gov)
2024-11-21 - 8:19:09 PM GMT- IP address: 97.182.23.177

Document sent to ALEXIS LOTERO (aclotero@santafenm.gov) and ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov) for signature. One of them to sign
2024-11-21 - 8:21:07 PM GMT

Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2024-11-21 - 9:09:12 PM GMT- IP address: 104.47.64.254

Document e-signed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
Signature Date: 2024-11-21 - 9:10:23 PM GMT - Time Source: server- IP address: 63.232.20.2

Document sent to JoAnn Lovato (jdlovato@santafenm.gov) and Travis Dutton-Leyda (tkduttonleyda@santafenm.gov) for signature. One of them to sign
2024-11-21 - 9:10:28 PM GMT

Email viewed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
2024-11-21 - 9:16:25 PM GMT- IP address: 174.218.17.153

Document e-signed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
Signature Date: 2024-11-21 - 9:39:01 PM GMT - Time Source: server- IP address: 216.207.130.218

Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature
2024-11-21 - 9:39:05 PM GMT

Email viewed by EMILY OSTER (ekoster@santafenm.gov)
2024-11-26 - 5:43:15 PM GMT- IP address: 104.47.64.254

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Document e-signed by EMILY OSTER (ekoster@santafenm.gov)

Signature Date: 2024-11-26 - 5:46:43 PM GMT - Time Source: server- IP address: 73.42.112.179

Agreement completed.

2024-11-26 - 5:46:43 PM GMT

CITY OF SANTA FE

Date: November 18, 2024

To: Governing Body

From: Spencer Schwartz, Project Manager Spencer Schwartz

Via: Regina Wheeler, Public Works Department Director RW (Nov 29, 2024 13:51 MST)
Maria Tucker, Community Services Director Maria Tucker
Brian Stinnett, Recreation Division Director Brian Stinnett (Nov 18, 2024 22:57 MST)
Sam Burnett, Facilities Division Director JOHN BURNETT (Nov 18, 2024 19:35 MST)

Subject: Genoveva Chavez Community Center On-Call HVAC, Mechanical & Plumbing Services

Vendor Name: B&D Industries

Munis Vendor Number: 3970

ACTION:
Request for Approval of a General Services Contract with B&D Industries in the Total Amount of $1,000,000 for On-Call Plumbing, Mechanical, and HVAC Services Through June 30, 2028.

CONTRACT NUMBER:
The FY25 Munis contract number is 3250173.

BACKGROUND AND SUMMARY:
The Public Works Department's Facilities Division uses on-call services throughout the City's facilities and properties including Recreation Division facilities. These on-call services allow us to address issues, needs, and emergencies as they arise in a timely and efficient manner. The Facilities Division typically maintains on-call contracts for general contracting, mechanical, electrical and plumbing, roofing, remediation, and landscaping.

This on-call contract is for plumbing, mechanical, and HVAC services at the Genoveva Chavez Community Center Ice Arena. Due to the size and complexity of this facility, a dedicated contract will help ensure that the Genoveva Chavez issues will receive support and services required to maintain operability and services to the public.

These on-call contracts are not a guarantee of payment. Services are used as needs arise and funding is available. Each time an on-call contact is used the vendor receives a formal request or 'task order' from Staff.

The $1,000,000 maximum for this contract is based on anticipated needs over the next four years.

ATTACHMENTS:

General Services Contract
Vendor's Quote
NM Statewide Price Agreement (SWPA) #30-00000-23-00084

Prior Approvals and Supporting Information:

PROCUREMENT METHOD:

The procurement method is the NM Statewide Price Agreement (SWPA) #30-00000-23-00084 which expires on July 4, 2025.

Chief Procurement Officer (CPO) / Designee: _____ **Date:** Dec 5, 2024

CPO Comment/Exceptions: _____

FUNDING SOURCE:

Fund Name/Number: Various
Munis Org Name/Number: Various
Munis Object Name/Number: Various

Budget Officer / Designee: Andy Hopkins **Date:** Dec 4, 2024

Budget Officer Comment/Exceptions: _____

ASSOCIATED APPROVALS:

Does this purchase require any of the following associated approvals: ☒ Yes | ☐ No
(ITT, Vehicles/Fleet, Facilities, Asset, Grant Review)

IT Components included? ☐ Yes | ☒ No
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Vehicles included? ☐ Yes | ☒ No
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Construction, Facilities, Furniture, Fixtures, Equipment included? ☒ Yes | ☐ No
Approval: _____
Comment/Exceptions: _____
Signature: JOHN BURNETT (Nov 18, 2024 19:35 MST)
Email: jsburnett@santafenm.gov

Capital Asset* or Project ☐ Yes | ☒ No**
Project Ledger #: _____
(*will this procurement result in a tangible item that costs more than $5,000?)
(**Capital Projects are new and improvement projects that are going to cost $10,000 or more)
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Is this a Grant Funded Purchase? ☐ Yes | ☒ No
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Item #: _____
Munis Contract #: 3250173
SWPA #: 30-00000-23-00084

CITY OF SANTA FE

CONSTRUCTION CONTRACT

THIS CONTRACT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **B & D Industries 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 procured this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount; and

The City and the Contractor hereby agree as follows:

1. Scope of Work

A. The Contractor shall perform the following work:

The Contractor shall perform all the work required by the Contract Documents for on-call HVAC/Plumbing Services for The Genoveva Chavez Community Center (GCCC) as described in the Contract Documents, including Exhibit A (Quote No: 9.6.24-17).

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.

B. Project: On-call plumbing services (see Exhibit A) for GCCC

C. City Department: Public Works

D. Distribution:

City	Spencer Schwartz, Facilities Division Project Administrator smschwartz@santafenm.gov, 505-955-5929
Contractor	B & D Industries cgiovenco@banddindustries.com, 505-559-2585

C. **Task Orders**

Once a need is identified, the City's Facilities Director or Director of Public Works will issue a written Task Order to the Contractor detailing the services required. Upon receiving the City's request for services, the Contractor shall promptly provide the Facilities Director with an estimate, based upon the rates included in Exhibit A, a cost summary, and a proposed schedule required to complete the assignment or task. Project schedules, negotiated price, and completion dates shall be determined on project-by-project basis and dependent upon the urgency of that task. The Contractor may be required to do some of the work in phases. The Contractor shall be required to provide the requested labor and all equipment and materials within one week of issuance of a Task Order by the City's Project Manager unless a different time for performance is specified in the task order. The Contractor shall agree to provide required labor within 24 hours for emergency situations whenever possible.

2. **Compensation**

A. The City shall pay to the Contractor based upon fixed rates as described in SWPA 30-00000-23-00084, such compensation not to exceed one million dollars ($1,000,000.00), including gross receipts tax.

The total amount payable to the Contractor under this Contract, including Alternates (if needed) gross receipts tax and expenses, shall not exceed one million dollars ($1,000,000). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Contract 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 Contract 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 Contract being amended in writing prior to those services in excess of the total compensation amount being provided.

The total amount payable to the Contractor under this Contract, excluding/including gross receipts tax and expenses, shall not exceed one million dollars for the term of this Contract.

The City shall pay to the Contractor on a time and materials basis for work pre-approved by an authorized City of Santa Fe Facilities Director or Director of Public Works in an amount that shall not exceed one million dollars ($1,000,000) plus applicable New Mexico Gross Receipts Tax.

B. Payment in future fiscal years is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.)

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and

accepted, payment shall be tendered to the Contractor within twenty-one days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.

D. If the City fails to pay the contractor within twenty-one days after receipt of an undisputed request for payment, the City shall pay interest to the contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until the payment is issued. If the City receives an improperly completed invoice, the City shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and the owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete.

E. **Notice of Extended Payment Provision for Grant Funded Contracts**. This contract allows the City to make payment within 45 days after submission of an undisputed request for payment for contracts funded by grant money consistent with NMSA 1978, sec. 57-28-5(B).

3. Term

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This contract shall terminate **four (4) years from date of final signature**. The City reserves the right to renew this contract on an annual basis by mutual agreement not to exceed a total of ten (10) years in accordance with NMSA 1978, Sections 13-1-150 through 152.

4. Termination

A. Grounds. The City may terminate this Contract for convenience or cause. For contracts within their authority, the City Manager or their designee is authorized to provide the notice of termination, otherwise such notice of termination shall be provided by the Mayor or their designee as authorized by the Governing Body. The Contractor may only terminate this Contract based upon the City's uncured, material breach of this Contract.

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 Contract 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 Contract 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 Contract, the Contractor is suspended or debarred by the City; or (iii) the Contract is terminated pursuant to Paragraph 5, "Appropriations," of this Contract.

C. Liability. Except as otherwise expressly allowed or provided under this Contract, 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 Contract.

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 CONTRACT.*

5. Appropriations

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Contract. If sufficient appropriations and authorization are not made by the Governing Body, this Contract 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 Contract to unilaterally reduce funding, the Contractor shall have the option to terminate the Contract 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 construction 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 Contract. 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 Contract or assign any claims for money due or to become due under this Contract 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 Contract without the prior approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Contract, nor shall any subcontract obligate direct payment from the City.

10. Release

Final payment of the amounts due under this Contract shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Contract.

11. Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of this Contract 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 Contract shall become the property of the City and shall be delivered to the City no later than the termination date of this Contract. Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright or other claim of ownership 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 Contract, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Contract.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Contract, will continue to comply with, and that this Contract 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 Contract was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Contract, 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 Contract 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 Contract 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 Contract to the contrary, the City may immediately terminate the Contract.

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

14. Amendment

A. This Contract 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 Contract 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 Contract, 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) Contract compensation, as outlined in Article 2; or
5) Contract 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 Facilities Division Director or Director of Public Works 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 Contract, and become binding as a part of the original Contract.

16. Merger

This Contract 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 contract.

This Contract is issued against the state or agency Master Agreement, established and maintained by the State of New Mexico (issuing entity), NM Statewide Price Agreement (SWPA) #30-00000-23-00084 and through this language hereby incorporates this Contract by reference and is included in the order of precedence.

No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

17. Penalties for violation of law

NMSA 1978, sections 13-1-28 through 13-1-199, 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 Contract. If Contractor is found not to be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

19. Applicable Law

The laws of the State of New Mexico shall govern this Contract, 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, section 38-3-2. By execution of this Contract, 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 Contract.

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 Contract may be terminated by the City.

21. Other Insurance

If the services contemplated under this Contract will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Contract, 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 Contract shall be the greater of (1) the minimum coverage and limits specified in this Contract, 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 Contract are sufficient to cover the obligations of Contractor hereunder.

D. Contractor shall maintain the above insurance for the term of this Contract 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.

22. 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 Contract's term and effect and retain them for a period of three (3) years from the date of final payment under this Contract. 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 Contract shall not foreclose the right of the City to recover excessive or illegal payments

23. 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 Contract, 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 Contract. 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 Contract 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.

24. New Mexico Tort Claims Act

Any liability incurred by the City of Santa Fe in connection with this Contract 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 Contract modifies or waives any provision of the New Mexico Tort Claims Act.

25. Invalid Term or Condition

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

26. Enforcement of Contract

A party's failure to require strict performance of any provision of this Contract 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 Contract 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.

27. Notices

Any notice required to be given to either party by this Contract 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:
Spencer Schwartz
Project Administrator
City of Santa Fe Public Works
2651 Siringo Road, Building E
PO Box 909
Santa Fe, NM 87504-0909
smschwartz@santafenm.gov
505-955-5929

To the Contractor:
Christopher Giovenco
Director, Service
B & D Industries, Inc.
9720 Bell Ave. SE
Albuquerque, NM 87123
cgiovenco@banddindustries.com
505-559-2585

28. Authority

If Contractor is other than a natural person, the individual(s) signing this Contract 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.

29. 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.

30. 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.

31. 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.

32. General and Special Provisions

A. Terms used in this Contract 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 comply with the law.

C. This Contract shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Contract.

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 Contract 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 Contract.

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 Contract 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 Contract are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Contract.

I. Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Contract shall be attached to this Contract at the time of execution and are hereby incorporated by reference as though set forth in full in this Contract to the extent they are consistent with its conditions and terms.

J. Separability. If any clause or provision of this Contract is illegal, invalid or unenforceable under present or future laws effective during the term of this Contract, then and in that event, it is the intention of the parties hereto that the remainder of this Contract shall not be affected thereby.

K. 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.

L. 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.

M. Pursuant to NMSA 1978, section 13-1-191, reference is hereby made to the Criminal Laws of New Mexico (including NMSA 1978, sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (NMSA 1978, sections 13-1-28 through 13-1-199) imposes civil and criminal penalties for its violation.

N. Pursuant to NMSA 1978, section 13-4-11. 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 Contract as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

_____
ALAN WEBBER, MAYOR

DATE: _____

CONTRACTOR:

clinton beall (Nov 6, 2024 14:20 MST)
CLINTON BEALL, PRESIDENT

DATE: Nov 6, 2024

NMBTIN: 85-0196391

ATTEST:

_____
GERALYN CARDENAS, INTERIM CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault
Kevin L. Nault (Nov 6, 2024 14:55 MST)
ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
FINANCE DIRECTOR

NEW MEXICO
9720 Bell Ave SE
Albuquerque, NM 87123
Phone: (505) 299-4464
(866) 315-8349
Fax: (505) 298-2114

BRANCH OFFICES

NEW MEXICO
101 DP Rd
Los Alamos, NM 87544
Phone: (505) 661-8336
Fax: (505) 661-8337

5920 N. Lovington Hwy,
Hobbs, NM 88240
Phone: (505) 780-0410

2885 Industrial Rd.
Santa Fe, NM 87505
Phone: (505) 559-2585
Fax: (505) 559-2589

ARIZONA
3001 South 35th
Street #C10
Phoenix, AZ 85034
Phone: (480) 632-4002

NEW YORK
65 Washington Street
Rensselaer, NY 12144
Phone: (518) 400-7412

September 6, 2024 **Quote No: 9.6.24-17**

Spencer Schwartz
City of Santa Fe
505-955-5929
smschwartz@santafenm.gov
SPA: 30-00000-23-00084

RE: On call HVAC/Plumbing services for Genoveva Chavez Community Center

Mr. Schwartz,

Thank you for the opportunity to provide this quote.

Pricing as follows per SPA: 30-00000-23-00084:

Total: **$1,000,000.00**

Scope:

Provide on call services per SPA: 30-00000-23-00084 for Genoveva Chavez Community Center at the direction of City of Santa Fe officials.

Please contact me should you have questions or concerns. We look forward to your favorable response.

Best Regards,
Christopher Giovenco
Director - Service
B&D Industries, Inc.
505-933-1521 (cell)
24 Hour Response 505-299-4464
cgiovenco@banddindustries.com

B&D_GCCCiceOncall_Construction_Contract_Final CAO with Exhibit A

Final Audit Report 2024-11-06

Created:	2024-10-28
By:	Amy Cawthon (amcawthon@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAV5eNOnq7B20npqvI13DOvLrOwByRWbf_

"B&D_GCCCiceOncall_Construction_Contract_Final CAO with Exhibit A" History

Document created by Amy Cawthon (amcawthon@santafenm.gov)
2024-10-28 - 7:12:30 PM GMT- IP address: 63.232.20.2

Document emailed to clinton@banddindustries.com for signature
2024-10-28 - 7:13:08 PM GMT

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2024-11-06 - 12:20:30 PM GMT- IP address: 146.75.175.1

Signer clinton@banddindustries.com entered name at signing as clinton beall
2024-11-06 - 9:20:31 PM GMT- IP address: 50.230.108.154

Document e-signed by clinton beall (clinton@banddindustries.com)
Signature Date: 2024-11-06 - 9:20:33 PM GMT - Time Source: server- IP address: 50.230.108.154

Document emailed to klnault@santafenm.gov for signature
2024-11-06 - 9:20:35 PM GMT

Powered by Adobe Acrobat Sign

Email viewed by klnault@santafenm.gov

2024-11-06 - 9:24:30 PM GMT- IP address: 104.47.65.254

Signer klnault@santafenm.gov entered name at signing as Kevin L. Nault

2024-11-06 - 9:55:08 PM GMT- IP address: 172.59.1.214

Document e-signed by Kevin L. Nault (klnault@santafenm.gov)

Signature Date: 2024-11-06 - 9:55:10 PM GMT - Time Source: server- IP address: 172.59.1.214

Agreement completed.

2024-11-06 - 9:55:10 PM GMT

NEW MEXICO
9720 Bell Ave SE
Albuquerque, NM 87123
Phone: (505) 299-4464
(866) 315-8349
Fax: (505) 298-2114

BRANCH OFFICES

NEW MEXICO
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Los Alamos, NM 87544
Phone: (505) 661-8336
Fax: (505) 661-8337

5920 N. Lovington Hwy,
Hobbs, NM 88240
Phone: (505) 780-0410

2885 Industrial Rd.
Santa Fe, NM 87505
Phone: (505) 559-2585
Fax: (505) 559-2589

ARIZONA
3001 South 35th
Street #C10
Phoenix, AZ 85034
Phone: (480) 632-4002

NEW YORK
65 Washington Street
Rensselaer, NY 12144
Phone: (518) 400-7412

September 6, 2024 **Quote No: 9.6.24-17**

Spencer Schwartz
City of Santa Fe
505-955-5929
smschwartz@santafenm.gov
SPA: 30-00000-23-00084

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Mr. Schwartz,

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Scope:

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Please contact me should you have questions or concerns. We look forward to your favorable response.

Best Regards,
Christopher Giovenco
Director - Service
B&D Industries, Inc.
505-933-1521 (cell)
24 Hour Response 505-299-4464
cgiovenco@banddindustries.com

DocuSign Envelope ID: 502ABA98-7835-4E98-ABAE-7DE071C16230

State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
25 Vendors

Number**: 30-00000-23-00084**

Amendment No.**: Three**

Term**: July 5, 2023 - July 4, 2025**

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

Invoice:
As Requested

MJ

Procurement Specialist**: Mikayla Trujillo**

Telephone No.**: (505) 469-1092**

Email: **Mikayla.Trujillo@gsd.nm.gov**

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

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

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from July 5, 2024 to July 4, 2025 at the same price, terms and conditions, except Vendor (AH) Comfort System USA Southwest, Inc. who chose not to extend.

See attached price increases for Vendor (AF) B & D Industries.

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

Dorothy Mendonca

Date: 7/8/2024

Dorothy Mendonca
New Mexico State Purchasing Agent

JC

DocuSign Envelope ID: 502ABA98-7835-4E98-ABAE-7DE071C16230

Vendor (AF) B & D Industries Price Increases

Item	Unit	Description	Current Rate	New Rate
001	Hour	**Journeymen/Foreman/Experienced Technician - Worker, regular hours**		
		Zone 1	$95.00	**$101.18**
		Zone 2	$95.00	**$101.18**
		Zone 3	$95.00	**$101.18**
		Zone 4	$95.00	**$101.18**
		Zone 5	$95.00	**$101.18**
		Zone 6	$95.00	**$101.18**
002	Hour	**Journeymen/Foreman/Experienced Technician - Worker, after hours**		
		Zone 1	$125.00	**$133.13**
		Zone 2	$125.00	**$133.13**
		Zone 3	$125.00	**$133.13**
		Zone 4	$125.00	**$133.13**
		Zone 5	$125.00	**$133.13**
		Zone 6	$125.00	**$133.13**
003	Hour	**Apprentice/Experienced - Worker, regular hours**		
		Zone 1	$70.00	**$74.55**
		Zone 2	$70.00	**$74.55**
		Zone 3	$70.00	**$74.55**
		Zone 4	$70.00	**$74.55**
		Zone 5	$70.00	**$74.55**
		Zone 6	$70.00	**$74.55**
004	Hour	**Apprentice/Experienced - Worker, after hours**		
		Zone 1	$90.00	**$95.86**
		Zone 2	$90.00	**$95.86**
		Zone 3	$90.00	**$95.86**
		Zone 4	$90.00	**$95.86**
		Zone 5	$90.00	**$95.86**
		Zone 6	$90.00	**$95.86**
005	Hour	**Laborer, regular hours worked**		
		Zone 1	$55.00	**$57.33**
		Zone 2	$55.00	**$57.33**
		Zone 3	$55.00	**$57.33**
		Zone 4	$55.00	**$57.33**
		Zone 5	$55.00	**$57.33**
		Zone 6	$55.00	**$57.33**
006	Hour	**Laborer, after hours worked**		
		Zone 1	$70.00	**$72.97**
		Zone 2	$70.00	**$72.97**
		Zone 3	$70.00	**$72.97**
		Zone 4	$70.00	**$72.97**
		Zone 5	$70.00	**$72.97**
		Zone 6	$70.00	**$72.97**

DocuSign Envelope ID: 502ABA98-7835-4E98-ABAE-7DE071C16230

Item	Unit	Description	Current Rate	New Rate
		Projects OVER Sixty Thousand ($60,000.00)		
007	Hour	**Journeymen/Foreman/Experienced Technician - Worker, regular hours**		
		Zone 1	$95.00	**$101.18**
		Zone 2	$95.00	**$101.18**
		Zone 3	$95.00	**$101.18**
		Zone 4	$95.00	**$101.18**
		Zone 5	$95.00	**$101.18**
		Zone 6	$95.00	**$101.18**
008	Hour	**Journeymen/Foreman/Experienced Technician - Worker, after hours**		
		Zone 1	$125.00	**$133.14**
		Zone 2	$125.00	**$133.14**
		Zone 3	$125.00	**$133.14**
		Zone 4	$125.00	**$133.14**
		Zone 5	$125.00	**$133.14**
		Zone 6	$125.00	**$133.14**
009	Hour	**Apprentice/Experienced - Worker, regular hours**		
		Zone 1	$75.00	**$79.88**
		Zone 2	$75.00	**$79.88**
		Zone 3	$75.00	**$79.88**
		Zone 4	$75.00	**$79.88**
		Zone 5	$75.00	**$79.88**
		Zone 6	$75.00	**$79.88**
010	Hour	**Apprentice/Experienced - Worker, after hours**		
		Zone 1	$95.00	**$101.18**
		Zone 2	$95.00	**$101.18**
		Zone 3	$95.00	**$101.18**
		Zone 4	$95.00	**$101.18**
		Zone 5	$95.00	**$101.18**
		Zone 6	$95.00	**$101.18**
011	Hour	**Laborer, regular hours worked**		
		Zone 1	$55.00	**$57.33**
		Zone 2	$55.00	**$57.33**
		Zone 3	$55.00	**$57.33**
		Zone 4	$55.00	**$57.33**
		Zone 5	$55.00	**$57.33**
		Zone 6	$55.00	**$57.33**
012	Hour	**Laborer, after hours worked**		
		Zone 1	$70.00	**$72.97**
		Zone 2	$70.00	**$72.97**
		Zone 3	$70.00	**$72.97**
		Zone 4	$70.00	**$72.97**

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Item	Unit	Description	Current Rate	New Rate
		Zone 5	$70.00	**$72.97**
		Zone 6	$70.00	**$72.97**
013	Hour	**Diagnosis, project estimates, troubleshooting**	$95.00	**$101.18**
014	%	**Percentage Off Retail For all Parts and Materials**	0%	**No Change**
015	Day	**Daily per diem rate for overnight stay as needed including dinner and breakfast per person**	$150.00	**No Change**
016	Mileage	**One way per mile cost, per vehicle**	$0.62	**No Change**

Certificate Of Completion

Envelope Id: 502ABA9878354E98ABAE7DE071C16230
Status: Completed
Subject: Please DocuSign: 30-00000-23-00084 HVAC and Plumbing Services A003
Source Envelope:
Document Pages: 4
Signatures: 1
Envelope Originator:
Certificate Pages: 5
Initials: 2
Mikayla Trujillo
AutoNav: Enabled
1100 S Saint Francis Dr
EnvelopeId Stamping: Enabled
Santa Fe, NM 87502
Time Zone: (UTC-07:00) Mountain Time (US & Canada)
mikayla.trujillo@gsd.nm.gov
IP Address: 164.64.62.10

Record Tracking

Status: Original
7/3/2024 2:33:50 PM
Holder: Mikayla Trujillo
mikayla.trujillo@gsd.nm.gov
Location: DocuSign
Security Appliance Status: Connected
Pool: StateLocal
Storage Appliance Status: Connected
Pool: General Services Department
Location: DocuSign

Signer Events	Signature	Timestamp
Tami Concha tami.concha@gsd.nm.gov Const. Supervisor New Mexico General Services, State Purchasing Division Security Level: Email, Account Authentication (None), Login with SSO **Electronic Record and Signature Disclosure:** Accepted: 6/28/2024 7:02:43 AM ID: a9ed2d91-f227-45ce-9f3e-898ece78fea0	 Signature Adoption: Pre-selected Style Using IP Address: 68.84.148.80	Sent: 7/3/2024 2:36:05 PM Viewed: 7/5/2024 10:24:43 AM Signed: 7/5/2024 10:30:36 AM
Mikayla Trujillo mikayla.trujillo@gsd.nm.gov Procurement Specialist II GSD/SPD Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 7/5/2024 10:30:37 AM Viewed: 7/8/2024 8:07:48 AM Signed: 7/8/2024 8:07:51 AM
Dorothy Mendonca dorothy.mendonca@gsd.nm.gov SPD Division Director / State Purchasing Agent General Services Department Signing Group: 35000 - State Purchasing Agent Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/14/2023 7:24:59 AM ID: 51f6380f-50f7-4227-afb5-572b373dfb7c	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 7/8/2024 8:07:54 AM Viewed: 7/8/2024 9:08:12 AM Signed: 7/8/2024 9:08:16 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	7/3/2024 2:36:05 PM
Certified Delivered	Security Checked	7/8/2024 9:08:12 AM
Signing Complete	Security Checked	7/8/2024 9:08:16 AM
Completed	Security Checked	7/8/2024 9:08:16 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.

1. FINALMemo_GCCC_BDOnCall_09102024_SSD4 RW_revised

Final Audit Report 2024-11-29

Created:	2024-11-18
By:	Elizabeth Kahahane (elkahahane@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAuaPDPQpRYNUIAXV-s2kZA7KR0DMTSfW5

"1. FINALMemo_GCCC_BDOnCall_09102024_SSD4 RW_revised" History

Document created by Elizabeth Kahahane (elkahahane@santafenm.gov)
2024-11-18 - 10:39:09 PM GMT- IP address: 63.232.20.2

Document emailed to Spencer Schwartz (smschwartz@santafenm.gov) for signature
2024-11-18 - 10:46:29 PM GMT

Email viewed by Spencer Schwartz (smschwartz@santafenm.gov)
2024-11-18 - 11:07:33 PM GMT- IP address: 104.47.65.254

Document e-signed by Spencer Schwartz (smschwartz@santafenm.gov)
Signature Date: 2024-11-18 - 11:07:48 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to JOHN BURNETT (jsburnett@santafenm.gov) for signature
2024-11-18 - 11:07:49 PM GMT

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2024-11-19 - 1:50:23 AM GMT- IP address: 73.228.3.65

Document e-signed by JOHN BURNETT (jsburnett@santafenm.gov)
Signature Date: 2024-11-19 - 2:35:01 AM GMT - Time Source: server- IP address: 73.228.3.65

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2024-11-19 - 2:35:02 AM GMT

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2024-11-19 - 5:56:50 AM GMT- IP address: 67.0.50.139

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Signature Date: 2024-11-19 - 5:57:16 AM GMT - Time Source: server- IP address: 67.0.50.139

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2024-11-19 - 5:57:17 AM GMT

Email viewed by Maria Tucker (metucker@ci.santa-fe.nm.us)
2024-11-19 - 12:49:32 PM GMT- IP address: 172.59.1.251

Email viewed by Maria Tucker (metucker@ci.santa-fe.nm.us)
2024-11-21 - 4:06:19 PM GMT- IP address: 63.232.20.2

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2024-11-25 - 5:26:19 PM GMT- IP address: 172.59.0.19

Document e-signed by Maria Tucker (metucker@ci.santa-fe.nm.us)
Signature Date: 2024-11-25 - 5:26:45 PM GMT - Time Source: server- IP address: 172.59.0.19

Document emailed to rawheeler@santafenm.gov for signature
2024-11-25 - 5:26:46 PM GMT

Email viewed by rawheeler@santafenm.gov
2024-11-29 - 8:51:14 PM GMT- IP address: 104.47.65.254

Signer rawheeler@santafenm.gov entered name at signing as RW
2024-11-29 - 8:51:23 PM GMT- IP address: 12.104.110.14

Document e-signed by RW (rawheeler@santafenm.gov)
Signature Date: 2024-11-29 - 8:51:25 PM GMT - Time Source: server- IP address: 12.104.110.14

Agreement completed.
2024-11-29 - 8:51:25 PM GMT

1. FINALMemo_GCCC_BDOnCall_09102024_SSD4 RW_revised SIGNED

Final Audit Report 2024-12-04

Created:	2024-12-02
By:	JAMES EDWARDS (jwedwards@santafenm.gov)
Status:	Canceled / Declined
Transaction ID:	CBJCHBCAABAAxYeE_EYq42o2YpBqoba7e8XaBh9u7nlK

"1. FINALMemo_GCCC_BDOnCall_09102024_SSD4 RW_revised SIGNED" History

Document created by JAMES EDWARDS (jwedwards@santafenm.gov)
2024-12-02 - 5:31:27 PM GMT- IP address: 97.182.93.53

Document sent to ALEXIS LOTERO (aclotero@santafenm.gov) and ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov) for signature. One of them to sign
2024-12-02 - 5:33:29 PM GMT

Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2024-12-04 - 5:02:06 PM GMT- IP address: 104.47.64.254

Document e-signed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
Signature Date: 2024-12-04 - 5:02:20 PM GMT - Time Source: server- IP address: 63.232.20.2

Document sent to JoAnn Lovato (jdlovato@santafenm.gov) and Travis Dutton-Leyda (tkduttonleyda@santafenm.gov) for signature. One of them to sign
2024-12-04 - 5:02:22 PM GMT

Email viewed by JoAnn Lovato (jdlovato@santafenm.gov)
2024-12-04 - 8:09:52 PM GMT- IP address: 73.228.7.52

Document declined by JoAnn Lovato (jdlovato@santafenm.gov)
Decline reason: Missing Certificate of Insurance (COI)
2024-12-04 - 8:12:10 PM GMT- IP address: 73.228.7.52

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/29/2023

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: Carrie Butler
PHONE (A/C, No, Ext): (505) 262-9412 9412
FAX (A/C, No): (866) 487-3972
E-MAIL ADDRESS: Carrie.Butler@hubinternational.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Valley Forge Insurance Company	20508
INSURER B : National Fire Insurance Company of Hartford	20478
INSURER C : The Continental Insurance Company	35289
INSURER D : Builders Trust of New Mexico	
INSURER E :	
INSURER F :	

INSURED
B & D Industries, Inc.
9720 Bell Ave SE
Albuquerque, NM 87123

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR	X	X	6016149399	12/31/2023	12/31/2024	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$ 15,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
B	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO	X	X	6016149371	12/31/2023	12/31/2024	BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
C	X UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	$ 5,000,000
	EXCESS LIAB CLAIMS-MADE	X	X	6016149404	12/31/2023	12/31/2024	AGGREGATE	$
	DED X RETENTION $ 10,000						Aggregate	$ 5,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						X PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N (Mandatory in NH)	N / A	X	WC100-0005672-2024A	1/1/2024	1/1/2025	E.L. EACH ACCIDENT	$ 2,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 2,000,000
							E.L. DISEASE - POLICY LIMIT	$ 2,000,000

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

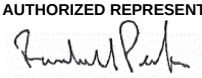
CERTIFICATE HOLDER

City of Santa Fe
200 Lincoln Ave
Santa Fe, NM 87501

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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CNA PARAMOUNT

Contractors' General Liability Extension Endorsement

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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14. **Joint Ventures/Partnership/Limited Liability Companies**
15. **Legal Liability – Damage To Premises / Alienated Premises / Property In The Named Insured's Care, Custody or Control**
16. **Liquor Liability**
17. **Medical Payments**
18. **Non-owned Aircraft Coverage**
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20. **Personal And Advertising Injury – Discrimination or Humiliation**
21. **Personal And Advertising Injury - Contractual Liability**
22. **Property Damage - Elevators**
23. **Supplementary Payments**
24. **Unintentional Failure To Disclose Hazards**
25. **Waiver of Subrogation – Blanket**
26. **Wrap-Up Extension: OCIP CCIP, or Consolidated (Wrap-Up) Insurance Programs**

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1. ADDITIONAL INSUREDS

a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs **A.** through **H.** below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph **A.** through **H.** below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

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coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury** or **property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:

a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or

b. the construction, erection, or removal of elevators; or

c. the ownership, maintenance or use of any elevators covered by this insurance; or

2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

a. Bodily injury, **property damage** or **personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or

b. Bodily injury or **property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** caused by:

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a. the **Named Insured's** acts or omissions; or

b. the acts or omissions of those acting on the **Named Insured's** behalf,

in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.

2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision **2.**, the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph **3.** in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph **4.** below, any organization in which a **Named Insured** has management control:

a. on the effective date of this **Coverage Part**; or

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b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

(a) any partnership, limited liability company or joint venture; or

(b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, management control means:

A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; or

B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.

4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph **3.** above, this insurance does not apply to:

a. **bodily injury** or **property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor

b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.

5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

6. BROADENED LIABILITY COVERAGE FOR DAMAGE TO YOUR PRODUCT AND YOUR WORK

A. Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusions **k.** and **l.** and replace them with the following:

This insurance does not apply to:

k. Damage to Your Product

Property damage to **your product** arising out of it, or any part of it except when caused by or resulting from:

(1) fire;

(2) smoke;

(3) collapse; or

(4) explosion.

l. Damage to Your Work

Property damage to **your work** arising out of it, or any part of it and included in the **products-completed operations hazard**.

This exclusion does not apply:

(1) If the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor; or

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(2) If the cause of loss to the damaged work arises as a result of:

(a) fire;

(b) smoke;

(c) collapse; or

(d) explosion.

B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to **5.** above, $100,000 is the most the Insurer will pay under **Coverage A** for the sum of **damages** arising out of any one **occurrence** because of **property damage** to **your product** and **your work** that is caused by fire, smoke, collapse or explosion and is included within the **product-completed operations hazard**. This sublimit does not apply to **property damage** to **your work** if the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor.

C. This **Broadened Liability Coverage For Damage To Your Product And Your Work** Provision does not apply if an endorsement of the same name is attached to this policy.

7. CONTRACTUAL LIABILITY – RAILROADS

With respect to operations performed within 50 feet of railroad property, the definition of **insured contract** is replaced by the following:

Insured Contract means:

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 to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner is not an **insured contract**;

b. A sidetrack agreement;

c. Any easement or license agreement;

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement;

f. That part of any other contract or agreement pertaining to the **Named Insured's** business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Named Insured** assumes the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

(1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

(2) Under which the **Insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(1)** above and supervisory, inspection, architectural or engineering activities.

8. ELECTRONIC DATA LIABILITY

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A. Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion **p. Electronic Data** and replace it with the following:

This insurance does not apply to:

p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

(1) any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

(2) the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data** that does not result from physical injury to tangible property.

However, unless Paragraph **(1)** above applies, this exclusion does not apply to **damages** because of **bodily injury**.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relation expenses or any other loss, cost or expense incurred by the **Named Insured** or others arising out of that which is described in Paragraph **(1)** or **(2)** above.

B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to **5.** above, $100,000 is the most the Insurer will pay under **Coverage A** for all **damages** arising out of any one **occurrence** because of **property damage** that results from physical injury to tangible property and arises out of **electronic data**.

C. The following definition is added to **DEFINITIONS**:

Electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

D. For the purpose of the coverage provided by this **ELECTRONIC DATA LIABILITY** Provision, the definition of **property damage** in **DEFINITIONS** is replaced by the following:

Property damage means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it; or

c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate **electronic data**, resulting from physical injury to tangible property. All such loss of **electronic data** shall be deemed to occur at the time of the **occurrence** that caused it.

For the purposes of this insurance, **electronic data** is not tangible property.

E. If Electronic Data Liability is provided at a higher limit by another endorsement attached to this policy, then the $100,000 limit provided by this **ELECTRONIC DATA LIABILITY** Provision is part of, and not in addition to, that higher limit.

9. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for

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claims arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

10. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily injury or **property damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

11. GENERAL AGGREGATE LIMITS OF INSURANCE - PER PROJECT

A. For each construction project away from premises the **Named Insured** owns or rents, a separate Construction Project General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:

1. All **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and

2. All medical expenses under **Coverage C**,

that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Construction Project General Aggregate Limit of any other construction project.

B. All:

1. **Damages** under **Coverage B**, regardless of the number of locations or construction projects involved;

2. **Damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single construction project, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and

3. Medical expenses under **Coverage C** caused by accidents which cannot be attributed solely to ongoing operations at a single construction project,

will reduce the General Aggregate Limit shown in the Declarations.

C. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Construction Project General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular construction project.

D. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of projects involved.

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E. If a single construction project away from premises owned by or rented to the **Insured** has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

F. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

12. IN REM ACTIONS

A quasi in rem action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were in personam against the **Named Insured**.

13. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

A. Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Insuring Agreement** is amended to replace Paragraphs **1.b.(1)** and **1.b.(2)** with the following:

b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:

(1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.

(2) the **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and

B. Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:

i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).

ii. delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

iii. add the following additional exclusions:

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, including but not limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

Dishonesty or Crime

Any actual or alleged dishonest, criminal or malicious act, error or omission.

Medicare/Medicaid Fraud

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any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement

Any **health care incident** for which coverage is excluded by endorsement.

C. DEFINITIONS is amended to:

i. add the following definitions:

Health care incident means an act, error or omission by the **Named Insured's employees** or **volunteer workers** in the rendering of:

a. **professional health care services** on behalf of the **Named Insured** or

b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

a. Physician;

b. Nurse;

c. Nurse practitioner;

d. Emergency medical technician;

e. Paramedic;

f. Dentist;

g. Physical therapist;

h. Psychologist;

i. Speech therapist;

j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

ii. delete the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

iii. amend the definition of **Insured** to:

a. add the following:

the **Named Insured's employees** are **Insureds** with respect to:

(1) **bodily injury** to a co-**employee** while in the course of the co-**employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

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(2) bodily injury to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

the **Named Insured's volunteer workers** are **Insureds** with respect to:

(1) bodily injury to a co-**volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

(2) bodily injury to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

b. delete Subparagraphs **(a)**, **(b)**, **(c) and (d)** of Paragraph **2.a.(1)** of **WHO IS AN INSURED**.

D. The **Other Insurance** condition is amended to delete Paragraph **b.(1)** in its entirety and replace it with the following:

Other Insurance

b. Excess Insurance

(1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

14. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

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, except that if the **Named Insured** was a joint venturer, partner, or member of a limited liability company and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

a. any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense first occurred after such termination date;

b. the **bodily injury** or **property damage** first occurred after such termination date; and

c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company; and

If the joint venture, partnership or limited liability company is or was insured under a **consolidated (wrap-up) insurance program**, then such insurance will always be considered valid and collectible for the purpose of paragraph **c.** above. But this provision will not serve to exclude **bodily injury**, **property damage** or **personal and advertising injury** that would otherwise be covered under the **Contractors General Liability Extension Endorsement** provision entitled **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS**. Please see that provision for the definition of **consolidated (wrap-up) insurance program**.

15. LEGAL LIABILITY – DAMAGE TO PREMISES / ALIENATED PREMISES / PROPERTY IN THE NAMED INSURED'S CARE, CUSTODY OR CONTROL

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion **j. Damage to Property** in its entirety and replace it with the following:

This insurance does not apply to:

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j. Damage to Property

Property damage to:

(1) Property the **Named Insured** owns, rents, or occupies, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises the **Named Insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;

(3) Property loaned to the **Named Insured**;

(4) Personal property in the care, custody or control of the **Insured**;

(5) That particular part of real property on which the **Named Insured** or any contractors or subcontractors working directly or indirectly on the **Named Insured's** behalf are performing operations, if the **property damage** arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

Paragraphs **(1), (3)** and **(4)** of this exclusion do not apply to **property damage** (other than damage by fire) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

Paragraph **(2)** of this exclusion does not apply if the premises are **your work**.

Paragraphs (**3), (4), (5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph **(6)** of this exclusion does not apply to **property damage** included in the **products-completed operations hazard**.

Paragraphs **(3)** and **(4)** of this exclusion do not apply to **property damage** to:

i. tools, or equipment the **Named Insured** borrows from others, nor

ii. other personal property of others in the **Named Insured's** care, custody or control while being used in the **Named Insured's** operations away from any **Named Insured's** premises.

However, the coverage granted by this exception to Paragraphs **(3)** and **(4)** does not apply to:

a. property at a job site awaiting or during such property's installation, fabrication, or erection;

b. property that is **mobile equipment** leased by an **Insured**;

c. property that is an **auto**, aircraft or watercraft;

d. property in transit; or

e. any portion of **property damage** for which the **Insured** has available other valid and collectible insurance, or would have such insurance but for exhaustion of its limits, or but for application of one of its exclusions.

A separate limit of insurance and deductible apply to such property of others. See **LIMITS OF INSURANCE** as amended below.

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B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in **LIMITS OF INSURANCE**.

C. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to **5.** above, $25,000 is the most the Insurer will pay under **Coverage A** for **damages** arising out of any one **occurrence** because of the sum of all **property damage** to borrowed tools or equipment, and to other personal property of others in the **Named Insured's** care, custody or control, while being used in the **Named Insured's** operations away from any **Named Insured's** premises. The Insurer's obligation to pay such **property damage** does not apply until the amount of such **property damage** exceeds $1,000. The Insurer has the right but not the duty to pay any portion of this $1,000 in order to effect settlement. If the Insurer exercises that right, the **Named Insured** will promptly reimburse the Insurer for any such amount.

D. Paragraph **6.**, Damage To Premises Rented To You Limit, of **LIMITS OF INSURANCE** is deleted and replaced by the following:

6. Subject to Paragraph **5.** above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under **Coverage A** for **damages** because of **property damage** to any one premises while rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, including contents of such premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. The Damage To Premises Rented To You Limit is the greater of:

a. $500,000; or

b. The Damage To Premises Rented To You Limit shown in the Declarations.

E. Paragraph **4.b.(1)(a)(ii)** of the **Other Insurance** Condition is deleted and replaced by the following:

(ii) That is property insurance for premises rented to the **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

16. LIQUOR LIABILITY

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Liquor Liability**.

This **LIQUOR LIABILITY** provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

17. MEDICAL PAYMENTS

A. LIMITS OF INSURANCE is amended to delete Paragraph **7.** (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph **5.** above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

(1) $15,000 unless a different amount is shown here: $N,NNN,NNN,NNN; or

(2) the amount shown in the Declarations for Medical Expense Limit.

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B. Under **COVERAGES**, the **Insuring Agreement** of **Coverage C** – **Medical Payments** is amended to replace Paragraph **1.a.(3)(b)** with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

18. NON-OWNED AIRCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;

2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and

3. the aircraft is not being used to carry persons or property for a charge.

19. NON-OWNED WATERCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph **(2)** of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

(2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:

(a) less than 75 feet long; and

(b) not being used to carry persons or property for a charge.

20. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

B. Under **COVERAGES**, **Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

Knowing Violation of Rights of Another

Personal and advertising injury caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

(a) the **Named Insured**; or

(b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.

2. add the following exclusions:

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This insurance does not apply to:

Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

Premises Related Discrimination

discrimination or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

Provision **1. ADDITIONAL INSURED** of this endorsement; or

attachment of an additional insured endorsement to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

21. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY

A. Under **COVERAGES**, **Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability**.

B. Solely for the purpose of the coverage provided by this **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** provision, the following changes are made to the section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B:**

1. Paragraph **2.d.** is replaced by the following:

d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph **2.f.(2)(b)** is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

C. This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B –Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

22. PROPERTY DAMAGE – ELEVATORS

A. Under **COVERAGES**, **Coverage A** – **Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs **(3)**, **(4)** and **(6)** of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.

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B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

A. Paragraph **1.b.** is amended to delete the $250 limit shown for the cost of bail bonds and replace it with a $5,000. limit; and

B. Paragraph **1.d.** is amended to delete the limit of $250 shown for daily loss of earnings and replace it with a $1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or

2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and

2. was executed prior to the **bodily injury**, **property damage** or **personal and advertising injury** giving rise to the **claim**.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury**, **property damage**, or **personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor

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2. **Bodily injury** or **property damage** included within the **products-completed operations hazard** that arises out of those portions of the project that are not **residential structures**.

B. Condition **4. Other Insurance** is amended to add the following subparagraph **4.b.(1)(c)**:

This insurance is excess over:

(c) Any of the other insurance whether primary, excess, contingent or any other basis that is insurance available to the **Named Insured** as a result of the **Named Insured** being a participant in a **consolidated (wrap-up) insurance program**, but only as respects the **Named Insured's** involvement in that **consolidated (wrap-up) insurance program**.

C. **DEFINITIONS** is amended to add the following definitions:

Consolidated (wrap-up) insurance program means a construction, erection or demolition project for which the prime contractor/project manager or owner of the construction project has secured general liability insurance covering some or all of the contractors or subcontractors involved in the project, such as an Owner Controlled Insurance Program (O.C.I.P.) or Contractor Controlled Insurance Program (C.C.I.P.).

Residential structure means any structure where 30% or more of the square foot area is used or is intended to be used for human residency, including but not limited to:

1. single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments; and

2. the common areas and structures appurtenant to the structures in paragraph **1.** (including pools, hot tubs, detached garages, guest houses or any similar structures).

However, when there is no individual ownership of units, **residential structure** does not include military housing, college/university housing or dormitories, long term care facilities, hotels or motels. **Residential structure** also does not include hospitals or prisons.

This **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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CNA PARAMOUNT

Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

I. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:

A. in the performance of your ongoing operations subject to such **written contract**; or

B. in the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury** or **property damage** included in the **products-completed operations hazard**, and only if:

1. the **written contract** requires you to provide the additional insured such coverage; and

2. this **coverage part** provides such coverage.

II. But if the **written contract** requires:

A. additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or

B. additional insured coverage with "arising out of" language; or

C. additional insured coverage to the greatest extent permissible by law;

then paragraph **I.** above is deleted in its entirety and replaced by the following:

WHO IS AN INSURED is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of **your work** that is subject to such **written contract**.

III. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

A. coverage broader than required by the **written contract**; or

B. a higher limit of insurance than required by the **written contract**.

IV. The insurance granted by this endorsement to the additional insured does not apply to **bodily injury**, **property damage**, or **personal and advertising injury** arising out of:

A. the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:

1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and

2. supervisory, inspection, architectural or engineering activities; or

B. any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.

V. Under **COMMERCIAL GENERAL LIABILITY CONDITIONS,** the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this **coverage part**:

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Primary and Noncontributory Insurance

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

1. primary and non-contributing with other insurance available to the additional insured; or

2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

VI. Solely with respect to the insurance granted by this endorsement, the section entitled **COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;

2. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and

3. make available any other insurance, and tender the defense and indemnity of any **claim** to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph **3.** does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

VII. Solely with respect to the insurance granted by this endorsement, the section entitled **DEFINITIONS** is amended to add the following definition:

Written contract means a written contract or written agreement that requires you to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

A. is currently in effect or becomes effective during the term of this policy; and

B. was executed prior to:

1. the **bodily injury** or **property damage**; or

2. the offense that caused the **personal and advertising injury**;

for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured**:

1. **a.** Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,

   b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.

2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

   The insurance afforded by this provision **A.2.**:

   a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.

   b. Does not apply to:

   (1) **Bodily injury** or **property damage** caused by an **accident** that occurred before you acquired or formed the organization; or

   (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.

3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.

4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured,** includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or

2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2),** the limit for the cost of bail bonds is changed from $2,000 to $5,000; and

2. In **a.(4),** the limit for the loss of earnings is changed from $250 to $500 a day.

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C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.**:

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

a. $60 per day, in lieu of $20; subject to

b. $1,800 maximum, in lieu of $600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

a. $1,000 maximum, in lieu of $600.

D. Hired "Autos"

The following is added to **Section III. Paragraph A.**:

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

a. Any covered **auto** you lease, hire, rent or borrow without a driver; and

b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.

c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or $75,000, whichever is less, minus a $500 deductible for each covered auto. No deductible applies to **loss** caused by fire or lightning.

d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos.**

e. Such physical damage coverage for hired **autos** will:

(1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.

(2) Such coverage as is provided by this provision will be subject to a limit of $750 per **accident.**

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.**:

The accidental discharge of an airbag shall not be considered mechanical breakdown.

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F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories

d. A $100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.**:

Subject to the following, the **diminution in value** exclusion does not apply to:

a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and

b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.

c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.

d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:

(1) $5,000; or

(2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III**:

1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:

   a. An **auto** owned by that "executive officer" or a member of that person's household; or

   b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos.**

   Such Liability and/or Physical Damage Coverage as is afforded by this provision.

   (1) Equal to the greatest of those coverages afforded any covered **auto**; and

   (2) Excess over any other collectible insurance.

2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

   Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.**:

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(4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.**:

(6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss.**

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.**:

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.**:

Regardless of the provisions of Paragraphs **5.a.** and **5.d.** above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss.**

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

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BUILDERS TRUST®
OF NEW MEXICO

WAIVER OF SUBROGATION

Insured Name: B & D INDUSTRIES INC
Insured Policy Number: WC100-0005672-2024A

Builders Trust of New Mexico waives any right of recovery of subrogation against the certificate holder named on this certificate of insurance, but only to the extent that the employers to whom we provide coverage performs work under a written contract with the certificate holder that requires this waiver.

Name of Person	Name of Organization
	Blanket Waiver of Subrogation

Date: 12/8/2023 Countersigned by Randy L. Akin

Agency Number: 24 – 28
Agency Name: HUB International Insurance Services, Inc. (ABQ)

(505) 345-3477 ■ 1-800-640-3369 ■ FAX (505) 344-7245
5931 OFFICE BOULEVARD, NE SUITE 3 ALBUQUERQUE, NM 87109 ■ P.O. BOX 91330 ALBUQUERQUE, NM 87199-1330
www.builderstrust.com

1. FINALMemo_GCCC_BDOnCall_09102024_SSD4 RW_revised SIGNED (3)

Final Audit Report 2024-12-17

Created:	2024-12-05
By:	JAMES EDWARDS (jwedwards@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA2dC5-tikRaD5ZSbxq5AkNE7WkirbEycO

"1. FINALMemo_GCCC_BDOnCall_09102024_SSD4 RW_revised SIGNED (3)" History

Document created by JAMES EDWARDS (jwedwards@santafenm.gov)
2024-12-05 - 9:29:12 PM GMT- IP address: 97.182.206.186

Document sent to JoAnn Lovato (jdlovato@santafenm.gov) and Travis Dutton-Leyda (tkduttonleyda@santafenm.gov) for signature. One of them to sign
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Email viewed by JoAnn Lovato (jdlovato@santafenm.gov)
2024-12-05 - 10:51:34 PM GMT- IP address: 63.232.20.2

Document e-signed by JoAnn Lovato (jdlovato@santafenm.gov)
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Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature
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Document e-signed by EMILY OSTER (ekoster@santafenm.gov)
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Agreement completed.
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CITY OF SANTA FE

Date: November 25, 2024

To: Governing Body

Via: Regina Wheeler, Public Works Director Regina Wheeler (Nov 29, 2024 13:56 MST)
Sam Burnett, Facilities Division Director JOHN BURNETT (Nov 26, 2024 08:26 MST)

From: Tim Farrell, Public Works Property Development Manager Timothy Farrell

Subject: Capital Appropriation Project Grant Agreement 24-I3145 for Renovations to El Museo Cultural de Santa Fe Facility

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ACTION:
Request Approval of the of State of New Mexico Department of Finance and Administration General Fund 93100 Capital Appropriation Project Grant Agreement 24-I3145 in the Total Amount of $175,000 for Renovations to El Museo Cultural de Santa Fe Facility With a Reversion Date of June 30, 2028. (Tim Farrell, Public Works Property Development Manager; tgfarrell@santafenm.gov)

Request Approval of a Budget Adjustment Request (BAR) to Allocate $175,000 from the 2024 Capital Appropriation to FY25 Revenue and Expenses for the Santa Fe Railyard.

BACKGROUND AND SUMMARY:
El Museo Cultural de Santa Fe, established in 1993 as a local community-led and community run Hispano/Chicano cultural center, has grown into and now occupies 31,000 square feet in this former warehouse building at the Railyard. This City owned facility, originally constructed and used for shipping and warehouse purposes, is now used for community theater, perforce art and artist booth sales.

The City of Santa Fe received capital appropriation 24-I3145 in the amount of $175,000 and has a reversion date of June 30, 2028. The funds will be used for renovations to the entrances, restrooms, and various interior transition areas for improved accessibility and ADA compliance.

There are two additional State Capital Appropriation Grants for El Museo:
- $210,000 allocated through June 30, 2027, for needed renovations to the building, including the heating and air conditioning (HVAC) systems and electrical infrastructure.
- $126,950 allocated through June 30, 2026, for renovations and improvements to the building, as deemed necessary by the City, both for scheduled repair and maintenance and also to provide modern efficiencies and operational improvements.

All funds are expected to be utilized prior to the reversion dates.

ATTACHMENTS:
Grant Agreement NMDFA 24-I3145
BAR

PROCUREMENT METHOD:
Not Applicable

Chief Procurement Officer (CPS)/Designee: N/A (Dec 4, 2024 11:00 MST) Date: Dec 4, 2024
CPO Comment/Exceptions: _____

FUNDING SOURCE:
2024 New Mexico State Capital Appropriation
Fund Name/Number: CIPARTCULT/350
Munis Org Name/Number: ArtCltrCIP/3509980
Munis Expenditure Object Name/Number: WIP Construction/572970
Munis Revenue Object Name/Number: New Mexico Fin and Admin/490210
Project Ledger Number: El Museo Improvements/PWD2535024

Budget Officer/Designee: Andy Hopkins Date: Dec 4, 2024
Budget Officer Comment/Exceptions: _____

ASSOCIATED APPROVALS:
IT Components included? ☐ Yes | ☑ No
Approval: _____ Date: _____
Comment/Exceptions: _____

Vehicles included? ☐ Yes | ☑ No
Approval: _____ Date: _____
Comment/Exceptions: _____

Construction, Facilities, Furniture, Fixtures, Equipment included? ☑ Yes | ☐ No
Approval: _____ **Signature:** JOHN BURNETT (Nov 26, 2024 08:26 MST) Date: _____
Comment/Exce| **Email:** jsburnett@santafenm.gov _____

Capital Asset* or Project? ☑ Yes | ☐ No**
Project Ledger# PWD2535024
(*will this procurement result in a tangible item that costs more than $5,000?)
(**Capital Projects are new and improvement projects that are going to cost $10,000 or more)
Approval: _____ Date: _____
Comment/Exceptions: _____

Is this a Grant Funded Purchase? ☑ Yes | ☐ No
Approval: Erika Lujan (Dec 9, 2024 08:06 MST) Title: Grants Manager Date: Dec 9, 2024
Comment/Exceptions: Grant Agreement NMDFA 24-I3145

Anticipated length of project: _____

Department Contract Administrator Contact Info:
Elizabeth L. Kahahane (elkahahane@santafenm.gov)

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
GENERAL FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of the date it is executed, by and between the Department of Finance and Administration, hereinafter called the "Department" or abbreviation such as "DFA/LGD", 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 2024, Chapter 66, Section 28, Paragraph 503**, 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 Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

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:

24-I3145 $175,000.00 APPROPRIATION REVERSION DATE: June 30, 2028

Laws of 2024, Chapter 66, Section 28, Paragraph 503, One Hundred Seventy-five Thousand ($175,000.00), from the General Fund 93100 to plan, design and construct accessibility improvements for a cultural museum space in a multipurpose building in the Railyard area in Santa Fe in Santa Fe county;

The Grantee's total reimbursements shall not exceed One Hundred Seventy-five Thousand $175,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, Zero $0.00, which equals One Hundred Seventy-five Thousand $175,000.00 (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 Language if special conditions apply. 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 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.

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 shall request approval of its obligation(s) by submitting a Notice of Obligation form as provided by the Department. 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.

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.

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[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.

[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.

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: Alan Webber
Title: Mayor
Address: PO Box 909, Santa Fe, NM 87504
Email: mayor@santafenm.gov
Telephone: 505-955-6590

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: CITY OF SANTA FE
Name: Emily K. Oster
Title: Finance Director
Address: PO Box 909, Santa Fe, NM 87504
Email: ekoster@santafenm.gov
Telephone: 505-629-3411

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

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 **June 30, 2028** 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 quarterly 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. Additionally, the Grantee shall certify on the Request for Payment form 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.

Quarterly reports are due on the last day of each quarter. Quarter end reporting periods are September 30th, December 31st, March 31st, and June 30th.

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 provided by the Department. 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 execution 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. Twenty (20) days from date of Early Termination; or

iii. 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 Wage 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 Finance and Administration, Local Government Division (DFA/LGD) 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 DFA/LGD Grant Agreement. Should the DFA/LGD 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.

ARTICLE 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

_____
Entity Name

_____
Signature of Official with Authority to Bind Grantee

By: _____
(Print Name)

Its: _____
(Title)

_____
Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

_____
By:

Its: Cabinet Secretary or Designee

_____
Date

IN WITNESS WHEREOF, the parties have executed this Capital Appropriation Project as of the dates set forth below.

CITY OF SANTA FE:

SEE ABOVE

_____

ALAN WEBBER, MAYOR

ATTEST:

_____

GERALYN CARDENAS, INTERIM CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault

Kevin L. Nault (Aug 13, 2024 14:30 MDT)

ASSISTANT CITY ATTORNEY

FINANCE DIRECTOR:

Emily K. Oster

EMILY OSTER

STATE OF NEW MEXICO
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. Contact Name/Phone #: _____

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 (I*f Applicable*): _____

G. Grant Balance: _____

H. 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 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 the 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*)

Printed Name

Date: _____

Grantee Representative

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **PO #** _____ **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 # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

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: _____

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.

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

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

DEPARTMENT / DIVISION NAME	DATE
Community Development / Arts & Culture CIP	8/15/2024

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WIP Construction - El Museo Improvements	3509980	572970	PWD2535024	175,000	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
DFA - 24-I3145 El Museo Improvements	3509980	490210	PWD2535024	(175,000)	
				$ -	$ -

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

Agreement with NM DFA to plan, design, construct accessibility improvements at El Museo in the Railyard in the to

tal amount of $175,000 (24-I3145 expires 06/30/28)

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
350	173,250
TOTAL:	173,250

Halona Crowe — 8/15/2024
Prepared By *{print name}* — Date

JOHN BURNETT (Nov 26, 2024 08:26 MST)
Division Director Signature — Date

Regina Wheeler
Regina Wheeler (Nov 29, 2024 13:56 MST)
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 — Dec 4, 2024
Budget Officer — Date

Emily K. Oster — Dec 18, 2024
Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

CITY OF SANTA FE

Date: November 25, 2024

To: Governing Body

From: Tim Farrell, Public Works Property Development Manager Timothy Farrell

Via: Regina Wheeler, Public Works Director Regina Wheeler (Nov 29, 2024 13:55 MST)
Sam Burnett, Facilities Division Director JOHN BURNETT (Nov 26, 2024 08:27 MST)

Subject: Capital Appropriation Project Grant Agreement 24-I4219 for Renovations to El Museo Cultural de Santa Fe Facility

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ACTION:
Request Approval of the State of New Mexico Department of Finance and Administration General Fund 93100 Capital Appropriation Project Grant Agreement 24-I4219, in the Total Amount of $126,950 for Renovations to El Museo Cultural de Santa Fe Facility With a Reversion Date of June 30, 2026. (Tim Farrell, Public Works Property Development Manager; tgfarrell@santafenm.gov)

Request Approval of a Budget Adjustment Request (BAR) to Allocate $126,950 from the 2024 Capital Appropriation to FY25 Revenue and Expenses for the Santa Fe Railyard.

BACKGROUND AND SUMMARY:
El Museo Cultural de Santa Fe, established in 1993 as a local community-led and community run Hispano/Chicano cultural center, has grown into and now occupies 31,000 square feet in this former warehouse building at the Railyard. This City owned facility, originally constructed and used for shipping and warehouse purposes, is now used for community theater, perforce art and artist booth sales.

The City of Santa Fe received capital appropriation 24-I4219 in the amount of $126,950 and has a reversion date of June 30, 2026. The funds will be used for renovations and improvements to the building, as deemed necessary by the City, both for scheduled repair and maintenance but also to provide modern efficiencies and operational improvements.

There are two additional State Capital Appropriation Grants for El Museo:
- $175,000 allocated through June 30, 2028, for needed renovations to the building, including the heating and air conditioning (HVAC) systems and electrical infrastructure.
- $210,000 allocated through June 30, 2027, for renovations and improvements to the building, as deemed necessary by the City, both for scheduled repair and maintenance and also to provide modern efficiencies and operational improvements.

All funds are expected to be utilized prior to the reversion dates.

ATTACHMENTS:
Grant Agreement NMDFA 24-I4219
BAR

PROCUREMENT METHOD:
Not Applicable

Chief Procurement Officer (CPS)/Designee: N/A N/A (Dec 9, 2024 11:57 MST) Date: Dec 9, 2024
CPO Comment/Exceptions: _____

FUNDING SOURCE:
2024 New Mexico State Capital Appropriation
Fund Name/Number: CIPARTCULT/350
Munis Org Name/Number: ArtCltrCIP/3509980
Munis Expenditure Object Name/Number: WIP Construction/572970
Munis Revenue Object Name/Number: New Mexico Fin and Admin/490210
Project Ledger Number: El Museo Improvements/PWD2535023

Budget Officer/Designee: Andy Hopkins Date: Dec 4, 2024
Budget Officer Comment/Exceptions: _____

ASSOCIATED APPROVALS:
IT Components included? ☐ Yes | ☑ No
Approval: _____ Date: _____
Comment/Exceptions: _____

Vehicles included? ☐ Yes | ☑ No
Approval: _____ Date: _____
Comment/Exceptions: _____

Construction, Facilities, Furniture, Fixtures, Equipment included? ☑ Yes | ☐ No
Approval: _____ **Signature:** JOHN BURNETT (Nov 26, 2024 08:27 MST) Date: _____
Comment/Exce| **Email:** jsburnett@santafenm.gov

Capital Asset* or Project? ☑ Yes | ☐ No**
Project Ledger# PWD2535023
(*will this procurement result in a tangible item that costs more than $5,000?)
(**Capital Projects are new and improvement projects that are going to cost $10,000 or more)
Approval: _____ Date: _____
Comment/Exceptions: _____

Is this a Grant Funded Purchase? ☑ Yes | ☐ No
Approval: Erika Lujan Erika Lujan (Dec 9, 2024 14:55 MST) Title: Grants Manager Date: 12.9.2024
Comment/Exceptions: Grant Agreement NMDFA 24-I4219

Anticipated length of project: _____

Department Contract Administrator Contact Info:
Elizabeth L. Kahahane, (elkahahane@santafenm.gov)

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
GENERAL FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of the date it is executed, by and between the Department of Finance and Administration, hereinafter called the "Department" or abbreviation such as "DFA/LGD", 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 2024, Chapter 65, Section 217**, 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 Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

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:

24-I4219 $126,950.00 APPROPRIATION REVERSION DATE: June 30, 2026

Laws of 2024, Chapter 65, Section 217, One Hundred Twenty-six Thousand Nine Hundred Fifty ($126,950.00), from the General Fund 93100 The time of expenditure for the local government division project in Subsection 390 of Section 35 of Chapter 81 of Laws 2020 to plan, design, construct, furnish, equip and install improvements, including roofing, lighting and heating, ventilation and air conditioning systems, to El Museo Cultural de Santa Fe in Santa Fe in Santa Fe county is extended through fiscal year 2026.

The Grantee's total reimbursements shall not exceed One Hundred Twenty-six Thousand Nine Hundred Fifty $126,950.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, Zero $0.00, which equals One Hundred Twenty-six Thousand Nine Hundred Fifty $126,950.00 (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 Language if special conditions apply. 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 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.

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 shall request approval of its obligation(s) by submitting a Notice of Obligation form as provided by the Department. 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.

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.

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[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.

[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.

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: Alan Webber
Title: Mayor
Address: PO Box 909, Santa Fe, NM 87504
Email: mayor@santafenm.gov
Telephone: 505-955-6590

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: CITY OF SANTA FE
Name: Emily K. Oster
Title: Finance Director
Address: PO Box 909, Santa Fe, NM 87504
Email: ekoster@santafenm.gov
Telephone: 505-629-3411

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

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 **June 30, 2026** 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 quarterly 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. Additionally, the Grantee shall certify on the Request for Payment form 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.

Quarterly reports are due on the last day of each quarter. Quarter end reporting periods are September 30th, December 31st, March 31st, and June 30th.

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 provided by the Department. 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 execution 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. Twenty (20) days from date of Early Termination; or

iii. 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 Wage 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 Finance and Administration, Local Government Division (DFA/LGD) 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 DFA/LGD Grant Agreement. Should the DFA/LGD 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.

ARTICLE 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

_____
Entity Name

_____
Signature of Official with Authority to Bind Grantee

By: _____
(Print Name)

Its: _____
(Title)

_____
Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

_____
By:

Its: Cabinet Secretary or Designee

_____
Date

IN WITNESS WHEREOF, the parties have executed this Capital Appropriation Project as of the dates set forth below.

CITY OF SANTA FE:

SEE ABOVE

_____

ALAN WEBBER, MAYOR

ATTEST:

_____

GERALYN CARDENAS, INTERIM CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault

Kevin L. Nault (Aug 13, 2024 14:31 MDT)

ASSISTANT CITY ATTORNEY

FINANCE DIRECTOR:

Emily K. Oster

EMILY OSTER

STATE OF NEW MEXICO
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. Contact Name/Phone #: _____

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 (I*f Applicable*): _____

G. Grant Balance: _____

H. 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 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 the 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*)

Printed Name

Date: _____

Grantee Representative

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **PO #** _____ **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 # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

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: _____

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.

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

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

DEPARTMENT / DIVISION NAME	DATE
Community Development / Arts & Culture CIP	8/15/2024

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WIP Construction - El Museo Improvements	3509980	572970	PWD2535023	125,681	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
DFA - 24-I4219 El Museo Improvements	3509980	490210	PWD2535023	(125,681)	
				$ -	$ -

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

Agreement with NM DFA to plan, design, construct, furnish, equip and install improvements, including roofing, lighting and heating, ventilation and air conditioning systems at El Museo Cultural De Santa Fe in the total amount of $126,950 (24-I4219 expires 06/30/26) minus 1% AIPP $1269.50

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	**0**

Halona Crowe — 8/15/2024
Prepared By *{print name}* — Date

JOHN BURNETT (Nov 26, 2024 08:27 MST)
Division Director Signature — Date

Regina Wheeler
Regina Wheeler (Nov 29, 2024 13:55 MST)
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 — Dec 4, 2024
Budget Officer — Date

Emily K. Oster — Dec 18, 2024
Finance Director *{≤ $5,000}* — Date

Randy Randall (Dec 18, 2024 16:52 MST) — Dec 18, 2024
City Manager *{≤ $60,000}* — Date

Contract Packet to GB_NMDFA 24-I4219 Cap App_RYD El Museo_11 25 2024 TF3 dc2 RAW format ELK

Final Audit Report 2024-11-29

Created:	2024-11-26
By:	Elizabeth Kahahane (elkahahane@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAh9fVS7aX9-pp_BhXZVZAvsERrkYDSP5a

"Contract Packet to GB_NMDFA 24-I4219 Cap App_RYD El Museo_11 25 2024 TF3 dc2 RAW format ELK" History

Document created by Elizabeth Kahahane (elkahahane@santafenm.gov)
2024-11-26 - 0:12:18 AM GMT- IP address: 63.232.20.2

Document emailed to Timothy Farrell (tgfarrell@santafenm.gov) for signature
2024-11-26 - 0:15:53 AM GMT

Email viewed by Timothy Farrell (tgfarrell@santafenm.gov)
2024-11-26 - 2:57:28 PM GMT- IP address: 104.47.65.254

Document e-signed by Timothy Farrell (tgfarrell@santafenm.gov)
Signature Date: 2024-11-26 - 2:57:33 PM GMT - Time Source: server- IP address: 63.232.20.2

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2024-11-26 - 2:57:36 PM GMT

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Document e-signed by JOHN BURNETT (jsburnett@santafenm.gov)
Signature Date: 2024-11-26 - 3:27:10 PM GMT - Time Source: server- IP address: 174.218.21.137

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2024-11-26 - 3:27:14 PM GMT

Email viewed by rawheeler@santafenm.gov
2024-11-29 - 8:55:36 PM GMT- IP address: 104.47.65.254

Powered by Adobe Acrobat Sign

Signer rawheeler@santafenm.gov entered name at signing as Regina Wheeler

2024-11-29 - 8:55:55 PM GMT- IP address: 12.104.110.14

Document e-signed by Regina Wheeler (rawheeler@santafenm.gov)

Signature Date: 2024-11-29 - 8:55:57 PM GMT - Time Source: server- IP address: 12.104.110.14

Agreement completed.

2024-11-29 - 8:55:57 PM GMT

Contract Packet to GB_NMDFA 24-I4219 Cap App_RYD El Museo_11 25 2024 TF3 dc2 RAW format ELK - DeptSigs

Final Audit Report 2024-12-18

Created:	2024-12-03
By:	JAMES EDWARDS (jwedwards@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAtqYyfngVE7-Dp1sIXpvUyRJ8sZSHYKs_

"Contract Packet to GB_NMDFA 24-I4219 Cap App_RYD El Museo_11 25 2024 TF3 dc2 RAW format ELK - DeptSigs" History

Document created by JAMES EDWARDS (jwedwards@santafenm.gov)
2024-12-03 - 4:06:45 PM GMT- IP address: 97.182.93.53

Document sent to ALEXIS LOTERO (aclotero@santafenm.gov) and ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov) for signature. One of them to sign
2024-12-03 - 4:11:19 PM GMT

Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2024-12-04 - 8:27:56 PM GMT- IP address: 104.47.64.254

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2024-12-04 - 8:30:04 PM GMT

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2024-12-04 - 11:55:40 PM GMT- IP address: 63.232.20.2

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2024-12-05 - 5:45:23 AM GMT- IP address: 172.225.80.180

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2024-12-09 - 4:04:41 AM GMT- IP address: 172.225.199.26

Email viewed by JoAnn Lovato (jdlovato@santafenm.gov)
2024-12-09 - 6:55:31 PM GMT- IP address: 63.232.20.2

Signer JoAnn Lovato (jdlovato@santafenm.gov) entered name at signing as N/A
2024-12-09 - 6:56:59 PM GMT- IP address: 63.232.20.2

Document e-signed by N/A (jdlovato@santafenm.gov)
Signature Date: 2024-12-09 - 6:57:01 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to evlujan@santafenm.gov for signature
2024-12-09 - 6:57:06 PM GMT

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2024-12-09 - 9:54:47 PM GMT- IP address: 104.47.64.254

Signer evlujan@santafenm.gov entered name at signing as Erika Lujan
2024-12-09 - 9:55:10 PM GMT- IP address: 63.232.20.2

Document e-signed by Erika Lujan (evlujan@santafenm.gov)
Signature Date: 2024-12-09 - 9:55:12 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature
2024-12-09 - 9:55:18 PM GMT

Email viewed by EMILY OSTER (ekoster@santafenm.gov)
2024-12-18 - 11:21:00 PM GMT- IP address: 104.47.64.254

Document e-signed by EMILY OSTER (ekoster@santafenm.gov)
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City of Santa Fe, New Mexico

Memorandum

Date: December 17, 2024

To: Governing Body

From: Michael Dozier, Wastewater Division Director MD
Steven Walker, Emergency Program Manager JSW
JSW

Via: John Dupuis, Public Works Director
JD

Re: Request for Approval of a BAR $4,109,145 for Wastewater

Item and Issue

Request for Approval of a Budget Amendment Resolution emergency (BAR) in the Total Amount of $4,109,145 from Public Utilities Cash Balance for Repair and Maintenance to Fund a Construction Contract with AAC Construction to support the WWTP with various problems and solutions to bring the WWFT into compliance.

Background and Summary

The Public Utilities Department respectfully requests your review and approval of an Emergency Determination BAR approval to support the WWTP with various problems and solutions to bring the WWFT into compliance in the total amount of $4,109,145. The emergency contract for this BAR was approved by the Mayor on December 11, 2024, and the BAR was forgotten in the packet and the memo.

Recommended Action

Please approve the BAR to Fund the AAC Contract to support the WWTP with various problems and solutions to bring the WWFT into compliance.

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

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

DEPARTMENT / DIVISION NAME	DATE

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WWMD WIP CONSTRUCTION	5000375	572970	WWM2450002	4,109,145	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
				$ 4,109,145	$ -

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

Increase from CASH BALANCE in WWMD Enterprise Fund to Fund the On-Call CIP Construction Services contract for FY25+

for (AAC emergency 3204639)

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
500	(4,109,145)
TOTAL:	**(4,109,145)**

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Linda MacAllister — 8/20/2024
Prepared By *{print name}* — Date

Division Director Signature *{optional}* — Date: Dec 18, 2024

John Dupuis (Dec 18, 2024 13:27 MST) — Dec 18, 2024
Department Director Signature — Date

Andy Hopkins — Dec 19, 2024
Budget Officer — Date

Emily K. Oster — Dec 19, 2024
Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

CITY OF SANTA FE

Date: November 26, 2024

To: Mayor Alan Webber and Governing Body
Finance Committee, Public Works and Utilities Committees

From: Steven Walker, Emergency Procurement Program Manager

Via: John Dupuis, Public Utilities Department Director

Subject: AAC Emergency Amendment 1 – Construction Contract 3204639

Vendor Name: A.A.C. Construction, LLC

Vendor Number: 7958

ITEM AND ISSUE:

Public Utility Department respectfully requests your review and approval of an Amendment #1 to 3204639 with A.A.C. Construction, LLC for a Construction Contract. Amendment #1 increases the amount of compensation to support the WWTP with various problems and solutions to bring the WWFT into compliance by $4,109,144.16 and not to exceed total compensation of $6,574,981.20 for a term of 2 years.

CONTRACT NUMBER:
The FY24 Munis contract number is 3204639.

BACKGROUND AND SUMMARY:
The amendment with A.A.C. Construction, LLC adds to the work already performed for the emergency procurement. When contract 3204639 was originally written, a number of actionable items were quickly determined to help return the Paseo Real Wastewater Reclamation Facility (PRWRF) to compliance from violations of the Clean Water Act (CWA) (33 U.S.C. §§ 1251-1387) posed in Administrative Order Docket CWA-06-2024-1765. The contract and determination were approved by the City of Santa Fe Counsel, Mayor and Cleark on 12 April 2024. After Hazen and Sawyer's (contract #3204638) assessment of the facility, a number of other emergency items were identified.

These are listed as follows:

1) Installation of metering manholes and vaults for non-potable water
2) Installation of instrumentations and controls
3) Fabrications and metal installations, including welding operations
4) Acquisition of mechanical parts and supplies
5) Acquisition of building materials for structures
6) Transportation and deliveries
7) Building of minor concrete structures
8) False work for temporary structures
9) Moving of dry soils and aggregates
10) DAF building support to get pumps and electrical working
11) Various hardware and fasteners to keep things together
12) SCADA telemetry electrical support in various buildings

13) Minor building modifications as necessary to accommodate the administrator's/engineer's requirements
14) Aeration equipment assembly, installation, and power supply
15) Heavy equipment support as necessary to accommodate the various tasks.

The original action items were quickly and efficiently dealt with to get the PRWRF into compliance. These new tasks work toward keeping the PRWRF in compliance.

Prior Approvals and Supporting Information:

PROCUREMENT METHOD:
The procurement method used was NMSA 1978, Section 13-1-127, Emergency

Chief Procurement Officer (CPO)/Designee Approval: _____ **Date:** Nov 26, 2024

CPO Comment/Exceptions: Approved Emergency declaration attached.

FUNDING SOURCE:
Fund Name/Number: Wastewater/500
Munis Org Name/Number: Wastewater Capital Projects/5000375
Munis Object Name/Number: WIP Construction/572970

Budget Officer/Designee Approval: Andy Hopkins **Date:** Nov 26, 2024

Budget Officer/Designee Comment/Exceptions: _____

ASSOCIATED APPROVALS:
IT Components included? ☐ **Yes** | ☒ **No**
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Vehicles included? ☐ **Yes** | ☒ **No**
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Construction, Facilities, Furniture, Fixtures, Equipment included? ☐ **Yes** | ☒ **No**
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Capital Asset or Project ☒ **Yes** | ☐ **No**
Approval: Josie Bolden **Title:** Controller **Date**: Nov 26, 2024
Comment/Exceptions: Na

ATTACHMENTS:
Horizons Declination, Procurement Document: Emergency Determination, Vendor's Quote, Certificate of Liability Insurance (COI), Construction Amendment One, Construction Original Contract

City of Santa Fe
Emergency Determination Form

The emergency procurement method may only be used as described in NMSA 1978, Section 13-1-127 and in the City's Procurement Manual XII.

Notify all signatories as soon as you are made aware of the emergency. Give them a brief synopsis of the emergency, answer their questions, and let them know this document and all supporting documents will be sent to them for signatures. They should know about the request prior to obtaining signatures.

The Department that makes an emergency procurement to plan or prepare for the response to a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event shall account for the money spent in making the procurement and report on that accounting to the City's Finance Department Director within ninety days after the end of the contract or fiscal year in which the procurement was made, whichever comes first.

I.	**Department:**	Public Utilities, Wastewater Division, City of Santa Fe
	Department Director:	John Dupuis
	Department Contact:	Michael Dozier
	Department Telephone Number:	(505)955-4642
	Chief Procurement Officer:	Travis Dutton-Leyda
	Telephone Number:	(505) 629-8351
II.	**Name of Contractor:**	A.A.C. Construction, LLC.
	Address of Contractor:	18 L Luna Rd, Santa Fe, NM 57507
	Amount of prospective contract:	$4,109,144.16
	Term of prospective contract:	Two Years from the date of the original contract
	Location of Services:	Paseo Real Wastewater Reclamation Facility

III. Please thoroughly list the services (scope of work), construction or items of tangible personal property of the contract:

1) Installation of metering manholes and vaults for non-potable water
2) Installation of instrumentations and controls
3) Fabrications and metal installations, including welding operations
4) Acquisition of mechanical parts and supplies
5) Acquisition of building materials for structures
6) Transportation and deliveries
7) Building of minor concrete structures
8) False work for temporary structures
9) Moving of dry soils and aggregates
10) DAF building support to get pumps and electrical working
11) Various hardware and fasteners to keep things together
12) SCADA telemetry electrical support in various buildings

13) Minor building modifications as necessary to accommodate the administrator's/engineer's requirements
14) Aeration equipment assembly, installation, and power supply
15) Heavy equipment support, as necessary, to accommodate the various tasks.

IV. Provide an explanation for the justification of the procurement including a description of the emergency condition(s) requiring use of emergency procurement and the practicable competition utilized in compliance with NMSA 1978, Section 13-1-127.

The United States Environmental Protection Agency (EPA) issued Administrative Order (AO) CWA-06-2024-1765 to the City on March 4, 2024. The AO states that the City's Paseo Real Water Reclamation Facility (PRWRF) has repeatedly failed to meet effluent limits specified in the National Pollutant Discharge Elimination System (NPDES) Permit No. NM00222292. The City issued a response to the EPA's AO on April 4, 2024. The City's response provided an initial plan for immediate actions (30 days), near-term actions (6 months), and long-term actions (18 months) intended to address the permit violations as quickly as possible and implement measures to prevent similar exceedances from reoccurring.

Similarly, the New Mexico Environment Department (NMED) has determined that the City of Santa Fe Paseo Real Wastewater Treatment Plant (WWTP) has been operating in noncompliance with the New Mexico Water Quality Act (WQA) and Water Quality Control Commission's (WQCC) regulations (20.6.2 and 20.6.4 New Mexico Administrative Code) adopted pursuant to the WQA.

Emergency procurement is required to complete the urgent action items in the scope of work to cumulatively address the AO. We also face ongoing needs for critical repairs and replacements throughout the plant, including pumps, piping, electrical equipment, and other infrastructure, as well as funding for supplemental chemicals to support critical treatment processes. If the City does not approve emergency procurement to expedite urgent actions, the City risks losing the progress made to date and facing even higher costs in the future due to non-compliance penalties that would prolong the emergency condition.

To keep the Paseo Real Wastewater Reclamation Facility in compliance, the above scope of work is required within two years from April 12, 2024; a time period that does not allow for competitive procurement.

EPA Region 6 Administrative Order Attached.

V. Please describe what measures are being taken to minimize the duration and effect of this emergency procurement (for example: is the emergency only in place until a competitive process can be completed, etc.).

The duration of the emergency procurement is determined by a set schedule of activities required to address and resolve National Pollutant Discharge Elimination System (NPDES) permit violations outlined in the Environmental Protection Agency (EPA) Administrative Order. While the Wastewater Management Division (WWMD) has made significant progress at the PRWRF, both the EPA Administrative Order and NMED Administrative Compliance Order remain in effect. Although the PRWRF is currently meeting most discharge permit requirements, full compliance has not been achieved. Specifically, effluent quality is not continuously meeting permit limits for total nitrogen and total phosphorus. Additional improvements are needed to restore PRWRF's long-term ability to reliably comply with permit requirements. Without continued funding to address these critical issues, the City risks regressing and jeopardizing the progress we've made, which could result in regulatory agencies administering significant financial penalties.

VI. Describe what measures the Department will take in the future to prevent/mitigate use of emergency procurement under similar circumstances.

To minimize the impact and duration of emergency procurement, WWMD has prioritized actions that are essential to long-term permit compliance. These actions are complex and multi-tiered, with some improvements requiring dozens of incremental steps to fully resolve. Furthermore, many of the incremental steps cannot be fully defined until preceding steps are completed. In the near term, emergency procurement remains necessary to expedite the most urgent action items critical to permit compliance. In the long term, competitive procurement will be utilized to address non-urgent action items. Both the urgent and non-urgent action items have been documented in an Action Item Log, which the Public Utilities Directory will present to the City Manager.

Certified by:

City Chief Procurement Officer, Travis Dutton-Leyda	**Date** Nov 25, 2024

City Approval by:

John Dupuis (Nov 25, 2024 13:46 MST) **Department Director, John Dupuis**	**Date** Nov 25, 2024
Senior City Attorney, Erin McSherry	**Date** Nov 25, 2024
Randy Randall (Nov 25, 2024 21:23 CST) **Interim City Manager, Randy Randall**	**Date** Nov 25, 2024
Finance Director, Emily Oster	**Date** Nov 25, 2024

Note: All emergencies must be posted to the SPD website: https://www.generalservices.state.nm.us/statepurchasing/submit-emergency.aspx and the City of Santa Fe's website: https://santafenm.gov/finance-2/purchasing-1/solicitations

QUOTE FY 24/25.

A.A.C. Construction, LLC

OWNER: CITY OF SANTA FE SEWER DIVISION
Owner's Rep.: Michael Dozier
Project Contact : Michael Dozier, Ph: 505-955-4642

CONTRACTOR: A.A.C. Construction, LLC
PROJECT MANAGER: Andrew Sisneros, (505) 930-0481
Date: 9/23/24 6:17 AM

DESCRIPTION:	**Customer Concern: There is an emergency at the WWTF and AAC is being tasked to support the WWTP with the various problems/solutions to bring the WWFT into compliance.**
LOCATION:	**73 Paseo Real, Santa Fe, NM 87507**

	Item Description	Hours	Labor Rate	Total Cost
LABOR:	Coordinator	900	$87.50	$78,750.00
	Superintendent	900	$70.00	$63,000.00
	Foreman	800	$65.00	$52,000.00
	Heavy Equipment Operator III	600	$55.00	$33,000.00
	Heavy Equipment Operator III	600	$55.00	$33,000.00
	Delivery Driver	450	$52.50	$23,625.00
	Truck Driver	450	$55.00	$24,750.00
	Laborer III	450	$52.50	$23,625.00
	Laborer III	450	$52.50	$23,625.00
	Laborer III	450	$52.50	$23,625.00
	Laborer III	450	$52.50	$23,625.00
	Laborer IV	450	$55.00	$24,750.00
	Electrician	700	$275.00	$192,500.00
	Welder	700	$230.00	$161,000.00
	TOTAL LABOR			**$780,875.00**

	Material Description	Material Quote Reference	Total Cost
MATERIAL:	Manhole Vaults with Haliday Traffic Rated Lids and Pipe Supports (NP Water Vault	7 x 18950	$132,650.00
	12" Mag Meters EH (NP Water Vaults)	3 x 12084.58	$36,253.74
	Misc. Parts for Vault Pipes Assembly (NP Water Vaults)		$58,750.00
	Freight for Vaults (NP Water Vaults)		$15,250.00
	Building Mods		$350,000.00
	Structural Steel		$100,000.00
	Metal Panels		$50,000.00
	Building Electrical Relocate		$85,000.00
	Building Mechanical Relocate		$50,000.00
	Building Concrete		$45,000.00
	Building Steel Reinforcement		$35,000.00
	Building Testing		$18,500.00
	Building Insulation		$50,000.00
	Strctural Fill		$50,000.00
	SCADA/Telemetry Support Reroute Conduits and perform terminals		$45,000.00
	DAF Building Support, Rebuild Motors, Clean Pressure Tank, Install Submersible Pumps, Restart System		$135,000.00
	Chemicals T-Flock, Alluminum Sulfate		$200,000.00
	Dry Material for Excavations (Crusher Fines) 500 Tons	21.64	$10,820.00
	Subgrade Surfacing (Base Course) 500 Tons	24.31	$12,155.00
	Fittings, Pipe Supply	Core & Main	$100,000.00
	Fittings, Pipes and Parts (Mechanical Supply)	ABQ P & P	$50,000.00
	Stainless Steel Bolts and Hardware	Copper State	$50,000.00
	Misc. Welding small crane	LA	$25,000.00
	Juristictional Permits Fees	City/State/County	$15,000.00
	Additional Blanket Policy for Pollution	USI	$10,500.00
	Additional WC Policy for Disease	USI	$18,500.00
	Consumable and misc materials welder		$50,000.00
	Misc Electrical Parts		$40,000.00
	TOTAL MATERIAL		**$1,838,378.74**

OWNER: CITY OF SANTA FE SEWER DIVISION **Project Contact :** Michael Dozier, Ph: 505-955-4642
Owner's Rep.: Michael Dozier

CONTRACTOR: A.A.C. Construction, LLC **Date:** 9/23/24 6:17 AM
PROJECT MANAGER: Andrew Sisneros, (505) 930-0481

	Equipment Type	Rate Type	Rate	Qnty	Total Cost
EQUIPMENT:	289 Mini Loader		95	500	$47,500.00
	Excavator		95	500	$47,500.00
	Misc. Heavy Equipment		275000	1	$275,000.00
	Crane		385	150	$57,750.00
	1 Ton P.U. With Trailer		30	10	$300.00
	1 Ton Service Truck		15	80	$1,200.00
	1 Ton Pick Up		15	150	$2,250.00
	Small Tools/Pumps, Saws, Hand Tools		25	640	$16,000.00
	Misc. Heavy Hauling		1500	10	$15,000.00
	Temporary Facilities		12	2500	$30,000.00
	Freight for Material		155	350	$54,250.00
	Transport Mini Excavator		1800	6	$10,800.00
	Transport Mini Loader		1800	6	$10,800.00
	Traffic Control & Devices		20000	1	$20,000.00
	Telehandler		10500	3	$31,500.00
	TOTAL EQUIPMENT				**$619,850.00**

SUBTOTAL:	$3,239,103.74
Contractor's Fee 16%	$518,256.60
SUBTOTAL:	$3,757,360.34
Tax @ 8.1875%	$307,633.88
Insurance & Bonds	$44,149.94
GRAND TOTAL:	**$4,109,144.16**

Address: A.A.C. Construction, LLC, 18 La Luna Rd, Santa Fe, NM 87507

Authorized Signature Date

EXHIBIT A

REVISED a WORK ORDER PRICING

A.A.C. Construction, LLC

OWNER: CITY OF SANTA FE SEWER DIVISION
Owner's Rep.: Michael Dozier
Project Contact : Michael Dozier, Ph: 505-955-4642

CONTRACTOR: A.A.C. Construction, LLC
PROJECT MANAGER: Andrew Sisneros, (505) 930-0481
Date: 3/19/2024

DESCRIPTION:	**Customer Concern: There is an emergency at the plant and filters have to be maintained and pumps need to be brought into working condition. House keeping of the sludge will be required to be exported from the facility. AAC is being tasked to support the WWTP with the solutions to the problems at hand.**
LOCATION:	**73 Paseo Real, Santa Fe, NM 87507**

	Item Description	Hours	Labor Rate	Total Cost
LABOR:	Coordinator	1200	$85.00	$102,000.00
	Superintendent	960	$65.00	$62,400.00
	Foreman	960	$55.00	$52,800.00
	Heavy Equipment Operator III	960	$50.00	$48,000.00
	Delivery Driver	640	$50.00	$32,000.00
	Truck Driver	640	$50.00	$32,000.00
	Laborer III	960	$45.00	$43,200.00
	Laborer III	960	$45.00	$43,200.00
	Laborer IV	960	$48.00	$46,080.00
	Electrician	640	$275.00	$176,000.00
	Welder	321	$230.00	$73,830.00
	TOTAL LABOR			**$711,510.00**

	Material Description	Material Quote Reference	Total Cost
MATERIAL:	Sand Media	3160cf	$25,000.00
	Anthracite	3160cf	$52,920.00
	Freight for sand		$38,500.00
	Freight for Anthracite		$22,000.00
	Traveling Pads, clean out sludge drying beds 80 each		$24,000.00
	Fittings, Pipes and Parts (Mechanical Supply)	ABQ P & P	$39,450.40
	Misc. Welding Supplies if needed, cat walk,small crane	LA	$25,000.00
	Consumable and misc materials welder		$8,500.00
	Misc Electrical Parts		$18,500.00
	TOTAL MATERIAL		**$253,870.40**

	Equipment Type	Rate Type	Rate	Qnty	Total Cost
EQUIPMENT:	289 Mini Loader		85	640	$54,400.00
	Excavator		160	150	$24,000.00
	Vac Trucks		**200000**	**1**	**$200,000.00**
	Dump Truck 1		155	360	$55,800.00
	Dump Truck 2		155	360	$55,800.00
	1 Ton P.U. With Trailer		30	10	$300.00
	1 Ton Service Truck		15	80	$1,200.00
	1 Ton Pick Up		15	150	$2,250.00
	Small Tools/Pumps, Saws, Hand Tools		25	640	$16,000.00
	Rebuild up to 8 each Flyt pumps		**62000**	**8**	**$496,000.00**
	Freight for Pumps to Abq		1200	40	$48,000.00
	Transport Excavator		1800	2	$3,600.00
	Transport Mini Loader		850	8	$6,800.00
	Telehandler		5000	3	$15,000.00
	TOTAL EQUIPMENT				**$979,150.00**

SUBTOTAL:	$1,944,530.40
Contractor's Fee 16%	$311,124.86
SUBTOTAL:	$2,255,655.26
Tax @ 8.1875%	$184,681.77
Insurance & Bonds	$25,500.00
GRAND TOTAL:	**$2,465,837.04**

Address: A.A.C. Construction, LLC, 18 La Luna Rd, Santa Fe, NM 87507

Authorized Signature

Date

STATUTORY AUTHORITY

The following findings are made, and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). The Administrator of EPA delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

FINDINGS

1. The City of Santa Fe (Respondent) is a municipality which was incorporated under the laws of the State of New Mexico, and as such, is a "person" as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant to this Order (all relevant times), Respondent owned or operated a municipal wastewater treatment facility located at Airport Road, Santa Fe, Santa Fe County, New Mexico, 87504 (facility), and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility was a “point source” of a “discharge” of “pollutants” with its municipal wastewater to the receiving waters of Santa Fe River in Segment No. 20.6.4.113 of the Rio Grande Basin which is a “water of the United States” within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. Respondent applied for and was issued NPDES Permit No. NM0022292 (herein the permit) under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on September 1, 2021, and expires on August 31, 2026. At all relevant times, Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

8. Part I.A of the permit places certain limitations on the quality and quantity of effluent discharged by Respondent. The relevant discharge limitations are indicated in the attached Table A.

9. Part I.C. of the permit requires the Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures, in order to determine the facility's compliance or noncompliance with the permit and applicable regulations. It also requires the Respondent to file with EPA certified Discharge Monitoring Reports (DMRs) of the results of monitoring, and Noncompliance Reports when appropriate.

10. Certified DMRs filed by the Respondent with EPA in compliance with the permit show discharges of pollutants from the facility that exceed the permitted effluent limitations established in Part I.A of the permit, as specified in the attached Table B.

11. Each instance in which Respondent discharged pollutants to waters of the United States in amounts exceeding the effluent limitations contained in the permit is a violation of the permit and Section 301 of the Act, 33 U.S.C. § 1311. Each violation of the conditions of the permit or regulations described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

12. On March 4, 2024, EPA issued Administrative Order Docket Number CWA-06-2024-1745 (Preceding AO) to the Respondent, which cited permit effluent limits violations. The Preceding AO required the correction of the cited violations within thirty (30) days of the issuance. In the event that the required correction was not possible, the Respondent was required to submit a comprehensive plan to eliminate the cited violations within the shortest time possible.

13. On April 4, 2024, the Respondent submitted a written response to the Preceding AO. In the response, the Respondent proposed a comprehensive plan consisting of immediate, near-term, and long-term actions to address the violations and to implement measures to prevent them from reoccurring. Immediate actions were scheduled to have occurred within

thirty (30) days of the April 4, 2024, response letter. Near-term actions were scheduled to be accomplished within six (6) months, and long-term actions within eighteen (18) months.

14. A schedule for compliance to eliminate the cited violations is hereby incorporated, by reference, into this Order.

SECTION 309 (a)(3) COMPLIANCE ORDER

15. Based on the foregoing Findings and pursuant to the authority of Section 309 of the Act, EPA hereby orders Respondent to take the following actions:

A. The Respondent shall accomplish the following tasks and comply with the following schedule of activities:

ACTIVITY	DUE DATE
1. Submit a certified statement of the status of the Immediate Actions proposed for completion within thirty (30) days of the April 4, 2024, response letter.	July 30, 2024
Near-term Actions	
2. Conduct Onsite Sampling, assess efficacy of the secondary treatment process and recommend process changes to improve treatment efficacy.	September 30, 2024
3. Collect influent and effluent samples for analysis, to be conducted by an outside laboratory, to determine if the cyanide exceedances are real or an artifact of false positives.	September 30, 2024
4. Have consultant audit the Respondent's laboratory procedures for cyanide analysis. Submit a certified report of the audit to this office. If the audit effort confirms that the cyanide exceedances are real, then also submit a proposed written action plan to address cyanide exceedances.	September 30, 2024
5. Repair failed process air piping and diffuser grids to increase the secondary treatment aerobic volume.	September 30, 2024
6. Install a temporary chemical closing system to improve sludge settling in the secondary clarifiers. Conduct jar testing to determine which specific chemical will be used.	September 30, 2024
7. Rehabilitate the two (2) existing travelling bridge sand filters so this infrastructure can return to service.	September 30, 2024
8. Build a comprehensive base of knowledge management tools and decision trees to guide plant staff with use of the developed Standard Operating Procedures (SOPs).	September 30, 2024
9. Train laboratory staff to improve laboratory sampling and handling practices, data management, workflow, and develop communications protocol for all testing performed to support treatment operations and regulatory compliance.	September 30, 2024
Long-term Actions	
10. Develop an inventory of all instrumentation, calibration practices, and data management for process control. Conduct a gap analysis to identify corrective actions for process control instrumentation.	October 31, 2025
11. Develop a steady-state biological process model of the Water Reclamation Facility to stimulate current treatment performance and evaluate alternatives to improve performance.	October 31, 2025
12. Attain compliance with all terms of this schedule.	November 30, 2025

B. Until compliance is achieved under this Order, Respondent shall submit a Quarterly Report indicating progress of the actions listed in this compliance schedule. The quarters will end in the months of March, June, September, and December and the Quarterly Reports are due by the 15th of the following month.

C. If Respondent would like to arrange a meeting with EPA to discuss the allegations in this Order, it should contact EPA within forty-five (45) days of the effective date of this Order. The meeting will be held at the Region 6 offices, 1201 Elm Street, Dallas, Texas, or through a virtual platform, as appropriate, and Respondent can provide any information it believes is relevant to this Order. Respondent shall submit to EPA all information or materials it considers relevant to EPA at least ten (10) days prior to the meeting.

D. To arrange a meeting, or to ask questions or comment on this matter, please contact Ms. Mona Tates, of my staff, at (214) 665-7152 or tates.mona@epa.gov.

E. Any information or correspondence submitted by Respondent to EPA under this Order shall be addressed to the following:

Ms. Mona Tates
tates.mona@epa.gov

and

Ms. Nancy Williams
williams.nancy@epa.gov

GENERAL PROVISIONS

Issuance of this Section 309(a)(3) Compliance Order shall not be deemed an election by EPA to forego any administrative, judicial, civil or criminal action to seek penalties, fines, or any other relief appropriate under the Act for the violations cited herein, or other violations that become known to EPA. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

Respondent may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

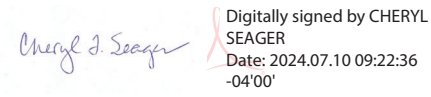
Failure to comply with this Section 309(a)(3) Compliance Order or the Act may result in further administrative action, or a civil judicial action initiated by the United States Department of Justice.

This Order does not constitute a waiver or modification of the terms or conditions of Respondent's NPDES permit, which remains in full force and effect. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligation to comply with any applicable federal, state, or local law or regulation.

The effective date of this Order is the date it is received by the Respondent.

July 10, 2024

Date



Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

AAC Construction LLC - Emergency Determination_11.25.24

Final Audit Report 2024-11-26

Created:	2024-11-26
By:	Linda Macallister (lmmacallister@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAbaAIgfJgaqQirA6JpmkdfhzYCHImHWoE

"AAC Construction LLC - Emergency Determination_11.25.24" History

Document created by Linda Macallister (lmmacallister@santafenm.gov)
2024-11-26 - 1:20:52 AM GMT- IP address: 63.232.20.2

Document emailed to Randy Randall (rrandall@santafenm.gov) for signature
2024-11-26 - 1:21:29 AM GMT

Email viewed by Randy Randall (rrandall@santafenm.gov)
2024-11-26 - 3:21:34 AM GMT- IP address: 104.28.32.102

Document e-signed by Randy Randall (rrandall@santafenm.gov)
Signature Date: 2024-11-26 - 3:23:24 AM GMT - Time Source: server- IP address: 68.105.56.157

Agreement completed.
2024-11-26 - 3:23:24 AM GMT

Item # 24-0711
Munis Contract # 3204639
Original Contract Item # 24-0297
SWPA/GSA/Coop/RFP/ITB #: Emergency Determination

CITY OF SANTA FE
AMENDMENT No. 1 TO
CONSTRUCTION CONTRACT
ITEM# 24-0297

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE CONSTRUCTION CONTRACT, dated April 11, 2024 (the "Contract"), between the City of Santa Fe (the "City") and **A.A.C. Construction, LLC.** (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Contract, the Contractor has agreed to build upon the improvements initiated for the City in April 2024 and to respond to the EPA's and NMED's requirement that the City eliminate or mitigate the violations identified by the EPA within the shortest possible time.
B. Pursuant to Article 14 of the Contract, 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 SERVICES

   The second to last paragraph in Article 1 of the Contract shall be amended to read as follows:

   The Contractor's scope of work includes support for plan items 5, 9, and 10 above. Additional detail on the Contractor's scope of work is listed in Exhibits A and B. The Contractor shall be responsible for verifications of all conditions, measurements, and dimensions for bidding.

2. COMPENSATION.

   Article 2, paragraph A of the Contract is amended to increase the amount of compensation by a total of $4,109,144.16 including New Mexico Gross Receipts Tax so that Article 2, paragraph A reads in its entirety

as follows:

A. The City shall pay to the Contractor in full payment for services satisfactorily performed such compensation not to exceed six million five hundred seventy-four thousand nine hundred eighty-one dollars and twenty cents ($6,574,981.20), including gross receipts tax of four hundred ninety-two thousand three hundred fifteen dollars and sixty-five cents ($492,315.65). The New Mexico gross receipts tax levied on the amounts payable under this contract shall be paid by the City to the Contractor.

The total amount payable to the Contractor under this Contract shall not exceed six million five hundred seventy-four thousand nine hundred eighty-one dollars and twenty cents ($6,574,981.20). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Contract 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 Contract 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 Contract being amended in writing prior to those services in excess of the total compensation amount being provided

3. CONTRACT IN FULL FORCE.

Except as specifically provided in this Amendment, the Contract remains and shall remain in full force and

effect, in accordance with its terms.

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

CITY OF SANTA FE:

Alan Webber (Dec 15, 2024 14:10 MST)

ALAN WEBBER, MAYOR

DATE: Dec 15, 2024

CONTRACTOR:

Andrew Sisneros (Nov 26, 2024 14:34 MST)

ANDREW SISNEROS, MANAGING MEMBER

DATE: Nov 26, 2024

CRS # 03-157349-00-5

Registration # 222939

ATTEST:

Andrea Salazar (Dec 16, 2024 08:30 MST)

ANDRÉA SALAZAR, CITY CLERK

GB MTG 12/11/2024

AS

CITY ATTORNEY'S OFFICE:

Marcos Martinez

Marcos Martinez (Nov 26, 2024 14:34 MST)

MARCOS MARTINEZ, SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

EMILY OSTER, FINANCE DIRECTOR

QUOTE FY 24/25.

A.A.C. Construction, LLC

OWNER: CITY OF SANTA FE SEWER DIVISION
Owner's Rep.: Michael Dozier

Project Contact : Michael Dozier, Ph: 505-955-4642

CONTRACTOR: A.A.C. Construction, LLC
PROJECT MANAGER: Andrew Sisneros, (505) 930-0481

Date: 9/23/24 6:17 AM

DESCRIPTION:	**Customer Concern: There is an emergency at the WWTF and AAC is being tasked to support the WWTP with the various problems/solutions to bring the WWFT into compliance.**
LOCATION:	**73 Paseo Real, Santa Fe, NM 87507**

	Item Description	Hours	Labor Rate	Total Cost
LABOR:	Coordinator	900	$87.50	$78,750.00
	Superintendent	900	$70.00	$63,000.00
	Foreman	800	$65.00	$52,000.00
	Heavy Equipment Operator III	600	$55.00	$33,000.00
	Heavy Equipment Operator III	600	$55.00	$33,000.00
	Delivery Driver	450	$52.50	$23,625.00
	Truck Driver	450	$55.00	$24,750.00
	Laborer III	450	$52.50	$23,625.00
	Laborer III	450	$52.50	$23,625.00
	Laborer III	450	$52.50	$23,625.00
	Laborer III	450	$52.50	$23,625.00
	Laborer IV	450	$55.00	$24,750.00
	Electrician	700	$275.00	$192,500.00
	Welder	700	$230.00	$161,000.00
	TOTAL LABOR			**$780,875.00**

	Material Description	Material Quote Reference	Total Cost
MATERIAL:	Manhole Vaults with Haliday Traffic Rated Lids and Pipe Supports (NP Water Vault	7 x 18950	$132,650.00
	12" Mag Meters EH (NP Water Vaults)	3 x 12084.58	$36,253.74
	Misc. Parts for Vault Pipes Assembly (NP Water Vaults)		$58,750.00
	Freight for Vaults (NP Water Vaults)		$15,250.00
	Building Mods		$350,000.00
	Structural Steel		$100,000.00
	Metal Panels		$50,000.00
	Building Electrical Relocate		$85,000.00
	Building Mechanical Relocate		$50,000.00
	Building Concrete		$45,000.00
	Building Steel Reinforcement		$35,000.00
	Building Testing		$18,500.00
	Building Insulation		$50,000.00
	Strctural Fill		$50,000.00
	SCADA/Telemetry Support Reroute Conduits and perform terminals		$45,000.00
	DAF Building Support, Rebuild Motors, Clean Pressure Tank, Install Submersible Pumps, Restart System		$135,000.00
	Chemicals T-Flock, Alluminum Sulfate		$200,000.00
	Dry Material for Excavations (Crusher Fines) 500 Tons	21.64	$10,820.00
	Subgrade Surfacing (Base Course) 500 Tons	24.31	$12,155.00
	Fittings, Pipe Supply	Core & Main	$100,000.00
	Fittings, Pipes and Parts (Mechanical Supply)	ABQ P & P	$50,000.00
	Stainless Steel Bolts and Hardware	Copper State	$50,000.00
	Misc. Welding small crane	LA	$25,000.00
	Juristictional Permits Fees	City/State/County	$15,000.00
	Additional Blanket Policy for Pollution	USI	$10,500.00
	Additional WC Policy for Disease	USI	$18,500.00
	Consumable and misc materials welder		$50,000.00
	Misc Electrical Parts		$40,000.00
	TOTAL MATERIAL		**$1,838,378.74**

EXHIBIT B

OWNER: CITY OF SANTA FE SEWER DIVISION

Owner's Rep.: Michael Dozier

Project Contact : Michael Dozier, Ph: 505-955-4642

CONTRACTOR: A.A.C. Construction, LLC

PROJECT MANAGER: Andrew Sisneros, (505) 930-0481

Date: 9/23/24 6:17 AM

	Equipment Type	Rate Type	Rate	Qnty	Total Cost
EQUIPMENT:	289 Mini Loader		95	500	$47,500.00
	Excavator		95	500	$47,500.00
	Misc. Heavy Equipment		275000	1	$275,000.00
	Crane		385	150	$57,750.00
	1 Ton P.U. With Trailer		30	10	$300.00
	1 Ton Service Truck		15	80	$1,200.00
	1 Ton Pick Up		15	150	$2,250.00
	Small Tools/Pumps, Saws, Hand Tools		25	640	$16,000.00
	Misc. Heavy Hauling		1500	10	$15,000.00
	Temporary Facilities		12	2500	$30,000.00
	Freight for Material		155	350	$54,250.00
	Transport Mini Excavator		1800	6	$10,800.00
	Transport Mini Loader		1800	6	$10,800.00
	Traffic Control & Devices		20000	1	$20,000.00
	Telehandler		10500	3	$31,500.00
	TOTAL EQUIPMENT				**$619,850.00**

SUBTOTAL:	$3,239,103.74
Contractor's Fee 16%	$518,256.60
SUBTOTAL:	$3,757,360.34
Tax @ 8.1875%	$307,633.88
Insurance & Bonds	$44,149.94
GRAND TOTAL:	**$4,109,144.16**

Address: A.A.C. Construction, LLC, 18 La Luna Rd, Santa Fe, NM 87507

Authorized Signature

Date

MEMORANDUM

DATE: ***March 29, 2024***

TO: ***Mayor Alan Webber and City Council***
Finance Committee
Public Works Public Utilities Committee

FROM: ***John Dupuis, Public Utilities Director*** JD

VIA: ***John Blair, City Manager*** JB
Emily Oster, Finance Director EKO

ITEM: Emergency Determination and Administrative Order Response

ISSUE:
Request Authorization to Complete the Paseo Real Water Reclamation Facility Administrative Order Emergency Project to ensure compliance with National Pollutant Discharge Elimination System (NPDES) and Discharge Permits and associated Contract approvals (Public Utilities Department/John Dupuis)

ISSUE:
In reference to the Paseo Real Water Reclamation Facility Administrative Order Emergency Project, the Public Utilities Department has submitted an Emergency Determination Form for emergency procurement to implement a comprehensive plan that provides interim corrective measures and for the long-term success in operating and managing the Paseo Real Water Reclamation Facility (PRWRF) necessary to ensure compliance with NPDES and Discharge Permits within the shortest possible time. The referenced Administrative Order (AO), which the City received on March 6th, 2024 from the U.S. Environmental Protection Agency (EPA) Region 6, is attached and requires within 30 days the submission of the comprehensive written plan for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

The scope of work from each vendor included with the Emergency Determination Form, and attached, is a natural progression of the extensive evaluation and improvements-initiated April 2024 and would have been implemented over a reasonable timeframe. The emergency procurement, this request for authorization, and accompanying Budget Adjustment Request (BAR) are responsive to the requirement for the elimination of the violations within the shortest possible time. These actions included as part of the comprehensive plan will clearly communicate our commitment to complete this project within the shortest possible time, averts unnecessary enforcement escalation, and begins to restore the trust of the public and our regulators.

The comprehensive plan focuses on improving current data collection, regulatory compliance, operational knowledge management / transfer, and management practices at the PRWRF, combined with selective capital improvements to existing PRWRF facilities. This comprehensive plan can be broken down into the following nine (10) steps:

1. Provide sampling and regulatory support to ensure compliance with existing permits.

2. Support the City's external communications and regularly establish weekly updates to improve communication and restore trust with Regulators.

3. Build a comprehensive base of knowledge & management tools / decision trees to guide PRWRF staff in day-to-day operations and management of the facility.

4. Improve PRWRF laboratory practices, data management, workflows, and communications for all testing performed to ensure regulatory compliance and/or support treatment operations.

5. Provide an inventory of all PRWRF instrumentation, calibration practices, data flows, and uses of information currently collected, and rectify gaps to improve process monitoring and control.

6. Develop a model for treatment operations using open-source software that integrates information available from lab test results and real-time supervisory control and data acquisition (SCADA) data.

7. Develop continuous modeling results incorporated into an advanced SCADA interface at the PRWRF to simulate and help optimize treatment plant operations and management.

8. Develop tools for simulation, testing, and operation of proposed changes to plant operations and enable remote operational support for emergency conditions.

9. Short-term treatment plant improvement projects. Examples of these limited scope projects include installing a new mechanical bar screen the already procured by the City, restoring two (2) former traveling bridge filter systems to working condition, or portable container-based sand filtration equipment and related pumping capability.

10. Additional support to complete the items above including process engineering alternatives development and review, project management and scheduling support, construction related support and services, training support, and related items or equipment.

Below is a list of the contractors that to date have provided a proposal/scope of work, the amount of the prospective contract, and the term of the prospective contract that, once authorized, will be negotiated, and executed as quickly as possible.

A. Name of Contractor: AquaSight
Amount of prospective contract: $350,000.00
Term of prospective contract: Three years

B. Name of Contractor: Great Western Electrical
Amount of prospective contract: $155,690.08
Term of prospective contract: One year

C. Name of Contractor: Carollo Engineers, Inc.
Amount of prospective contract: $60,000.00
Term of prospective contract: One year

D. Name of Contractor: ITSQUEST Staffing
Amount of prospective contract: $264,463.70
Term of prospective contract: One year and two months

E. Name of Contractor: Hazen and Sawyer
Amount of prospective contract: $2,718,000.00
Term of prospective contract: 2.5 years

F. Name of Contractor: A.A.C. Construction, LLC
Amount of prospective contract: $2,465,837.04
Term of prospective contract: Two Years

G. Name of Contractor: Molzen Corbin
Amount of prospective contract: $180,000.00
Term of prospective contract: Two Years

H. Name of Contractor: Rain for Rent (Western Oilfields Supply Co.)
Address of Contractor: 2495 Lakeside Drive, Las Cruces, NM 88007
Amount of prospective contract: $1,032,505.46
Term of prospective contract: Three Years

The current total prospective contract amount is **$7,226,496.28**. Contracts Attached for signature are E. Hazen & Sawyer, and A.A.C Construction, LLC others will be forth coming if contracts are required for the service requested.

The total budget amount requested is **$8,000,000**. Due to the critical nature of the funding and schedule for completion of the project, the Public Utilities Department requests authorization to the City Manager to negotiate and execute all necessary contracts and purchase orders to expedite project initiation. Once a contract is executed, the results will be reported to the Governing Body.

ACTION REQUESTED:

Request Approval of the of contracts with Hazen & Sawyer in the amount of $2,718,000.00 and with A.A.C Construction, LLC in the amount of $2,465,837.04.

Item #: 24-0297
Munis Contract #: 3204639
SWPA/GSA/Coop/RFP/ITB #: _____

CITY OF SANTA FE

CONSTRUCTION CONTRACT

THIS CONTRACT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **A.A.C. Construction, LLC** 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 procured this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount; and

The City and the Contractor hereby agree as follows:

1. Scope of Work

A. The Contractor shall perform the following work:

The Contractor shall perform all the work required by this contract to build upon the improvements initiated in April 2023. The emergency procurement, this request for authorization, and accompanying Budget Adjustment Request (BAR) respond to the EPA's and NMED's requirement that the City eliminate or mitigate the violations identified by the EPA within the shortest possible time. These actions, included as part of a comprehensive plan, will demonstrate our commitment to complete this project within the shortest possible time in the most efficient way possible.

The comprehensive plan focuses on improving current data collection, regulatory compliance, operational knowledge management / transfer, and management practices at the Paseo Real Water Reclamation Facility (PRWRF), combined with selective capital improvements to existing PRWRF facilities. This comprehensive plan can be broken down into the following ten (10) steps:

1. Provide sampling and regulatory support to ensure compliance with existing permits.

2. Support the City's external communications and regularly established weekly updates to improve communication and restore trust with Regulators.

3. Build a comprehensive base of knowledge & management tools / decision trees to guide PRWRF staff in day-to-day operations and management of the facility.

4. Improve PRWRF laboratory practices, data management, workflows, and communications for

all testing performed to ensure regulatory compliance and/or support treatment operations.

5. Provide an inventory of all PRWRF instrumentation, calibration practices, data flows, and uses of information currently collected, and rectify gaps to improve process monitoring and control.

6. Develop a model for treatment operations using open-source software that integrates information available from lab test results and real-time supervisory control and data acquisition (SCADA) data.

7. Develop continuous modeling results incorporated into an advanced SCADA interface at the PRWRF to simulate and help optimize treatment plant operations and management.

8. Develop tools for simulation, testing, and operation of proposed changes to plant operations and enable remote operational support for emergency conditions.

9. Short-term treatment plant improvement projects. Examples of these limited scope projects include installing a new mechanical bar screen the already procured by the City, restoring two (2) former traveling bridge filter systems to working condition, or portable container based sand filtration equipment and related pumping capability.

10. Additional support to complete the items above including process engineering alternatives development and review, project management and scheduling support, construction related support and services, training support, and related items or equipment, as described in the Contract Documents.

The Contractor's scope of work includes support for plan items 5, 9, and 10 above. Additional detail on the Contractor's scope of work is listed in Exhibit A. 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 such compensation not to exceed (two million four hundred sixty-five thousand eight hundred thirty-seven dollars and four cents) ($2,465.837.04), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Contract shall be paid by the City to the Contractor.

The total amount payable to the Contractor under this Contract, excluding Alternates (if needed) gross receipts tax and expenses, shall not exceed (two million four hundred sixty-five thousand eight hundred thirty-seven dollars and four cents) **$2,465,837,04. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Contract 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 Contract 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 Contract being amended in writing prior to those services in excess of the total compensation amount being provided.

B. Payment in future fiscal years is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.)

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within twenty-one days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. .

D. If the City fails to pay the contractor within twenty-one days after receipt of an undisputed request for payment, the City shall pay interest to the contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until the payment is issued. If the City receives an improperly completed invoice, the City shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and the owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete.

E. **Notice of Extended Payment Provision for Grant Funded Contracts**. This contract allows the City to make payment within 45 days after submission of an undisputed request for payment for contracts funded by grant money consistent with NMSA 1978, sec. 57-128-5(B).

3. Term

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This contract shall terminate **two (2) years from date of final signature**. The City reserves the right to renew this contract on an annual basis by mutual agreement not to exceed a total of ten (10) years in accordance with NMSA 1978, Sections 13-1-150 through 152.

4. Termination

A. Grounds. The City may terminate this Contract for convenience or cause. For contracts within their authority, the City Manager or their designee is authorized to provide the notice of termination, otherwise such notice of termination shall be provided by the Mayor or their designee as authorized by the Governing Body. The Contractor may only terminate this Contract based upon the City's uncured, material breach of this Contract.

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 Contract 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 Contract 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 Contract, the Contractor is suspended or debarred by the City; or (iii) the Contract is terminated pursuant to Paragraph 5, "Appropriations," of this Contract.

C. Liability. Except as otherwise expressly allowed or provided under this Contract, 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 Contract. 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 CONTRACT.*

5. Appropriations

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Contract. If sufficient appropriations and authorization are not made by the Governing Body, this Contract 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 Contract to unilaterally reduce funding, the Contractor shall have the option to terminate the Contract 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 construction 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 Contract. 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 Contract or assign any claims for money due or to become due under this Contract 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 Contract without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Contract, nor shall any subcontract obligate direct payment from the City.

10. Release

Final payment of the amounts due under this Contract shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Contract.

11. Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of this Contract 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 Contract shall become the property of the City and shall be delivered to the City no later than the termination date of this Contract. Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright or other claim of ownership 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 Contract, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Contract.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Contract, will continue to comply with, and that this Contract 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 Contract was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Contract, 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 Contract 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 Contract 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 Contract to the contrary, the City may immediately terminate the Contract.

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

14. Amendment

A. This Contract 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 Contract 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 Contract, 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.

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 Contract, and become binding as a part of the original Contract.

16. Merger

This Contract 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 contract.

All terms and conditions of the Emergency Procurement and the Contractor's response to such document(s) are incorporated herein by reference and is included in the order of precedence.

No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

17. Penalties for violation of law

NMSA 1978, sections 13-1-28 through 13-1-199, 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 Contract. If Contractor is found not to be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

19. Applicable Law

The laws of the State of New Mexico shall govern this Contract, 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, section 38-3-2. By execution of this Contract, 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 Contract.

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 Contract may be terminated by the City.

21. Other Insurance

If the services contemplated under this Contract will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Contract, 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 Contract shall be the greater of (1) the minimum coverage and limits specified in this Contract, 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 Contract are sufficient to cover the obligations of Contractor hereunder.

D. Contractor shall maintain the above insurance for the term of this Contract 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.

22. 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 Contract's term and effect and retain them for a period of three (3) years from the date of final payment under this Contract. 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 Contract shall not foreclose the right of the City to recover excessive or illegal payments

23. 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 Contract, 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 Contract. 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 Contract 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.

24. New Mexico Tort Claims Act

Any liability incurred by the City of Santa Fe in connection with this Contract 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 Contract modifies or waives any provision of the New Mexico Tort Claims Act.

25. Invalid Term or Condition

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

26. Enforcement of Contract

A party's failure to require strict performance of any provision of this Contract 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 Contract 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.

27. Notices

Any notice required to be given to either party by this Contract 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:
City of Santa Fe
Attn: Michael Dozier, Wastewater Department Director
315 Caja Del Rio
Santa Fe, NM 87507

To the Contractor:
A.A.C. Construction LLC
18 La Luna Road
Santa Fe, NM 87507

28. Authority

If Contractor is other than a natural person, the individual(s) signing this Contract 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.

29. 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.

30. 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.

31. 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.

32. General and Special Provisions

A. Terms used in this Contract 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. It is the sole responsibility of the Contractor to comply with the law.

C. This Contract shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Contract.

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 Contract 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 Contract.

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 Contract 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 Contract are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Contract.

I. Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Contract shall be attached to this Contract at the time of execution and are hereby incorporated by reference as though set forth in full in this Contract to the extent they are consistent with its conditions and terms.

J. Separability. If any clause or provision of this Contract is illegal, invalid or unenforceable under present or future laws effective during the term of this Contract, then and in that event, it is the intention of the parties hereto that the remainder of this Contract shall not be affected thereby.

K. 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.

L. 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.

M. Pursuant to NMSA 1978, section 13-1-191, reference is hereby made to the Criminal Laws of New Mexico (including NMSA 1978, sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (NMSA 1978, sections 13-1-28 through 13-1-199) imposes civil and criminal penalties for its violation.

N. Pursuant to NMSA 1978, section 13-4-11. 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 Contract as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

Alan Webber (Apr 11, 2024 20:41 MDT)

ALAN WEBBER, MAYOR

DATE: Apr 11, 2024

CONTRACTOR:

Andrew Sisneros

Digitally signed by Andrew Sisneros
DN: cn=Andrew Sisneros, o=A.A.C. Construction, LLC, ou, email=andrew@cnsp.net, c=US
Date: 2024.04.09 13:23:36 -06'00'

NAME

Managing Member

TITLE

DATE: 04-09-2024

CRS#: 03-157349-00-5

Registration #: 222939

ATTEST:

GERALYN CARDENAS (Apr 12, 2024 09:06 MDT)

GERALYN CARDENAS, XIV
INTERIM CITY CLERK

GB MTG 04/10/2024

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Apr 9, 2024 14:07 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

FINANCE DIRECTOR

EXHIBIT A

REVISED a WORK ORDER PRICING

A.A.C. Construction, LLC

OWNER: CITY OF SANTA FE SEWER DIVISION
Owner's Rep.: Michael Dozier
Project Contact : Michael Dozier, Ph: 505-955-4642

CONTRACTOR: A.A.C. Construction, LLC
PROJECT MANAGER: Andrew Sisneros, (505) 930-0481
Date: 3/19/2024

DESCRIPTION:	**Customer Concern: There is an emergency at the plant and filters have to be maintained and pumps need to be brought into working condition. House keeping of the sludge will be required to be exported from the facility. AAC is being tasked to support the WWTP with the solutions to the problems at hand.**
LOCATION:	**73 Paseo Real, Santa Fe, NM 87507**

	Item Description	Hours	Labor Rate	Total Cost
LABOR:	Coordinator	1200	$85.00	$102,000.00
	Superintendent	960	$65.00	$62,400.00
	Foreman	960	$55.00	$52,800.00
	Heavy Equipment Operator III	960	$50.00	$48,000.00
	Delivery Driver	640	$50.00	$32,000.00
	Truck Driver	640	$50.00	$32,000.00
	Laborer III	960	$45.00	$43,200.00
	Laborer III	960	$45.00	$43,200.00
	Laborer IV	960	$48.00	$46,080.00
	Electrician	640	$275.00	$176,000.00
	Welder	321	$230.00	$73,830.00
	TOTAL LABOR			**$711,510.00**

	Material Description	Material Quote Reference	Total Cost
MATERIAL:	Sand Media	3160cf	$25,000.00
	Anthracite	3160cf	$52,920.00
	Freight for sand		$38,500.00
	Freight for Anthracite		$22,000.00
	Traveling Pads, clean out sludge drying beds 80 each		$24,000.00
	Fittings, Pipes and Parts (Mechanical Supply)	ABQ P & P	$39,450.40
	Misc. Welding Supplies if needed, cat walk,small crane	LA	$25,000.00
	Consumable and misc materials welder		$8,500.00
	Misc Electrical Parts		$18,500.00
	TOTAL MATERIAL		**$253,870.40**

	Equipment Type	Rate Type	Rate	Qnty	Total Cost
EQUIPMENT:	289 Mini Loader		85	640	$54,400.00
	Excavator		160	150	$24,000.00
	Vac Trucks		**200000**	**1**	**$200,000.00**
	Dump Truck 1		155	360	$55,800.00
	Dump Truck 2		155	360	$55,800.00
	1 Ton P.U. With Trailer		30	10	$300.00
	1 Ton Service Truck		15	80	$1,200.00
	1 Ton Pick Up		15	150	$2,250.00
	Small Tools/Pumps, Saws, Hand Tools		25	640	$16,000.00
	Rebuild up to 8 each Flyt pumps		**62000**	**8**	**$496,000.00**
	Freight for Pumps to Abq		1200	40	$48,000.00
	Transport Excavator		1800	2	$3,600.00
	Transport Mini Loader		850	8	$6,800.00
	Telehandler		5000	3	$15,000.00
	TOTAL EQUIPMENT				**$979,150.00**

SUBTOTAL:	$1,944,530.40
Contractor's Fee 16%	$311,124.86
SUBTOTAL:	$2,255,655.26
Tax @ 8.1875%	$184,681.77
Insurance & Bonds	$25,500.00
GRAND TOTAL:	**$2,465,837.04**

Address: A.A.C. Construction, LLC, 18 La Luna Rd, Santa Fe, NM 87507

Authorized Signature

Date

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: A.A.C Construction, LLC

Procurement/contract Title: Paseo Real Water Reclamation Facility

Procurement Method/Vehicle: ☐Sole Source ☐State Price Agreement/Existing ☐ Cooperative ☐Request For Proposals(RFP) ☐Invitation To Bid (ITB) ☐Exempt: 13-1-98

☐Small Purchase (Contract Under $60,000) ☒Other: Emergency Procurement

Requesting Department: Public Utilities Staff Name: John Dupuis

Procurement Requirements:

Procurement files shall be maintained for all purchases and contracts, regardless of the method of procurement. The procurement files shall contain the basis on which the awards are made, all submitted bids/proposals, all evaluation materials (bid tabs or Evaluation Committee Reports), scoresheets, quotations, and all other documentation related to or prepared in conjunction with evaluations, negotiations, and the award processes. The procurements shall contain written determinations from the Requesting Departments, signed by the Chief Procurement Officers (this document), setting forth the reasoning for the contract award decisions before submitting them to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING (CPD)

YES	N/A		YES	N/A	
☒	☐	**Written Determination (srvs)**	☐	☒	**Quote(s) (3 Valid & Current for Over 20k)**
☐	☒	**RFP - Confidential info to be provided to GB by CPD Buyer**	☒	☐	**BAR**
☐	☒	**ITB (include bid tab)**	☐	☒	**FIR**
☒	☐	**Other: _Emergency Procurement_____**	☐	☒	**Certificate of Insurance (srvs)**
☐	☒	**Cooperative Agreements and GSAs and Statewide Price Agreements (include the cover page to show valid dat, s page, and items to be purchased)**			
☐	☒	**Horizon Declination or Screenshot of horizonsofnewmexico.org/services.html (srvs)**			
☒	☐	**Summary of Contract (only on contracts)**			
☒	☐	**Current Santa Fe Business Registration (or Exemption if no tax)**			
☒	☐	**Executed Contract or Price Agreement (legal and contractor must sign before purchasing approves)**			
☐	☒	**Chief Procurement Officer (or designee) Approval for Exempt from Procurement (use memo on our site)**			
☐	☒	**Evaluation Committee Report (RFPs only)**			
☐	☒	**Signed Sole Source Determination, Vendor Written Quote, SS Letter from Contractors, and 30 Days Email**			
☒	☐	**>20k = Memo addressed to City Manager (Under 150K) Committees/City Council (Over 150K)**			

John Dupuis Department Point of Contact	Director Title	04/05/2024 Date
John Dupuis Department Director		 Date
Travis Dutton-Leyda Chief Procurement Officer		Apr 5, 2024 Date
 ITT Representative	 Title	 Date

CoSF

Version 3 12.1.2023

City of Santa Fe

Summary of Contract, Agreement, Amendment & Lease

All applicable fields to be completed by department (complete 1.b only if you are processing an amendment):

1.a Munis Contract: 3204639 Procurement # (RFP/ITB# If any):

Contractor: A.A.C Construction, LLC.

Procurement Method/Vehicle: Small Purchase ☐ RFP ☐ ITB ☐ Sole Source ☐ GSA ☐ Cooperative ☐ Exempt ☐ SWPA/Existing ☐

Description/Title: Emergency Procurement Paseo Real Reclamation Facility

Contract: ◉ Agreement: ○ Lease/Rent: ○ Amendment: ○

Term Start Date: Upon Approval Term End Date: 2 Years Total Contract Amount: 2,465,837.04

☐ Approved by Council *(If over the City Manager's approval threshold, you must go through GB)* 04/10/2024

Contract / Lease:

1.b Amendment #: _____ to the Original Contract/Lease # _____

Increase/(Decrease) Amount $: _____

Extend Expiration Date to: _____

☐ Approved by Council *(If the original went through GB, all amendments must go through GB regardless of the amendment reason)* Date: _____

Amendment is for:

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

New contract for a term of 2 years from date of approval to respond to the EPA's and NMED's requirement that the City eliminate or mitigate violations identified by the EPA within the shortest possible time. These actions, included as part of a comprehensive plan, will clearly demonstrate the City's commitment to complete this project within the shortest possible time in the most efficient way possible.

3. Procurement History: _____

Purchasing Officer Review: Date: Apr 5, 2024

Comment & Exceptions: _____

4. Funding Source: _____ **Org / Object:** 5000375.572970

Andy Hopkins

Budget Officer Approval: Date: Apr 5, 2024

Comment & Exceptions: _____

5. Grant History (if applicable): _____

Grants Administrator Approval: _____ **Date** _____

Staff Contact who Completed This Form: John Dupuis Phone #: 505-955-4233

To be recorded by City Clerk:

Clerk # _____ Email: _____

Date of Execution: _____

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

City of Santa Fe New Mexico
Memorandum

Date: March 29, 2024

To: Mayor Alan Webber and City Council
Finance Committee
Public Works Public Utilities Committee

Via: Emily Oster, Finance Department Director
Travis Dutton-Leyda, Chief Procurement Officer
John Dupuis Public Utilities Department Director

From: Michael Dozier Wastewater Management Division Director

Subject: BAR

ITEM AND ISSUE:
Wastewater Management is requesting a Budget increase from Cash Balance in Wastewater Enterprise Fund to WWMD WIP Construction (5000375-572970) to fund Emergency Procurement in the amount of $8,000,000.

BACKGROUND AND SUMMARY:
The Wastewater Treatment Facility is currently suffering wastewater treatment challenges causing difficulties maintaining consistent compliance with monitoring standards. An Environmental Protection Agency (EPA) Administrative Order and New Mexico Environment Department (NMED) Notice of Noncompliance has initiated an Emergency Procurement to remedy the compliance issues from multiple fronts.

FUNDING SOURCE:
Fund Name/Number: Wastewater Enterprise Fund/500
Munis Org Name/Number: CIP / 5000375
Munis Object Name/Number: WIP Construction / 572970

ACTION REQUESTED:
Wastewater Management respectfully requests the transfer of $8,000,000 dollars from Cash Balance in Wastewater Enterprise Fund to WWMD WIP Construction (5000375-572970) to fund Emergency Procurement.

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

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

DEPARTMENT / DIVISION NAME	DATE
PUD/Wastewater to ITT	3/21/2024

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WWMD WIP Construction	5000375	572970		8,000,000	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
Budget Increase from Cash Balance in Wastewater					
Enterprise Fund					
				$ 8,000,000	$ -

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

See attached Justification MEMO.

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
500	(8,000,000)
TOTAL:	(8,000,000)

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

CITY COUNCIL APPROVAL

City Council Approval Date: _____

Agenda Item #: _____

Xavier Martinez — Prepared By *{print name}* — 3/21/2024 Date

Michael Dozier — Michael Dozier (Mar 21, 2024 13:58 MDT) — Mar 21, 2024 Date
Division Director Signature *{optional}*

John Dubois (Mar 21, 2024 15:23 MDT) — Mar 21, 2024 Date
Department Director Signature

Andy Hopkins — Budget Officer — Mar 22, 2024 Date

Emily K. Oster — Finance Director *{≤ $5,000}* — Apr 4, 2024 Date

John Blair — John Blair (Apr 4, 2024 17:16 MDT) — Apr 4, 2024 Date
City Manager *{≤ $60,000}*

Signature: John Dupuis (Apr 4, 2024 15:34 MDT)

Email: jedupuis@santafenm.gov

City of Santa Fe
Emergency Determination Form

The Department that makes an emergency procurement to plan or prepare for the response to a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event shall account for the money spent in making the procurement and report on that accounting to the City's Finance Department Director within ninety days after the end of the contract or fiscal year in which the procurement was made, whichever comes first.

I. Department: Public Utilities, **City of Santa Fe**

Department Director: John Dupuis

Department Contact: _P. Fred Heerbrandt, P.E.

Department Telephone Number: 505-955-4623

City of SF Chief Procurement Officer: **Travis Dutton-Leyda, CPO**

Telephone Number: **(505) 629-8351**

II. **A. Name of Contractor: AquaSight**

Address of Contractor: 1650 W. Big Beaver Rd., Troy MI 48084

Amount of prospective contract: $350,000.00

Term of prospective contract: Three years

B. Name of Contractor: Great Western Electrical

Address of Contractor: 3310 Girard NE, Albuquerque, nm 87107

Amount of prospective contract: $155,690.08

Term of prospective contract: One year

C. Name of Contractor: Carollo Engineers, Inc.

Address of Contractor: P. O. Box 30835, Salt Lake City, UT 84130-0835

Amount of prospective contract: $80,000.00

Term of prospective contract: One year

D. Name of Contractor: ITSQUEST Staffing

Address of Contractor: 1012 Marquez Pl Ste 301B, Santa Fe, NM 87505

Amount of prospective contract: $264,463.70

Term of prospective contract: One year and two months

E. Name of Contractor: Hazen and Sawyer

Address of Contractor: 100 Sun Ave. NE, Suite 206, Albuquerque, NM 87109

Amount of prospective contract: $2,718,000.00

Term of prospective contract: 2.5 years

F. Name of Contractor: A.A.C. Construction, LLC

Address of Contractor: 18 La Luna Rd, Santa Fe, NM 57507

Amount of prospective contract: $2,465,837.04

Term of prospective contract: Two Years

G. Name of Contractor: Molzen Corbin

Address of Contractor: 2701 Miles Rd. SE, Albuquerque, NM 87106

Amount of prospective contract: $180,000

Term of prospective contract: Two Years

H. Name of Contractor: Rain for Rent (Western Oilfields Supply Co.)

Address of Contractor: 2495 Lakeside Drive, Las Cruces, NM 88007

Amount of prospective contract: $903,214.87

Term of prospective contract: Three Years

GRAND TOTAL: $7,117,250.69

The attached contractors and their associated scopes of work will assist City staff in bringing the wastewater reclamation facility into compliance.

Location of Services: Paseo Real Wastewater Reclamation Facility, 73 Paseo Real, Santa Fe, NM 87507

III. **Please thoroughly list the services (scope of work), construction or items of tangible personal property of the contract:**

1. Emergency funding request to remediate issues currently affecting the WWTF
   a. Contractors: Hazen and Sawyer ($2.7M), AAC construction (est.$2.5M), Carollo ($80k), Aquasight ($350k), ITSQuest (scheduler $264k), Great Western ($156k), Molzen Corbin ($180k), Rain for Rent ($903K)
   b. Improvements Plan
      - Quarterly Reporting disconnect
      - Weekly Meetings with NMED
      - Unit Process Operating Strategy documentation (Carollo/Hazen)
      - Instrumentation Implementation
      - Model Development/SCADA Integration
      - Sample and Reporting External Support
      - Advanced SCADA for Each Process
      - Unit Process Improvements

See attached proposals and scopes of work for details.

IV. **Provide an explanation for the justification of the procurement including a description of the emergency condition(s) requiring use of emergency procurement and the practicable competition utilized in compliance with NMSA 1978, § 13-1-127.**

The United States Environmental Protection Agency (EPA) has issued an Administrative Order (AO) issued to the City of Santa Fe for violations of the Clean Water Act (CWA) (33 U.S.C. §§ 1251-1387). The violations were identified during a review of the permit file and discharge monitoring reports submitted for the Paseo Real Wastewater Reclamation Facility. The violations alleged are for failure to meet permit effluent limitations. This AO does not assess a monetary penalty; however, it does require compliance with applicable federal regulations.

Similarly, the New Mexico Environment Department (NMED) has determined that the City of Santa Fe Paseo Real Wastewater Treatment Plant (WWTP) has been operating in noncompliance with the New Mexico Water Quality Act (WQA) and Water Quality Control Commission (WQCC)' regulations (20.6.2 and 20.6.4 New Mexico Administrative Code) adopted pursuant to the WQA.

To facilitate the most efficient response to these regulators, the City requires emergency procurement to develop a plan and to implement that plan to bring the Paseo Real Wastewater Reclamation Facility into compliance as soon as is feasible to do so.

EPA Region 6 Administrative Order Attached.

III. **Please describe what measures are being taken to minimize the duration and effect of this particular emergency procurement (for example: is the emergency only in place until a competitive process can be completed, etc.).**

By immediately bringing these contractors in to perform their requested scopes of work, we can begin to bring the facility into compliance, thereby eliminating or minimizing the associated risks to public health and safety associated with the non-compliant discharge.

IV. **Describe what measures the Department will take in the future to prevent/mitigate use of emergency procurement under similar circumstances.**

It is our goal and desire to prevent the conditions that precipitated the need for this emergency procurement by implementing the measures afforded by this emergency procurement.

Certified by:

City Chief Procurement Officer, Travis Dutton-Leyda — **Date** Apr 3, 2024

City Approval by:

John Dupuis (Apr 4, 2024 10:44 MDT)

Department Director, John Dupuis — **Date** Apr 4, 2024

Marcos Martinez
Marcos Martinez (Apr 3, 2024 17:03 MDT)

City Attorney, Erin McSherry — **Date** Apr 3, 2024

John Blair
John Blair (Apr 3, 2024 18:09 MDT)

City Manager, John Blair — **Date** Apr 3, 2024

Emily K. Oster

Finance Director, Emily Oster — **Date** Apr 4, 2024

Note: All emergencies must be posted to the SPD website:
https://www.generalservices.state.nm.us/statepurchasing/submit-emergency.aspx
and the City of Santa Fe's website:
https://santafenm.gov/finance-2/purchasing-1/solicitations

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 6
FINDINGS OF VIOLATION AND COMPLIANCE ORDER
Docket Number: CWA-06-2024-1745; NPDES Permit Number: NM0022292

STATUTORY AUTHORITY

The following findings are made, and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). The Administrator of EPA delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

FINDINGS

1. The City of Santa Fe (Respondent) is a municipality which was incorporated under the laws of the State of New Mexico, and as such, is a "person" as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant to this Order (all relevant times), Respondent owned or operated a municipal wastewater treatment facility located at Airport Road, Santa Fe, Santa Fe County, New Mexico, 87504 (facility), and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all times relevant, the facility was a "point source" of a "discharge" of "pollutants" with its municipal wastewater to the receiving waters of Santa Fe River in Segment No. 20.6.4.113 of the Rio Grande Basin which are "waters of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. Respondent applied for and was issued NPDES Permit No. NM0022292 (herein the permit) under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on September 1, 2021, and expires on August 31, 2026. At all relevant times, Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

8. Part I.A of the permit places certain limitations on the quality and quantity of effluent discharged by Respondent. The relevant discharge limitations are indicated in the attached Table A.

9. Part I.C. of the permit requires the Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures, in order to determine the facility's compliance or noncompliance with the permit and applicable regulations. It also requires the Respondent to file with EPA certified Discharge Monitoring Reports (DMRs) of the results of monitoring, and Noncompliance Reports when appropriate.

10. Certified DMRs filed by the Respondent with EPA in compliance with the permit show discharges of pollutants from the facility that exceed the permitted effluent limitations established in Part I.A of the permit, as specified in the attached Table B.

11. Each instance in which Respondent discharged pollutants to waters of the United States in amounts exceeding the effluent limitations contained in the permit is a violation of the permit and Section 301 of the Act, 33 U.S.C. § 1311. Each violation of the conditions of the permit or regulations described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

12. Administrative Order (AO) Docket Number CWA-06-2019-1773 was issued on March 29, 2019, regarding the facility's NPDES permit excursions. The Respondent submitted a written response to the AO on May 31, 2019.

13. Administrative Order (AO) Docket Number CWA-06-2019-1818 was issued on August 26, 2019, regarding the facility's NPDES permit excursions. The Respondent submitted a written response to the AO on October 23, 2019.

14. Administrative Order (AO) Docket Number CWA-06-2021-1725 was issued on June 1, 2021, regarding the facility's NPDES permit excursions. The Respondent submitted a written response to the AO on June 11, 2021.

SECTION 309 (a)(3) COMPLIANCE ORDER

Based on the foregoing Findings and pursuant to the authority of Section 309 of the Act, EPA hereby orders Respondent to take the following actions:

A. Within thirty (30) days of the effective date of this Order, Respondent shall submit a list of the specific actions taken to correct the reporting and effluent violations cited in this Order.

B. Within thirty (30) days of the effective date of this Order, Respondent shall provide written certification to EPA, Region 6 that the violations cited herein have been corrected and that the facility is in compliance with the requirements of the permit.

C. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, Respondent shall, within thirty (30) days of the effective date of this Order, submit a comprehensive written plan for the elimination of the cited violations within the shortest possible time for EPA review. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan may include interim corrective measures to address effluent limit violations as quickly as possible followed by subsequent permanent measures. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

D. If Respondent would like to arrange a meeting with EPA to discuss the allegations in this Order, it should contact EPA within forty-five (45) days of the effective date of this Order. The meeting will be held at the Region 6 offices, 1201 Elm Street, Dallas, Texas, and Respondent can provide any information it believes is relevant to this Order. Respondent shall submit to EPA all information or materials it considers relevant to EPA at least ten (10) days prior to the meeting.

E. To arrange a meeting, or to ask questions or comment on this matter, please contact Ms. Mona Tates, of my staff, at (214) 665-7152 or tates.mona@epa.gov.

F. Any information or correspondence submitted by Respondent to EPA under this Order shall be addressed to the following:

Ms. Nancy Williams
williams.nancy@epa.gov

and

Ms. Mona Tates
tates.mona@epa.gov

GENERAL PROVISIONS

Issuance of this Section 309(a)(3) Compliance Order shall not be deemed an election by EPA to forego any administrative, judicial, civil or criminal action to seek penalties, fines, or any other relief appropriate under the Act for the violations cited herein, or other violations that become known to EPA. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

Respondent may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Failure to comply with this Section 309(a)(3) Compliance Order or the Act may result in further administrative action, or a civil judicial action initiated by the United States Department of Justice.

This Order does not constitute a waiver or modification of the terms or conditions of Respondent's NPDES permit, which remains in full force and effect. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligation to comply with any applicable federal, state, or local law or regulation.

The effective date of this Order is the date it is received by the Respondent.

March 4, 2024
Date

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 12/13/2023

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	CONTACT NAME: Sherryl Quint	
Downey & Company 6565 AMERICAS PARKWAY NE SUITE 750 ALBUQUERQUE NM 87110	PHONE (A/C, No, Ext): (505) 881-0300	FAX (A/C, No): (505) 881-0908
	E-MAIL ADDRESS: squint@downeyandco.com	

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : EMC Insurance Companies	
INSURER B : Employers Mutual Casualty Company	21415
INSURER C : New Mexico Security Insurance Company	15349
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
All-Rite Construction, Inc.
539 Oliver Ross Drive NW
Albuquerque NM 87121

COVERAGES **CERTIFICATE NUMBER:** 24/25 Multi **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:			5X10001	01/01/2024	01/01/2025	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 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY			5X10001	01/01/2024	01/01/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$ 1,000,000 $ $ $ $
B	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 10,000			5J10001	01/01/2024	01/01/2025	EACH OCCURRENCE AGGREGATE $	$ 5,000,000 $ 5,000,000 $
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [Y] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		89150.109	01/01/2024	01/01/2025	[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)

RE: City of Santa Fe Wastewater Management Division On-Call ContractCertificate holder is recognized as additional insured, as their interest may appear, per policy provisions.

CERTIFICATE HOLDER

City of Santa Fe

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

Sherryl L Quint

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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: A.A.C. CONSTRUCTION LLC
DBA: A.A.C. CONSTRUCTION LLC

Business Location: 18 LA LUNA RD
SANTA FE, NM 87507

CRS Number: 03-157349-00-5

Owner: Andrew Sisneros

License Number: 222939

License Type: Business License - Renewable

Issued Date: April 05, 2024

Classification: Out of Jurisdiction Contractor - Genera

Expiration Date: April 05, 2025

Fees Paid: $10.00

A.A.C. CONSTRUCTION LLC
18 LA LUNA RD LA LUNA
SANTA FE , NM 87507

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

Ver. 16 2/7/2020

Signature: XAVIER VIGIL
XAVIER VIGIL (Dec 14, 2024 18:03 MST)

Email: xivigil@santafenm.gov

Signature:

Email: jswalker@santafenm.gov

AAC EMERGENCY BAR int signed

Interim Agreement Report 2024-12-20

Created:	2024-12-19
By:	JAMES EDWARDS (jwedwards@santafenm.gov)
Status:	Out for Signature
Transaction ID:	CBJCHBCAABAAZYwXFQUPXxwospoJQwurdHo4g5q2W9Cd

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.

"AAC EMERGENCY BAR int signed" History

Document created by JAMES EDWARDS (jwedwards@santafenm.gov)
2024-12-19 - 4:42:56 PM GMT- IP address: 97.182.206.186

Document sent to LAYLA ARCHULETTA-MAESTAS (lsarchulettamaestas@santafenm.gov) and ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov) for signature. One of them to sign
2024-12-19 - 4:46:53 PM GMT

Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2024-12-19 - 6:13:24 PM GMT- IP address: 104.47.65.254

Document e-signed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
Signature Date: 2024-12-19 - 6:13:45 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature
2024-12-19 - 6:13:52 PM GMT

Email viewed by EMILY OSTER (ekoster@santafenm.gov)
2024-12-20 - 0:20:13 AM GMT- IP address: 104.47.65.254

Document e-signed by EMILY OSTER (ekoster@santafenm.gov)
Signature Date: 2024-12-20 - 0:23:35 AM GMT - Time Source: server- IP address: 63.232.20.2

Document sent to Randy Randall (rrandall@santafenm.gov) and lsarchulettamaestas@santafenm.gov for signature. One of them to sign
2024-12-20 - 0:23:41 AM GMT

Email viewed by Randy Randall (rrandall@santafenm.gov)

2024-12-20 - 4:37:58 AM GMT- IP address: 172.225.198.38

CITY OF SANTA FE

Date: November 21, 2024

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

From: Bill Schneider, PUD, Water Resources

Via: John Dupuis, Public Utilities Department Director

John Dupuis (Dec 6, 2024 09:17 MST)

Subject: Contract Amendment #1

Vendor Name: Stein & Brockmann

Munis Vendor Number: 3801

ITEM AND ISSUE:

The Public Utilities Department respectfully requests your review and approval of Amendment #1 to Contract Item Number 23-0415, Munis Contract Number 3204211, with Stein & Brockmann, P.A. for legal representation as described further below. This Amendment #2 is to increase the compensation by three-hundred twenty-four thousand five-hundred and sixty-two dollars and fifty cents ($324,562.50) for a contract total not to exceed three hundred eighty-nine thousand four hundred seventy-five dollars ($389,475.00) including gross receipts tax, and to extend the contract term by two (2) years to June 30, 2027.

CONTRACT NUMBER:

The FY23 Munis contract number is 3204211.

BACKGROUND AND SUMMARY:

The Public Utilities Department Water Division requires additional legal services, and time to conduct the services, to address recent legal challenges related to the Division's work for the San Juan Chama Return Flow Pipeline project. This contract currently describes the firm's work for the Water Division as: (1) return flow credits on the Santa Fe and Rio Grande Rivers; (2) ground water storage and recovery; (3) on-call consultation on water rights matters, and; (4) regular consultation and communication with the City Attorney's Office about these matters. The Contractor's scope of work includes entering an appearance in any administrative or judicial proceeding, one of which is forthcoming in approximately three (3) weeks related to this project.
Unanticipated additional work requires time beyond the current contract term and additional budget to fund the additional costs.
The original approval date is June 12, 2023, City Clerk number 23-0415.

Prior Approvals and Supporting Information:

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-98, Exempt

This contract was signed by the City Manager June 12, 2023. The existing contract, number 3204211, expires on June 30, 2025.

Chief Procurement Officer (CPO) / Designee: _____ **Date:** Dec 9, 2024
CPO Comment/Exceptions: Amendment #1

FUNDING SOURCE:

Fund Name/Number: Water Cash Fund 505

Munis Org Name/Number: 5050382

Munis Object Name/Number: 510200

Budget Officer / Designee: Andy Hopkins **Date:** Dec 9, 2024
Budget Officer Comment/Exceptions: _____

ASSOCIATED APPROVALS:

Does this purchase require any of the following associated approvals: ☐ Yes | ☐ No
(ITT, Vehicles/Fleet, Facilities, Asset, Grant Review)

IT Components included? ☐ Yes | ☒ No
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Vehicles included? ☐ Yes | ☒ No
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Construction, Facilities, Furniture, Fixtures, Equipment included? ☐ Yes | ◉ No
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Capital Asset* or Project ☐ Yes | ☐ No**
Project Ledger #: _____
(*will this procurement result in a tangible item that costs more than $5,000?)
(**Capital Projects are new and improvement projects that are going to cost $10,000 or more)
Approval: _____ **Title:** _____ **Date**: _____
Comment/Exceptions: _____

Is this a Grant Funded Purchase? ☐ Yes | ◉ No
Approval: _____ **Title:** _____ **Date:** _____
Comment/Exceptions: _____

ATTACHMENTS:

Procurement Document: SWPA/Existing Contract

Vendor's Quote

Legal Services Contract

1. Certificate of Liability Insurance (COI)
2. Original Contract and Packet

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 02/29/2024

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
LAI Professional Insurance Programs
810 Calle Mejia Suite 104
Santa Fe NM 87501

CONTACT NAME: Brenda Wooster
PHONE (A/C, No, Ext): (505) 471-0088 **FAX (A/C, No):** (505) 471-4358
E-MAIL ADDRESS: brenda.wooster@lai-insurance.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Medmarc Casualty Insurance Company	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Stein & Brockmann
505 Don Gaspar
Santa Fe NM 87505

COVERAGES **CERTIFICATE NUMBER:** CL2422913638 **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: Professiona Liability			24MCNM000002	01/09/2024	01/09/2025	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 $ $ $ $ 2,000,000 $
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ (Mandatory in NH) N/A If yes, describe under DESCRIPTION OF OPERATIONS below						☐ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $

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

Claims Made Policy Form, extending full prior acts coverage.

CERTIFICATE HOLDER

City of Santa Fe
200 Lincoln Avenue
P. O. Box 9029
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
Brenda Wooster

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CITY OF SANTA FE

LEGAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Stein & Brockmann, P.A. (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City.

1. Scope of Services

The Contractor agrees to represent the City in following matters:

A) Return Flow Credits on the Santa Fe and Rio Grande Rivers. Planning, drafting, and applying for one or more Return flow and/or discharge credits on the Santa Fe and Rio Grande Rivers. The application process includes, but is not limited to pre-application discussions and any administrative or adjudicative proceedings necessary to the permit process, as well as any appeals from the permitting process.

B) Ground Water Storage and Recovery. Planning, drafting, and applying for one or more groundwater storage and recovery permits on the Santa Fe and/or Rio Grande Rivers. The application process includes, but is not limited to, pre-application discussions and any administrative or adjudicative proceedings necessary to the permit process, as well as any appeals from the permitting process.

C) On-Call: Additional consultation with respect to water rights matters on an as needed basis and as requested by the City.

D) Consultation. The Contractor shall regularly consult and communicate with the City Attorney's Office regarding the status of t matter. Both the Contractor and the City Attorney's Office shall enter an appearance in any administrative or judicial proceeding.

2. Standard of Performance; Licenses.

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

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

3. Compensation.

A. The City shall pay to Contractor the following hourly rates: **$275/hour for Jay Stein or Jim Brockmann's time, $250/hour for junior associates, and $180/hour for paralegal time**. In addition, the City shall pay the Contractor for expenses incurred in the performance of services in the Agreement such as copying, telephone and computer research charges at the normal rate for such expenses charged by the Contractor to its other clients. Per diem and mileage expenses shall not exceed the amounts provided in the Per Diem and Mileage Act. Said services shall not exceed **sixty-thousand dollars ($60,000),** plus gross receipts tax, in total for the term of this Agreement.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums payable under this Agreement.

C. Payment shall be made upon receipt and approval by the City of detailed

statements containing a report of services completed. Compensation shall be paid only for services actually performed.

4. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on June 30, 2025 unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

5. 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.

6. 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.

7. 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.

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 ownership 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 13 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 13 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 13 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

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

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. 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.

16. 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.

17. 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.

18. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

19. 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.

20. Insurance

A. The Contractor shall maintain adequate legal malpractice insurance. It is the sole responsibility of the Contractor to be in compliance with the law. 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 obtain and maintain Workers' Compensation insurance required by law to provide coverage for Contractor's employees throughout the term of this Agreement. Upon request, Contractor shall provide the City with evidence of its compliance with such requirement.

21. Records and Financial Audit.

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

22. INDEMNIFICATION.

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments 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, including payments of all attorneys' fees and costs.

23. NEW MEXICO TORT CLAIMS ACT

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

24. Invalid Term or Condition.

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

25. 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:
CITY ATTORNEY'S OFFICE
P.O. BOX 909
SANTA FE, NM 87504

CONTRACTOR:
STEIN & BROCKMANN, P.A.
P.O. BOX 2067
SANTA FE, NM 87504

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

CITY OF SANTA FE:

John Blair
John Blair (Jun 12, 2023 21:14 MDT)
JOHN BLAIR, CITY MANAGER

Date: Jun 12, 2023

CONTRACTOR:
Stein & Brockmann, P.A.

Jay Stein
Jay F. Stein, President

Date: 4/17/2023

N.M. Taxation & Revenue
CRS #02-130722-009
City of Santa Fe Business
Registration #19-00070821

ATTEST:

Kristine Mihelcic
KRISTINE BUSTOS MIHELCIC, CITY CLERK XIV

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Apr 17, 2023 16:07 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
Emily K. Oster (Jun 10, 2023 08:30 MDT)

EMILY OSTER, FINANCE DIRECTOR

5050381.510200 AH
AH

City of Santa Fe, New Mexico

memo

Date: April 10, 2023

To: John Blair, City Manager
Emily Oster, Finance Director
Travis Dutton-Leyda, Purchasing Director

From: Marcos D. Martínez, Senior Assistant City Attorney MM
Irene Romero, Administrative Manager

Via: Erin K. McSherry, City Attorney EM
John Dupuis, Public Utilities Director JD

Re: Legal Services Agreement with Stein & Brockmann, LLC

The City Attorney's Office is requesting approval of the Legal Services Agreement with Stein & Brockmann, LLC. for $60,000, term date of June 30, 2025 for the following services:

A) Return Flow Credits on the Santa Fe and Rio Grande Rivers. Assisting the City with the state and federal permitting processes for one or more return flow and/or discharge credits on the Santa Fe and Rio Grande Rivers. The application process includes, but is not limited to any administrative or adjudicative proceeding and subsequent negotiations with the NM Office of the State Engineer, and the federal agencies involved in the NEPA process necessary to the permit the project.

B) Ground Water Storage and Recovery. Planning, drafting, and applying for one or more groundwater storage and recovery permits on the Santa Fe and/or Rio Grande Rivers. The application process includes, but is not limited to, pre-application discussions and any administrative or adjudicative proceeding necessary to the permit process.

C) Forty (40) and One-Hundred (100) Year Plans. Assist the City in drafting a water development plan for both internal planning use and possible submission to the New Mexico Office of the State Engineer.

D) Consultation. The Contractor shall regularly consult and communicate with the City Attorney's Office regarding the status of the matter. Both the Contractor and the City Attorney's Office shall enter an appearance in any administrative or judicial proceeding.

RECOMMEND ACTION:

The City Attorney's Office recommends approval of the Legal Services Agreement with Stein and Brockmann for $60,000, plus GRT, term date of June 30, 2025.

Business Unit 5050381 Line Item 510200

City of Santa Fe, New Mexico
memo

Date: March 21, 2023

To: Travis Dutton-Leyda, Chief Procurement Officer

From: Irene Romero, Administrative Manager IR

Subject: Exemption Determination Request 11-13 B 3

City Attorney's Office respectfully request exempt determination to be approved by the City's CPO. The Agreement is between the Stein Law Firm and the City of Santa Fe. The Stein Law Firm represents the City in the following matters: Return flow credits SF and Rio Grande Rivers; Ground Water Storage and recovery; consultation

City of Santa Fe follows the New Mexico State Procurement code.

(3) Legal services for advice, consultation, and representation of the City.

Amount: $60,000 plus grt $4987.50
Term: June 30, 2025

Approved Exemption

Travis Dutton-Leyda

Chief Procurement Officer

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Stein & Brockman
Procurement Title: Legal Services 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 City Attorney's Office Staff Name Marcos Martinez /Irene Romero

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: _____

Irene Romero	Administrative Manager	3/21/23
Department Rep Printed Name (attesting that all information included)	Title	Date
Travis Dutton-Leyda	Chief Procurement Officer	May 19, 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 any resulting contract.

*

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **3204027**

Contractor: **Stein & Brockman, LLC**

Description: **Contractor shall represent the City in following matter: Return Flow Credits on the SF and Rio Grande Rivers, Ground Water Storage and Recovery and consultation.**

Contract ☐ Agreement ☑ Lease / Rent ☐ Amendment ☐

Term Start Date: **7/1/23** Term End Date: **6/30/25**

☐ Approved by Council Date: _____

Contract / Lease: **Legal Services Agreement: $60,000**

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:** _____

Travis Dutton-Leyda — May 19, 2023

Purchasing Officer Review: Date:

Comment & Exceptions: Exempt CoSF Procurement Manual VI. 20

4. **Funding Source:** _____ **Org / Object:** **5050381.510200**

Andy Hopkins — May 19, 2023

Andy Hopkins (May 19, 2023 11:53 MDT)

Budget Officer Approval: Date:

Comment & Exceptions: _____

Staff Contact who completed this form: _____ Phone # _____

Email: _____

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

City of Santa Fe

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

BUSINESS REGISTRATION

Business Name: STEIN & BROCKMAN P.A.
DBA: STEIN & BROCKMAN P.A.

Business Location: 505 DON GASPAR AVE
SANTA FE , NM 87505

CRS Number: 0213072209

Owner: STEIN & BROCKMANN P.A.

License Number: 226583

License Type: Business License - Renewable

Issued Date: January 23, 2023

Classification: Business Registration - Standard

Expiration Date: January 23, 2024

Fees Paid: $35.00

STEIN & BROCKMAN P.A.
PO BOX 2067
SANTA FE, NM 87504

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

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

TO BE POSTED IN A CONSPICUOUS PLACE

Ver. 16 2/7/2020

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 02/23/2023

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
LAI Professional Insurance Programs
810 Calle Mejia Suite 104
Santa Fe NM 87501

CONTACT NAME: Brenda Wooster
PHONE (A/C, No, Ext): (505) 471-0088 **FAX (A/C, No):** (505) 471-4358
E-MAIL ADDRESS: brenda.wooster@lai-insurance.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Medmarc Casualty Insurance Company	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Stein & Brockmann
505 Don Gaspar
P. O. Box 2067
Santa Fe NM 87504

COVERAGES **CERTIFICATE NUMBER:** CL2322312165 **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	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	CLAIMS-MADE OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) N/A						E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Professional Liability			23MCNM000004	01/09/2023	01/09/2024	Per Claim	2,000,000
							Aggregagte	2,000,000

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

CERTIFICATE HOLDER
Stein & Brockmann
505 Don Gaspar Avenue
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
Brenda L Wooster

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The ACORD name and logo are registered marks of ACORD

Signature:

Email: ekmcsherry@santafenm.gov

Signature:
John Dupuis (May 15, 2023 11:11 MDT)

Email: jedupuis@santafenm.gov

Signature:
Marcos Martinez (May 15, 2023 11:11 MDT)

Email: mdmartinez@santafenm.gov

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/22/2023

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.

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PRODUCER
LAI Professional Insurance Programs
810 Calle Mejia Suite 104
Santa Fe NM 87501

CONTACT NAME: Brenda Wooster
PHONE (A/C, No, Ext): (505) 471-0088 **FAX (A/C, No):** (505) 471-4358
E-MAIL ADDRESS: brenda.wooster@lai-insurance.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Medmarc Casualty Insurance Company	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Stein & Brockmann
505 Don Gaspar
P. O. Box 2067
Santa Fe NM 87504

COVERAGES **CERTIFICATE NUMBER:** CL2332212317 **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	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	☐ OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ (Mandatory in NH)	N/A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Professional Liability			23MCNM000004	01/09/2023	01/09/2024	Per Claim	2,000,000
							Aggregagte	2,000,000

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

CERTIFICATE HOLDER
City of Santa Fe
200 Lincoln Avenue
P. O. 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
Brenda L Wooster

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CM CAO Stein Brockman

Final Audit Report 2023-05-19

Created:	2023-05-19
By:	Jimmy Tapia (jptapia@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAQGI3cVed5rmAgk4mdDWkL9U4AI-MKaeI

"CM CAO Stein Brockman" History

Document created by Jimmy Tapia (jptapia@ci.santa-fe.nm.us)
2023-05-19 - 2:33:54 PM GMT- IP address: 63.232.20.2

Document emailed to Andy Hopkins (ajhopkins@santafenm.gov) for signature
2023-05-19 - 2:36:23 PM GMT

Restricted visibility Email viewed by Andy Hopkins (ajhopkins@santafenm.gov)
2023-05-19 - 5:52:41 PM GMT- IP address: 104.47.65.254

Restricted visibility Document e-signed by Andy Hopkins (ajhopkins@santafenm.gov)
Signature Date: 2023-05-19 - 5:53:02 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Travis Dutton-Leyda (tkduttonleyda@santafenm.gov) for signature
2023-05-19 - 5:53:04 PM GMT

Email viewed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
2023-05-19 - 6:12:12 PM GMT- IP address: 104.47.65.254

Document e-signed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
Signature Date: 2023-05-19 - 8:31:27 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.
2023-05-19 - 8:31:27 PM GMT

Item#_____
Munis Contract# 3204211
Original Contract Item# 23-0415
SWPA/GSA/Coop/RFP/ITB #: Exempt

CITY OF SANTA FE
AMENDMENT No. 1 TO
LEGAL SERVICES AGREEMENT
ITEM# 23-0415

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE LEGAL SERVICES AGREEMENT, dated June 12, 2023 (the "Contract"), between the City of Santa Fe (the "City") and Stein & Brockmann, P.A. (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 Contract, Contractor has agreed to represent the City in the following matters: (1) return flow credits on the Santa Fe and Rio Grande Rivers (2) ground water storage and recovery (3) on-call water rights matters, and (4) regular consultation and communication with the City Attorney's Office about these matters.

B. Pursuant to Article 14 of the Contract, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION.

The last sentence of Article 3, paragraph A, of the Contract is amended to increase the amount of compensation by a total of $324,562.50 including New Mexico gross receipts tax so that the last sentence of Article 3, paragraph A, reads in its entirety as follows:

Said services shall not exceed three hundred eighty-nine thousand four hundred seventy-five dollars ($389,475.00) including gross receipts tax, in total for the term of this agreement.

2. TERM:

Article 4 of the Contract is hereby deleted in its entirety and substitute the following Article 4 in its place:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on June 30, 2027 unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations).

3. CONTRACT IN FULL FORCE.

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

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

CITY OF SANTA FE:

_____
ALAN WEBBER, MAYOR

DATE:_____

CONTRACTOR:
Stein & Brockmann, P.A.

Jay Stein
Jay Stein (Nov 20, 2024 14:56 MST)

JAY F. STEIN, PRESIDENT

DATE: Nov 20, 2024

CRS #02-130722-009

ATTEST:

_____
ANDRÉA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Nov 20, 2024 14:57 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

_____
FINANCE DIRECTOR

Stein & Brockmann Memo-COI-Original Contract Pkt for Amendment 2 (1)

Interim Agreement Report 2024-12-11

Created:	2024-12-04
By:	JAMES EDWARDS (jwedwards@santafenm.gov)
Status:	Out for Signature
Transaction ID:	CBJCHBCAABAAxt_8H-zMwUbc8QU55YSMC-rwkfC3XQ6R

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.

"Stein & Brockmann Memo-COI-Original Contract Pkt for Amendment 2 (1)" History

Document created by JAMES EDWARDS (jwedwards@santafenm.gov)
2024-12-04 - 3:52:40 PM GMT- IP address: 97.182.93.53

Document emailed to John Dupuis (jedupuis@santafenm.gov) for signature
2024-12-04 - 3:55:28 PM GMT

Document e-signed by John Dupuis (jedupuis@santafenm.gov)
Signature Date: 2024-12-06 - 4:17:39 PM GMT - Time Source: server- IP address: 174.240.17.201

Document sent to ALEXIS LOTERO (aclotero@santafenm.gov) and ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov) for signature. One of them to sign
2024-12-06 - 4:17:43 PM GMT

Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2024-12-09 - 4:41:36 PM GMT- IP address: 104.47.64.254

Document e-signed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
Signature Date: 2024-12-09 - 4:42:35 PM GMT - Time Source: server- IP address: 63.232.20.2

Document sent to JoAnn Lovato (jdlovato@santafenm.gov) and Travis Dutton-Leyda (tkduttonleyda@santafenm.gov) for signature. One of them to sign
2024-12-09 - 4:42:39 PM GMT

Email viewed by JoAnn Lovato (jdlovato@santafenm.gov)
2024-12-09 - 4:48:39 PM GMT- IP address: 73.228.7.52

Document e-signed by JoAnn Lovato (jdlovato@santafenm.gov)

Signature Date: 2024-12-09 - 4:52:10 PM GMT - Time Source: server- IP address: 73.228.7.52

Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature

2024-12-09 - 4:52:13 PM GMT

City of Santa Fe, New Mexico

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

Alan Webber, Mayor

Councilors:
Signe I. Lindell, Mayor Pro Tem, District 1
Alma G. Castro, District 1
Michael J. Garcia, District 2
Carol Romero-Wirth, District 2
Lee Garcia, District 3
Pilar F.H. Faulkner, District 3
Jamie Cassutt, District 4
Amanda Chavez, District 4

DATE: **December 23, 2024**

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

FROM: **James Harris, Airport Manager; Kelly Bynon, Administrative Manager** Kelly Bynon

---

ACTION:

Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $286,560 to increase WIP Construction using funds budgeted in Miscellaneous Revenue during FY24.

(Kelly Bynon, Administrative Manager, kabynon@santafenm.gov)

BACKGROUND AND SUMMARY:

During FY24, the Santa Fe Regional Airports tenant, Signature Aviation, reverted two of their Hangar spaces back to the Airport's possession. At the time of reverting the hangars, there was found to be issues with the hangar doors, heating and other various items. Signature Aviation and the City of Santa Fe came to an agreement that Signature would pay for the cost of fixing these issues.

In FY24, Signature wired a payment pf $286,560 to the Airport based on the estimated cost of repairs. The Airport was unable to have these repairs done in FY24 but now has a contract in place to move forward. Therefore, approval of this expenditure only BAR is requested.

COMMITTEE REVIEW
Public Works: 01/06/2025
Finance: 01/13/2025
Governing Body: 01/15/2025

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

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

DEPARTMENT / DIVISION NAME	DATE
Public Works / Airport	12/23/2024

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WIP Construction	5450407	572970	AIR2554513	286,560	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
				$ 286,560	$ -

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

This money was provided to the Santa Fe Airport from tenant "Signature Flight Support" for the repair of hangar doors in FY24.

The repairs were not complete in the last FY however, the airport is ready to move forward using our Davenport on call contract.

This money was placed in misc. revenues but never budgeted to an expenditure account.

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
545	(286,560)
TOTAL:	**(286,560)**

Kelly Bynon — 12/23/2024
Prepared By *{print name}* — Date

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

ALEXIS LOTERO (Dec 26, 2024 12:45 MST) — Dec 26, 2024
Budget Officer — Date

Division Director Signature *{optional}* — Date

James Harris (Dec 25, 2024 19:39 MST) — Dec 25, 2024
Department Director Signature — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

Account

Fund	545 ...	AIRPORT	Acct	545-70-25-6050-000-00-000-471400-	
Org	5456050 ...	AIR Oper	Acct name	Miscellaneous Revenues 2	Account Notes
Object	471400 ...	Misc Rev	Type	Revenue	Status Active
Project	...		Rollup	...	
			Sub-Rollup	...	

MultiYr Fund

4 YEAR COMPARISON | HISTORY | 4 YEAR GRAPH | HISTORY GRAPH

Yr/Per 2024/13	Fiscal Year 2024	Fiscal Year 2023	Fiscal Year 2022	Fiscal Year 2025
Original Budget	.00	.00	.00	.00
Transfers In	.00	.00	.00	.00
Transfers Out	.00	.00	.00	.00
Revised Budget	.00	.00	.00	.00
Actual (Memo)	-289,242.99	-6,421.92	.00	-655.21
Encumbrances	.00	.00	.00	.00
Requisitions	.00			.00
Available	289,242.99	6,421.92	.00	655.21
Percent used	.00	.00	.00	.00

CITY OF SANTA FE

GENERAL JOURNAL ENTRY PROOF

Journal Summary

Year	Period	Journal	Journal Desc	Ref 2	Ref 3
2024	02	1635	ACH WIRE		

Src	Eff Date	Account Project String	Ref 1	Account Description Line Description	T	OB	Debit	Credit
GCR	08/10/2023	5456050-471400-		Miscellaneous Revenues 2 BBA AVIATION (SIGNATURE)				286,560.00
GCR	08/10/2023	999-100900-		Cash in Common ACH WIRE			286,560.00	
GCR	08/10/2023	999-290545-		Pooled Cash Fund 545 SYSTEM GENERATED DUE TO LINE				286,560.00
GCR	08/10/2023	545-100700-		AP Cash Control SYSTEM GENERATED DUE FROM LINE			286,560.00	
						Totals	**573,120.00**	**573,120.00**
GCR	08/10/2023	545-400000-		Revenue Control				286,560.00

Fund Summary

Year	Period	Journal	Eff Date
2024	02	1635	08/10/2023

Fund	Fund Description	Account	Account Description		Debit	Credit
545	Airport	545-100700-	AP Cash Control		286,560.00	
545	Airport	545-400000-	Revenue Control			286,560.00
				Fund Totals	**286,560.00**	**286,560.00**
999	Pooled Cash	999-100900-	Cash in Common		286,560.00	
999	Pooled Cash	999-290545-	Pooled Cash Fund 545			286,560.00
				Fund Totals	**286,560.00**	**286,560.00**

Due To/Due From Summary

Fund	Fund Description	DUE TO	DUE FROM
		0.00	0.00
	Totals	**0.00**	**0.00**

** End of Report - Generated by Randal L Holmes **

CITY OF SANTA FE

Date: **December 10, 2024**

To: **Governing Body, Finance, Public Works, and Utilities Committees**

Via: **James Harris, Airport Director**
James Garduno, Project Manager

From: **Sebastian Gallegos, Airport Project Administrator**

Subject: **Terminal Ramp Reconstruction**

Vendor Name: **Vital Consulting Group, LLC.**

Vendor Number: **5092**

ITEM AND ISSUE:
Request for the approval of Construction Contract in the total amount of $7,182,098.05 including NMGRT to complete a 2 phased demolition and reconstruction of the Terminal Ramp at the Santa Fe Regional Airport.; Sebastian Gallegos, Project Administrator, sfgallegos@santafenm.gov, 505-695-3538, James Harris, Airport Manager, jcharris@santafenm.gov, 505-955-2901

Action Requested: Approval of this construction contract for the Santa Fe Regional Airport.

BACKGROUND AND SUMMARY:

The Santa Fe Regional Airport has annual inspections by the Federal Aviation Administration (FAA). The terminal ramp was found by the FAA to have deficiencies with the structure and drainage.
This project will consist of:

- Reconstruction of the aircraft parking ramp adjacent to the existing Terminal Building.
- Addition of 1 new parking ramp.
- Reconstruction of this Terminal Ramp's storm drain system.
- Repainting the pavement markings of the Terminal Ramp.
- Removing and resetting airport security fencing adjacent to the ramp reconstruction location.

Molzen Corbin is the airport's A&E, they have provided the plans that meet all FAA regulations.

The airport posted ITB #25012 for the reconstruction of the ramp, Vital Consulting Group (VCG) was selected as the awarded vendor. This Contract will allow Vital Consulting Group to supply a site survey, drawings, rigging, and as built drawings, alongside general contracting and subcontracting for demolition and reconstruction, and ensuring that timelines and milestones are met accordingly. This project will not cause any closures of the airport.

PROCUREMENT METHOD:
This work is being procured via ITB using FAA grant funding, the remainder amount will be procured via an NMDOT Grant

Chief Procurement Officer Approval: _____ **Date:** Dec 11, 2024
Comment/Exceptions: NMSA 1978, Section 13-1-104

Supporting Information:

CONTRACT NUMBER: 3250179
The FY24 Munis contract number is 3250179

The funding source is:
Fund Name/Number: 545AIRPORT
Munis Org Name/Number: 5450407 / AIRPORT CIP
Munis Object Name/Number: 572970 / WIP CONSTRUCTION

If the project is grant funded? List grant award number*:* *3-35-0037-065-2024*

Grant Manager / Accounting Officer Approval: Erika Lujan Erika Lujan (Dec 11, 2024 12:39 MST) **Date:** Dec 11, 2024
Comment/Exceptions: _____

Project Ledger #: AIR2554506

Budget Officer Approval: Andy Hopkins **Date:** Dec 11, 2024
Comment/Exceptions: _____

CAPITAL ASSET (will this procurement result in a tangible item that costs more than $5,000?):

☐Yes | ☒ No

 # (if known): _____

Repair or Replacement of Existing Equipment:

☐Yes | ☒ No
If yes -> ☐Repair | ☒ Replacement

Please explain: _____

Capital Project:
(New and improvement projects that are going to cost $10,000 or more)
☒ Yes | ☐ No

Project Ledger #: AIR2554506

Anticipated length of project: 1 year

Asset Manager Approval: _____ **Date:** _____
Comment/Exceptions: _____

Department Approvals:
IT Components: ☐ **Yes** | ☒ **No**
Vehicles: ☐ **Yes** | ☒ **No**
Facilities, Furniture, Fixtures, Equipment: ☐ **Yes** | ☒ **No**

Approval: _____ **Title:** _____ **Date**: _____
Approval: _____ **Title:** _____ **Date**: _____
Comment & Exceptions: _____

Department Contract Administrator Contact Info:

ATTACHMENTS:
Vendor's Quote
Certificate of Liability Insurance
Construction Contract
CPO Determination

Item #: _____
Munis Contract #: 3250179_____
ITB #: 25012_____

CITY OF SANTA FE

CONSTRUCTION CONTRACT

THIS CONTRACT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **Vital Consulting Group, LLC**, 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 procured this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount; and

The City and the Contractor hereby agree as follows:

1. Scope of Work

A. The Contractor shall perform the following work:

The Contractor shall perform all the work required by the Contract Documents for Terminal Ramp Reconstruction. (Bid Number 25012), including but not limited to reconstruction of the aircraft parking ramp adjacent to the existing Terminal Building, reconstruction of this Terminal Ramp's storm drain system, repainting the pavement markings of the Terminal Ramp, and removing and resetting airport security fencing adjacent to the ramp reconstruction location as described in the Contract Documents.

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.

B. Project: Terminal Ramp Reconstruction.

C. City Department: Santa Fe Regional Airport

D. Distribution:

City: James Harris - Airport Manager, Santa Fe Regional Airport
121 Aviation Drive
Santa Fe, NM 87507

Contractor: Vincent Martinez, Vital Consulting Group
315 5th St NW
Albuquerque, NM 87102

Engineer: Kent Freier - Molzen Corbin
2701 Miles Rd SE
Albuquerque, NM 87106

2. Compensation

A. The total amount payable to the Contractor under this Contract including gross receipts tax and expenses, shall not exceed seven million one hundred eighty-two thousand ninety-eight dollars and five cents ($7,182,098.05). The New Mexico gross receipts tax levied on the amounts payable under this Contract shall be paid by the City to the Contractor, as follows:

The Unit Bid Contract Total is determined as follows:

Base Option B	$ 6,638,565.50
Gross Receipts Tax (8.1875%)	$ 543,532.55
Total Base Option B (w/NMGRT)	$ 7,182,098.05

The total amount payable to the Contractor under this Contract, including Alternates (if needed) gross receipts tax and expenses, shall not exceed seven million one hundred eighty-two thousand ninety-eight dollars and five cents ($7,182,098.05) including NM Gross Receipts Tax. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Contract 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 Contract 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 Contract being amended in writing prior to those services in excess of the total compensation amount being provided.

The City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of seven million one hundred eighty-two thousand ninety-eight dollars and five cents ($7,182,098.05) in (FY24) through (FY28). The New Mexico gross receipts tax levied on the amounts payable under this Contract totaling seven million, one hundred and forty-five thousand, eight hundred and seventeen dollars and thirty-seven cents ($7,182,098.05) shall be paid by the City to the Contractor.

B. Payment in future fiscal years is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.)

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within twenty-one days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.

D. If the City fails to pay the contractor within twenty-one days after receipt of an undisputed request for payment, the City shall pay interest to the contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until the payment is issued. If the City receives an improperly completed invoice, the City shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and the owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete.

E. **Notice of Extended Payment Provision for Grant Funded Contracts**. This contract allows the City to make payment within 45 days after submission of an undisputed request for payment for contracts funded by grant money consistent with NMSA 1978, sec. 57-28-5(B).

3. Term

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This contract shall terminate **four (4) years from date of final signature**. The City reserves the right to renew this contract on an annual basis by mutual agreement not to exceed a total of ten (10) years in accordance with NMSA 1978, Sections 13-1-150 through 152.

4. Termination

A. Grounds. The City may terminate this Contract for convenience or cause. For contracts within their authority, the City Manager or their designee is authorized to provide the notice of termination, otherwise such notice of termination shall be provided by the Mayor or their designee as authorized by the Governing Body. The Contractor may only terminate this Contract based upon the City's uncured, material breach of this Contract.

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 Contract 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 Contract 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 Contract, the Contractor is suspended or debarred by the City; or (iii) the Contract is terminated pursuant to Paragraph 5,

"Appropriations," of this Contract.

C. Liability. Except as otherwise expressly allowed or provided under this Contract, 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 Contract. 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 CONTRACT.*

5. Appropriations

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Contract. If sufficient appropriations and authorization are not made by the Governing Body, this Contract 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 Contract to unilaterally reduce funding, the Contractor shall have the option to terminate the Contract 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 construction 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 Contract. 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 Contract or assign any claims for money due or to become due under this Contract 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 Contract without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Contract, nor shall any subcontract obligate direct payment from the City.

10. Release

Final payment of the amounts due under this Contract shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Contract.

11. Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of this Contract 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 Contract shall become the property of the City and shall be delivered to the City no later than the termination date of this Contract. Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright or other claim of ownership 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 Contract, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Contract.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Contract, will continue to comply with, and that this Contract 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 Contract was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Contract, 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 Contract 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 Contract 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 Contract to the contrary, the City may immediately terminate the Contract.

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

14. Amendment

A. This Contract 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 Contract 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 Contract, 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) Contract compensation, as outlined in Article 2; or
5) Contract 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 Contract, and become binding as a part of the original Contract.

16. Merger

This Contract 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 contract.

All terms and conditions of **ITB** # 25012 and the Contractor's response to such document are incorporated herein by reference and is included in the order of precedence.

No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

17. Penalties for violation of law

NMSA 1978, sections 13-1-28 through 13-1-199, 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 Contract. If Contractor is found not to be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

19. Applicable Law

The laws of the State of New Mexico shall govern this Contract, 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, section 38-3-2. By execution of this Contract, 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 Contract.

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 Contract may be terminated by the City.

21. Other Insurance

If the services contemplated under this Contract will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Contract, 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 Contract shall be the greater of (1) the minimum coverage and limits specified in this Contract, 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 Contract are sufficient to cover the obligations of Contractor hereunder.

D. Contractor shall maintain the above insurance for the term of this Contract 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.

22. 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 Contract's term and effect and retain them for a period of three (3) years from the date of final payment under this Contract. 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 Contract shall not foreclose the right of the City to recover excessive or illegal payments

23. 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 Contract, 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 Contract. 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 Contract 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.

24. New Mexico Tort Claims Act

Any liability incurred by the City of Santa Fe in connection with this Contract 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 Contract

modifies or waives any provision of the New Mexico Tort Claims Act.

25. Invalid Term or Condition

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

26. Enforcement of Contract

A party's failure to require strict performance of any provision of this Contract 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 Contract 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.

27. Notices

Any notice required to be given to either party by this Contract 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: James Garduño – Project Manager, Santa Fe Regional Airport, 121 Aviation Dr. Santa Fe, NM 87507, jdgarduno@santafenm.gov

To the Contractor: Vincent Martinez – President/Managing Member, Vital Consulting Group, LLC., 315 5th St NW, Albuquerque, NM 87102, Vincent.martinez@vitalgrp.net

28. Authority

If Contractor is other than a natural person, the individual(s) signing this Contract 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. General and Special Provisions

A. Terms used in this Contract 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 comply with the law.

C. This Contract shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Contract.

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 Contract 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 Contract.

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 Contract 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 Contract are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Contract.

I. Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Contract shall be attached to this Contract at the time of execution and are hereby incorporated by reference as though set forth in full in this Contract to the extent they are consistent with its conditions and terms.

J. Separability. If any clause or provision of this Contract is illegal, invalid or unenforceable under present or future laws effective during the term of this Contract, then and in that event, it is the intention of the parties hereto that the remainder of this Contract shall not be affected thereby.

K. 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.

L. 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.

M. Pursuant to NMSA 1978, section 13-1-191, reference is hereby made to the Criminal Laws of New Mexico (including NMSA 1978, sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (NMSA 1978, sections 13-1-28 through 13-1-199) imposes civil and criminal penalties for its violation.

N. Pursuant to NMSA 1978, section 13-4-11. 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 Contract as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

_____
ALAN WEBBER, MAYOR

DATE: _____

CONTRACTOR: VITAL CONSULTING GROUP, LLC.

_____
VINCENT MARTINEZ,
PRESIDENT/MANAGING MEMBER

DATE: Nov 12, 2024
CRS#: 03-206732-00-1

ATTEST:

_____
GERALYN CARDENAS, INTERIM CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault
Kevin L. Nault (Nov 12, 2024 16:51 MST)
ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
FINANCE DIRECTOR

ITEM NO.	SPEC NO.	DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	AMOUNT
Deductive Alternate A2 - 8" PCCP Terminal Ramp, 9" PCCP FBO Ramps - Replace Item #12 of Base Option A with the Following Two Items						
1	P-501	Portland Cement Concrete Pavement, 8" Thickness, Complete	SY	9,510	$124.50	$ 1,183,995.00
2	P-501	Portland Cement Concrete Pavement, 9" Thickness, Complete	SY	11,030	$126.00	$ 1,389,780.00
					Subtotal Deductive Alternate A2:	$ 2,573,775.00
					Subtotal Base Option A, with Item #12 of Base Option A replaced by Subtotal Deductive Alternate A2 (w/o NMGRT):	$ 7,450,091.50
					NMGRT @ 8.1875%:	$ 609,976.24
					Total Base Option A, with Item #12 of Base Bid Replaced by Deductive Alternate A2 w/ NMGRT:	**$** 8,060,067.74

ITEM NO.	SPEC NO.	DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	AMOUNT
Base Option B - PCCP Terminal Apron with Concrete-Treated Base Course						
1	C-105	Mobilization, Complete	LS	1	$575,000.00	$ 575,000.00
2	CSPP	Airport Safety and Security, Complete	LS	1	$237,000.00	$ 237,000.00
3	P-101	Sawcut existing pavement, Complete	LF	2,610	$5.25	$ 13,702.50
4	P-152	Unclassified Excavation, Complete	CY	2,700	$17.00	$ 45,900.00
5	P-152	Unclassified Excavation, Removal and Replacement of Unsuitable Material, Complete in Place	CY	10,000	$42.00	$ 420,000.00
6	C-102	Temporary Pollution/Erosion Control	LS	1	$77,875.00	$ 77,875.00
7	P-101	Bituminous Pavement Removal, 4" to 6" Depth, Stockpiling On-Airport, Complete	SY	10,730	$9.00	$ 96,570.00
8	P-101	Removal and Disposal of Existing PCCP, Complete	SY	11,130	$30.00	$ 333,900.00
9	P-152	Subgrade Preparation	SY	21,900	$5.50	$ 120,450.00
10	P-209	Crushed Aggregate Base Course, CIP	CY	3,900	$120.00	$ 468,000.00
11	P-304	Concrete-Treated Base Course, 5", Complete in Place with Bond-Breaking Materials incidental to this item	SY	20,530	$47.00	$ 964,910.00
12	P-501	Portland Cement Concrete Pavement, 10" Thickness, Complete	SY	20,530	$127.00	$ 2,607,310.00
13	P-401	Bituminous Surface Course, 5", Complete in Place, DOT Mix Design in locations adjacent to existing structures	TON	317	$240.00	$ 76,080.00
14	P-602	Bituminous Prime Coat	GAL	400	$8.00	$ 3,200.00
15	P-603	Bituminous Tack Coat	GAL	100	$8.00	$ 800.00
16	P-620	Airfield Marking, Complete in Place	SF	4,200	$2.80	$ 11,760.00

ITEM NO.	SPEC NO.	DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	AMOUNT
17	P-101, D-701	Remove Existing Drop Inlet and Grate, Install New Drop Inlet with airport drainage inlet frame, aircraft-rated extra heavy duty ductile iron grate, and connection to storm drain pipes, Complete in Place	EA	3	$ 28,750.00	$ 86,250.00
18	D-701	New Drop Inlet, with airport drainage inlet frame, aircraft-rated extra heavy duty ductile iron grate, and connection to storm drain pipes, Complete in Place	EA	1	$ 26,750.00	$ 26,750.00
19	D-701	24" Storm Drain Pipe, Complete in Place	LF	790	$ 170.00	$ 134,300.00
20	F-162	Remove Automatic Security Fence Gate Pedestal Keypad and Associated Bollards, and Reinstall Keypad at the same location, CIP, including all electrical connections to make Gate systems whole.	LS	1	$ 37,275.00	$ 37,275.00
21		Remove and Salvage Exiting Concrete Parking Bumper and Reinstall at the same location after paving operations are complete, CIP.	EA	1	$ 100.00	$ 100.00
22		Install Protection Bollards, CIP.	EA	3	$ 600.00	$ 1,800.00
23	GP's	Construction Staking, Complete	LS	1	$ 109,500.00	$ 109,500.00
24	C-105	Contractor Quality Control Testing, Complete	LS	1	$ 155,500.00	$ 155,500.00
25	P-101, D-701	Remove Existing Storm Drain all sizes including necessary trenching and additional excavation, Complete.	LF	812	$ 39.00	$ 31,668.00
26	P-101, D-701	Remove Existing Storm Drain Manhole, Complete	EA	1	$ 2,350.00	$ 2,350.00
27		Remove and Dispose of Existing Electrical Junction Box. Install new Electrical Junction Box at the same location, adjusted to new pavement grade, CIP.	EA	1	$ 615.00	$ 615.00
					Subtotal Base Option B:	$ 6,638,565.50
NMGRT @ 8.1875%:						$ 543,532.55
					Total Base Option B w/NMGRT:	**$ 7,182,098.05**

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/10/2024

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 Holmes Murphy & Associates 2727 Grand Prairie Parkway Waukee IA 50263	**CONTACT NAME:** Brad Revier **PHONE (A/C, No, Ext):** 612-322-6045 **FAX (A/C, No):** 612-349-2490 **E-MAIL ADDRESS:** brevier@holmesmurphy.com
INSURED VITCONPC1 Vital Consulting Group, LLC PO Box 94778 Albuquerque NM 87199	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** National Fire Insurance Co of Hartford — 20478 **INSURER B :** The Continental Insurance Company — 35289 **INSURER C :** Valley Forge Insurance Company — 20508 **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 900094495 **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 [X] OCCUR X Contr Liab Per X Policy Form/XCU GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:			7034048000	6/12/2024	6/12/2025	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 $ 100,000 $ 15,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
A	**AUTOMOBILE LIABILITY** X ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY			7034047994	6/12/2024	6/12/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$ 1,000,000 $ $ $ $
B	X **UMBRELLA LIAB** [X] OCCUR **EXCESS LIAB** [ ] CLAIMS-MADE DED [X] RETENTION $ 10,000			7034047980	6/12/2024	6/12/2025	EACH OCCURRENCE AGGREGATE $	$ 10,000,000 $ 10,000,000 $
C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N [N] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		7034048014	6/12/2024	6/12/2025	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 2,000,000 $ 2,000,000 $ 2,000,000

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

City Department: Santa Fe Regional Airport - Project: Terminal Ramp Reconstruction.

Additional Insured only if required by written contract with respect to General Liability, Automobile Liability and Umbrella/Excess Liability applies on a primary basis and the insurance of the additional insured shall be non-contributory: Certificate Holder, Molzen Corbin & Associates, Project Owner and Others as required by written contract, per policy terms and conditions.

Waiver of Subrogation only if required by written contract with respect to General Liability, Automobile Liability, Workers Compensation and Umbrella/Excess Liability applies in favor of: Certificate Holder, Project Owner and Others as required by written contract, per policy terms and conditions.
See Attached...

CERTIFICATE HOLDER

James Harris - Airport Manager, Santa Fe Regional Airport
121 Aviation Drive
Santa Fe NM 87507

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: VITCONPC1

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Holmes Murphy & Associates	Vital Consulting Group, LLC PO Box 94778 Albuquerque NM 87199
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

General Liability, Automobile Liability, Workers Compensation and Umbrella/Excess Liability includes an endorsement providing 30 days' notice of cancellation will be furnished to the certificate holder.

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GALLEGOS, SEBASTIAN F.

From: DUTTON-LEYDA, TRAVIS K.
Sent: Tuesday, July 16, 2024 12:41 PM
To: GALLEGOS, SEBASTIAN F.
Cc: GARDUNO, JAMES D.; Purchasing DET
Subject: RE: Determination request

Hi, this is construction.

Thank you.

Regards,

Travis Dutton-Leyda
Chief Procurement Officer
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87501
505-629-8351
tkduttonleyda@santafenm.gov

https://santafenm.gov/finance-2/purchasing-1

Internal Link: https://intranet.santafenm.gov/finance_1

CITY OF SANTA FE
FINANCE

From: GALLEGOS, SEBASTIAN F. <sfgallegos@santafenm.gov>
Sent: Monday, July 15, 2024 3:50 PM
To: Purchasing DET <purchasing_det@santafenm.gov>
Cc: GARDUNO, JAMES D. <jdgarduno@santafenm.gov>
Subject: Determination request

Good afternoon Travis,

I would like to request a determination for the new construction of the Santa Fe Regional Airport's New Lighting Vault Project, this Vault will house all the necessary equipment to supply power to ensure and maintain proper lighting on the airfield. Attached are all the documentation MolzenCorbin provided for us, and below is the Scope of Work:

The City of Santa Fe wishes to establish a price agreement contract for the Santa Fe Municipal Airport New Airport Electrical Vault. This procurement will be based on unit price basis. The Scope of Bids further defined in the unit price Bid schedule and the Construction Drawings. The Contractor shall be

responsible for adherence to the Contract Documents Specifications, and approved directives and Change Orders.

- The Contractor Shall be responsible for the construction of the new Electrical lighting vault.
- The Contractor shall be responsible for State CID requirements and permit.
- The Contractor shall be responsible for verifications of all existing conditions, measurements and dimensions submitting a Bid.
- The Contractor shall be responsible for all permits, fees, and State and/or City inspections associated with the construction.

Thank you,
Sebastian Gallegos
Project Administrator
Santa Fe Regional Airport
121 Aviation Dr. Santa Fe, NM 87507
sfgallegos@santafenm.gov
Cell 505-695-3538
Office

SANTA FE
REGIONAL AIRPORT

CITY OF SANTA FE

Date: November 25, 2024

To: Governing Body

Via: Regina Wheeler, Public Works Director Regina Wheeler (Nov 26, 2024 09:53 EST)
Sam Burnett, Facilities Division Director JOHN BURNETT (Nov 25, 2024 11:41 MST)

From: Tim Farrell, Public Works Property Development Manager Timothy Farrell

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ACTION:
Request Approval of the of State of New Mexico Department of Finance and Administration (DFA) Capital Appropriation Project Grant Agreement 24-I3144 in the Total Amount of $100,000 for the Railyard Performance Center Facility. (Tim Farrell, Public Works Property Development Manager; tgfarrell@santafenm.gov).

Request Approval of a Budget Adjustment Request (BAR) to Allocate $100,000 from the 2024 Capital Appropriation to FY25 Revenue and Expenses for the Santa Fe Railyard, with a Reversion Date of June 30, 2028.

BACKGROUND AND SUMMARY:
The Railyard Performance Center has been operating at this location at the Railyard since 1996. The studio, which is home to the best dance floor in Northern New Mexico, supports classes, touring artists, performances, and community events in the heart of Santa Fe. The facility is owned by the City and operated by a local family business.

The appropriation will be used for renovations and improvements to the building, including the heating and air conditioning (HVAC) systems and electrical infrastructure. Based on the Facilities Divisions review and investigation of the work associated with this Grant, the funds will be fully utilized prior to June 2028.

ATTACHMENTS:
Grant Agreement NMDFA 24-I3144
BAR

PROCUREMENT METHOD:
2024 New Mexico State Capital Appropriation

Chief Procurement Officer (CPS)/Designee: _____ Date: Nov 27, 2024
CPO Comment/Exceptions: Excluded from Procurement

FUNDING SOURCE:
2024 New Mexico State Capital Appropriation
Fund Name/Number: Railyard/515
Munis Org Name/Number: 5150403/Ryd CapPrj
Munis Expenditure Object Name/Number: WIP Construction/572970
Munis Revenue Object Name/Number: New Mexico Fin and Admin/490210
Project Ledger Number: PWD2551519 - Railyard Performance Space

Budget Officer/Designee: Andy Hopkins Date: Nov 27, 2024
Budget Officer Comment/Exceptions: _____

ASSOCIATED APPROVALS:
IT Components included? ☐ Yes | ☑ No
Approval: _____ Date: _____
Comment/Exceptions: _____

Vehicles included? ☐ Yes | ☑ No
Approval: _____ Date: _____
Comment/Exceptions: _____

Construction, Facilities, Furniture, Fixtures, Equipment included? ☑ Yes | ☐ No
Approval: _____
Comment/Exceptions:
Signature: _____ JOHN BURNETT (Nov 25, 2024 11:41 MST)
Email: jsburnett@santafenm.gov

Capital Asset* or Project? ☑ Yes | ☐ No**
Project Ledger# PWD2551519
(*will this procurement result in a tangible item that costs more than $5,000?)
(**Capital Projects are new and improvement projects that are going to cost $10,000 or more)
Approval: _____ Date: _____
Comment/Exceptions: _____

Is this a Grant Funded Purchase? ☑ Yes | ☐ No
Approval: Erika Lujan Erika Lujan (Dec 3, 2024 09:24 MST) Title: Grants Manager Date: Dec 3, 2024
Comment/Exceptions: Grant Agreement NMDFA 24-I3144

Anticipated length of project: _____

Department Contract Administrator Contact Info:
Elizabeth L. Kahahane (elkahahane@santafenm.gov)

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
GENERAL FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of the date it is executed, by and between the Department of Finance and Administration, hereinafter called the "Department" or abbreviation such as "DFA/LGD", 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 2024, Chapter 66, Section 28, Paragraph 502**, 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 Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

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:

24-I3144 $100,000.00 APPROPRIATION REVERSION DATE: June 30, 2028

Laws of 2024, Chapter 66, Section 28, Paragraph 502, One Hundred Thousand ($100,000.00), from the General Fund 93100 to plan, design, construct, upgrade and improve heating, ventilation and air conditioning systems and electrical infrastructure at railyard facilities in Santa Fe in Santa Fe county;

The Grantee's total reimbursements shall not exceed One Hundred Thousand $100,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, Zero $0.00, which equals One Hundred Thousand $100,000.00 (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 Language if special conditions apply. 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 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.

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 shall request approval of its obligation(s) by submitting a Notice of Obligation form as provided by the Department. 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.

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.

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[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.

[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.

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: Alan Webber
Title: Mayor
Address: PO Box 909, Santa Fe, NM 87504
Email: mayor@santafenm.gov
Telephone: 505-955-6590

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: CITY OF SANTA FE
Name: Emily K. Oster
Title: Finance Director
Address: PO Box 909, Santa Fe, NM 87504
Email: ekoster@santafenm.gov
Telephone: 505-629-3411

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

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 **June 30, 2028** 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 quarterly 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. Additionally, the Grantee shall certify on the Request for Payment form 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.

Quarterly reports are due on the last day of each quarter. Quarter end reporting periods are September 30th, December 31st, March 31st, and June 30th.

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 provided by the Department. 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 execution 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. Twenty (20) days from date of Early Termination; or

iii. 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 Wage 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 Finance and Administration, Local Government Division (DFA/LGD) 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 DFA/LGD Grant Agreement. Should the DFA/LGD 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.

ARTICLE 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

_____
Entity Name

_____
Signature of Official with Authority to Bind Grantee

By: _____
(Print Name)

Its: _____
(Title)

_____
Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

_____
By:

Its: Cabinet Secretary or Designee

_____
Date

IN WITNESS WHEREOF, the parties have executed this Capital Appropriation Project as of the dates set forth below.

CITY OF SANTA FE:

SEE ABOVE

_____

ALAN WEBBER, MAYOR

ATTEST:

_____

GERALYN CARDENAS, INTERIM CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault

Kevin L. Nault (Aug 13, 2024 14:24 MDT)

ASSISTANT CITY ATTORNEY

FINANCE DIRECTOR:

Emily K. Oster

_____

EMILY OSTER

STATE OF NEW MEXICO
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. Contact Name/Phone #: _____

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 (I*f Applicable*): _____

G. Grant Balance: _____

H. 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 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 the 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.

Emily K. Oster

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Grantee Representative

EMILY OSTER
Printed Name

Printed Name

Date: Dec 24, 2024

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **PO #** _____ **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 # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

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: _____

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.

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

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

DEPARTMENT / DIVISION NAME	DATE
Railyard / Railyard CIP	8/16/2024

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WIP Construction - Railyard Facilities CIP	5150403	572970	PWD2551519	100,000	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
DFA - 24-I3144 Railyard Facilities CIP	5150403	490210	PWD2551519	(100,000)	
				$ -	$ -

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

Agreement with NM DFA to plan, design, construct, upgrade and improve heating, ventilation and air conditioning systems and electrical infrastructure at the Railyard Facilities in the amount of $100,000 (24-I3144 expires 06/30/28)

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	**0**

Halona Crowe — 8/15/2024
Prepared By *{print name}* — Date

JOHN BURNETT (Nov 25, 2024 11:41 MST)
Division Director Signature — Date

Regina Wheeler (Nov 26, 2024 09:53 EST)
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 — Dec 4, 2024
Budget Officer — Date

Emily K. Oster — Dec 24, 2024
Finance Director *{≤ $5,000}* — Date

Randy Randall (Dec 24, 2024 17:45 MST) — Dec 24, 2024
City Manager *{≤ $60,000}* — Date

Contract Packet to GB_NMDFA 24-I3144 Cap App_Railyard Performance Center_11 25 2024

Final Audit Report 2024-11-26

Created:	2024-11-25
By:	Elizabeth Kahahane (elkahahane@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAUiu9Xw19e5UNnZN7QtpVI6dDoSP4YfCu

"Contract Packet to GB_NMDFA 24-I3144 Cap App_Railyard Performance Center_11 25 2024" History

Document created by Elizabeth Kahahane (elkahahane@santafenm.gov)
2024-11-25 - 4:43:23 PM GMT- IP address: 63.232.20.2

Document emailed to Timothy Farrell (tgfarrell@santafenm.gov) for signature
2024-11-25 - 4:50:54 PM GMT

Email viewed by Timothy Farrell (tgfarrell@santafenm.gov)
2024-11-25 - 5:45:10 PM GMT- IP address: 104.47.65.254

Document e-signed by Timothy Farrell (tgfarrell@santafenm.gov)
Signature Date: 2024-11-25 - 5:45:17 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to JOHN BURNETT (jsburnett@santafenm.gov) for signature
2024-11-25 - 5:45:20 PM GMT

Email viewed by JOHN BURNETT (jsburnett@santafenm.gov)
2024-11-25 - 6:41:00 PM GMT- IP address: 63.232.20.2

Document e-signed by JOHN BURNETT (jsburnett@santafenm.gov)
Signature Date: 2024-11-25 - 6:41:23 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to rawheeler@santafenm.gov for signature
2024-11-25 - 6:41:27 PM GMT

Email viewed by rawheeler@santafenm.gov
2024-11-26 - 2:52:39 PM GMT- IP address: 24.73.110.46

Signer rawheeler@santafenm.gov entered name at signing as Regina Wheeler
2024-11-26 - 2:53:14 PM GMT- IP address: 24.73.110.46

Powered by Adobe Acrobat Sign

Document e-signed by Regina Wheeler (rawheeler@santafenm.gov)

Signature Date: 2024-11-26 - 2:53:16 PM GMT - Time Source: server- IP address: 24.73.110.46

Agreement completed.

2024-11-26 - 2:53:16 PM GMT

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Adobe
Acrobat Sign

Contract Packet to GB_NMDFA 24-I3144 Cap App_Railyard Performance Center_11 25 2024 (1)

Final Audit Report 2024-12-04

Created:	2024-11-27
By:	JAMES EDWARDS (jwedwards@santafenm.gov)
Status:	Canceled / Declined
Transaction ID:	CBJCHBCAABAAz0DluXYQNFd_PSUJi0pYLdu9xcYJl2ET

"Contract Packet to GB_NMDFA 24-I3144 Cap App_Railyard Performance Center_11 25 2024 (1)" History

Document created by JAMES EDWARDS (jwedwards@santafenm.gov)
2024-11-27 - 8:03:51 PM GMT- IP address: 97.182.93.53

Document sent to ALEXIS LOTERO (aclotero@santafenm.gov) and ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov) for signature. One of them to sign
2024-11-27 - 8:06:52 PM GMT

Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2024-11-27 - 8:58:59 PM GMT- IP address: 104.47.64.254

Document e-signed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
Signature Date: 2024-11-27 - 8:59:33 PM GMT - Time Source: server- IP address: 63.232.20.2

Document sent to JoAnn Lovato (jdlovato@santafenm.gov) and Travis Dutton-Leyda (tkduttonleyda@santafenm.gov) for signature. One of them to sign
2024-11-27 - 8:59:38 PM GMT

Document e-signed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
Signature Date: 2024-11-27 - 10:42:51 PM GMT - Time Source: server- IP address: 73.228.6.238

Document emailed to evlujan@santafenm.gov for signature
2024-11-27 - 10:42:56 PM GMT

Email viewed by evlujan@santafenm.gov
2024-12-03 - 4:21:55 PM GMT- IP address: 104.47.65.254

Powered by Adobe Acrobat Sign

Signer evlujan@santafenm.gov entered name at signing as Erika Lujan

2024-12-03 - 4:24:16 PM GMT- IP address: 63.232.20.2

Document e-signed by Erika Lujan (evlujan@santafenm.gov)

Signature Date: 2024-12-03 - 4:24:18 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature

2024-12-03 - 4:24:30 PM GMT

Email viewed by EMILY OSTER (ekoster@santafenm.gov)

2024-12-04 - 0:38:47 AM GMT- IP address: 104.47.64.254

Document declined by EMILY OSTER (ekoster@santafenm.gov)

Decline reason: Please route to Andy Hopkins to sign the BAR form, then back to me to sign the grant agreement. Thank you, Emily

2024-12-04 - 0:42:14 AM GMT- IP address: 63.232.20.2

Contract Packet to GB_NMDFA 24-I3144 Cap App_Railyard Performance Center_11 25 2024 (1) (1)

Final Audit Report 2024-12-17

Created:	2024-12-04
By:	JAMES EDWARDS (jwedwards@santafenm.gov)
Status:	Canceled / Declined
Transaction ID:	CBJCHBCAABAAN-JOEkBVDfkN88ugw2VOJM4ShYCxf-kI

"Contract Packet to GB_NMDFA 24-I3144 Cap App_Railyard Performance Center_11 25 2024 (1) (1)" History

Document created by JAMES EDWARDS (jwedwards@santafenm.gov)
2024-12-04 - 5:48:15 PM GMT- IP address: 97.182.93.53

Document emailed to ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov) for signature
2024-12-04 - 5:51:13 PM GMT

Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2024-12-04 - 9:48:04 PM GMT- IP address: 104.47.65.254

Document e-signed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
Signature Date: 2024-12-04 - 9:48:41 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature
2024-12-04 - 9:48:45 PM GMT

Email viewed by EMILY OSTER (ekoster@santafenm.gov)
2024-12-11 - 4:42:30 AM GMT- IP address: 73.42.112.179

Email viewed by EMILY OSTER (ekoster@santafenm.gov)
2024-12-15 - 0:59:04 AM GMT- IP address: 73.42.112.179

Email viewed by EMILY OSTER (ekoster@santafenm.gov)
2024-12-17 - 9:40:03 PM GMT- IP address: 104.47.65.254

Document declined by EMILY OSTER (ekoster@santafenm.gov)
Decline reason: Hi, I need to sign the grant agreement on page 13 in addition to the BAR on page 16. Please add a signature block for me on page 13 and route back to me to sign. Thank you, Emily

Powered by Adobe Acrobat Sign

2024-12-17 - 9:45:48 PM GMT- IP address: 63.232.20.2

Powered by
Adobe
Acrobat Sign

Contract Packet to GB_NMDFA 24-I3144 Cap App_Railyard Performance Center_11 25 2024 (1) (1) (1)

Final Audit Report 2024-12-25

Created:	2024-12-18
By:	JAMES EDWARDS (jwedwards@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA9XwJSnHF7LaIaOmnl8q7skNczyDEOat1

"Contract Packet to GB_NMDFA 24-I3144 Cap App_Railyard Performance Center_11 25 2024 (1) (1) (1)" History

Document created by JAMES EDWARDS (jwedwards@santafenm.gov)
2024-12-18 - 5:11:46 PM GMT- IP address: 97.182.206.186

Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature
2024-12-18 - 5:17:58 PM GMT

Email viewed by EMILY OSTER (ekoster@santafenm.gov)
2024-12-18 - 11:51:36 PM GMT- IP address: 104.47.64.254

Document e-signed by EMILY OSTER (ekoster@santafenm.gov)
Signature Date: 2024-12-25 - 0:25:09 AM GMT - Time Source: server- IP address: 75.104.68.196

Document sent to LAYLA ARCHULETTA-MAESTAS (lsarchulettamaestas@santafenm.gov) and Randy Randall (rrandall@santafenm.gov) for signature. One of them to sign
2024-12-25 - 0:25:14 AM GMT

Email viewed by Randy Randall (rrandall@santafenm.gov)
2024-12-25 - 0:44:48 AM GMT- IP address: 104.28.48.216

Document e-signed by Randy Randall (rrandall@santafenm.gov)
Signature Date: 2024-12-25 - 0:45:35 AM GMT - Time Source: server- IP address: 24.8.17.39

Agreement completed.
2024-12-25 - 0:45:35 AM GMT

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THE CITY OF
SANTA FE

MEMORANDUM

DATE: December 12, 2024

TO: Finance Committee
Public Works Committee
Governing Body
Andy Hopkins, Budget Andy Hopkins
Erika Lujan, Grants Erika Lujan
Erika Lujan (Dec 16, 2024 08:14 MST)

FROM: Sten Johnson, Assistant Fire Chief

VIA: Brian Moya, Fire Chief BM

CC: David Chapman, Grant Administrator

SUBJECT: NM DFA General Fund 93100 Capital Appropriation Project

ITEM AND ISSUE:
Request for Approval of a State of New Mexico Department of Finance and Administration General Fund 93100 Capital Appropriation Project Agreement for $250,000 to Purchase and Install Self-contained Breathing Apparatus (SCBA) for the Fire Department. SCBA equipment to be procured from vendor, Municipal Emergency Services.
Reversion date of June 30, 2026
Request for Approval of a Budget Amendment Resolution (BAR) to Put $250,000 From the DFA Grant into FY25 Fire Department Revenue and Safety Equipment Expenses.

BACKGROUND AND SUMMARY:
The City received the attached award announcement for NM DFA General Fund 93100 Capital Appropriations Project; 24-I3141 in the amount of $250,000.00.

These funds are granted for the procurement of Self-Contained Breathing Apparatus for the Fire Department. This procurement will replace aging equipment, update equipment to the latest offered technology and expand inventory to meet the needs of our growing department. The latest offered technology will assist to keep our Firefighters safe while working within environments that are immediately dangerous to life and health.

ATTACHMENTS:

New Mexico Finance and Administration General Fund 93100 Capital Appropriation Project Agreement.

BAR and Project Ledger.

City of Santa Fe New Mexico

Finance Department

Project Ledger Request Form

Date of Request: 12/2/2024

Project Title: Fire Department SCBA Procurement

Project Type: ☐ CIP ☑ Grant ☑ Internal Tracking

Project ID: PWD2522128

Grant ID: _____

Approved By: _____

(Finance Use Only)

Department: Fire Project Manager: Sten Johnson Ext: 505-467-9799

Project Date Range: 7/1/2023 to 6/30/2024 ☐ Create Fixed Asset

---

☐ Multi-Funding (complete all funding sources, should equal 100%)

Funding Source: NM DFA Capital Appropriations % of Funding: 100

MUNIS ORG: 2210181 MUNIS OBJ: 570500 Awarded Amount: $250,000.00

Funding Source: _____ % of Funding: _____

MUNIS ORG: _____ MUNIS OBJ: _____ Awarded Amount: _____

Expense String Phase:

A project must have at least one phase identified, this can be used as an additional level of tracking, for example, CIP - Design, Construction, etc. For Grants can be used as reimbursable types, such as transportation, salaries.

(You can create more than one phase and you can default MUNIS ORGs and OBJs, optional)

Phase: Machinery/Equipment >$5000 MUNIS ORG: 2210181 MUNIS OBJ: 570500

Grants Only (list all grants if applicable):

Grantor Name: NM DFA Capital Appropriations Project Awarded Amount: $250,000.00

AR Charge Code: 2210181.490210 ☐ Grant funds multiple projects (Complete a form for each project)

Grantor Id: _____ Federal CFDA (if applicable): N/A

Grantor Name: _____ Awarded Amount: _____

AR Charge Code: _____ ☐ Grant funds multiple projects (Complete a form for each project)

Grantor Id: _____ Federal CFDA (if applicable): _____

(If grants please provide all grant award documents with form) ☑ Attached Grant Documentation

Log # (Finance use only):	
Journal # (Finance use only):	

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

DEPARTMENT / DIVISION NAME	DATE
Fire	12/3/2024

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*(enter as positive #)*	*(enter as negative #)*
Machinery/Equipment >5000	2210181	570500	PWD2522128	250,000	
REVENUES				*(enter as negative #)*	*(enter as positive #)*
NM Dept of Finance and Administration	2210181	490210	PWD2522128	(250,000)	
				$ -	$ -

JUSTIFICATION: *(use additional page if needed)*
–Attach supporting documentation/memo
Capital Appropriations grant for the purchase of new Self Contained Breathing Apparatus. These are needed to replace soon to be outdated and depreciated current inventory.

(Complete section below if BAR results in a net change to ANY Fund)

Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	0

Sten Johnson — Prepared By *(print name)* — 12/3/2024 Date

12/17/24 — Division Director Signature *(optional)* — Date

12/17/24 — 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 — Budget Officer — Dec 16, 2024 Date

Finance Director *(≤ $5,000)* — Date

City Manager *(≤ $60,000)* — Date

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
GENERAL FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of the date it is executed, by and between the Department of Finance and Administration, hereinafter called the "Department" or abbreviation such as "DFA/LGD", 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 2024, Chapter 66, Section 28, Paragraph 499**, 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 Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

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:

24-I3141 $250,000.00 APPROPRIATION REVERSION DATE: June 30, 2026

Laws of 2024, Chapter 66, Section 28, Paragraph 499, Two Hundred Fifty Thousand ($250,000.00), from the General Fund 93100 to purchase and install equipment, including self-contained breathing apparatus, for the fire department in Santa Fe in Santa Fe county;

The Grantee's total reimbursements shall not exceed Two Hundred Fifty Thousand $250,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, Zero $0.00, which equals Two Hundred Fifty Thousand $250,000.00 (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 Language if special conditions apply. 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 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.

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 shall request approval of its obligation(s) by submitting a Notice of Obligation form as provided by the Department. 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.

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.

---

[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.

[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.

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: Alan Webber
Title: Mayor
Address: PO Box 909, Santa Fe, NM 87504
Email: mayor@santafenm.gov
Telephone: 505-955-6590

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: CITY OF SANTA FE
Name: Emily K. Oster
Title: Finance Director
Address: PO Box 909, Santa Fe, NM 87504
Email: ekoster@santafenm.gov
Telephone: 505-629-3411

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

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 **June 30, 2026** 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 quarterly 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. Additionally, the Grantee shall certify on the Request for Payment form 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.

Quarterly reports are due on the last day of each quarter. Quarter end reporting periods are September 30th, December 31st, March 31st, and June 30th.

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 provided by the Department. 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 execution 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. Twenty (20) days from date of Early Termination; or

iii. 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 Wage 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 Finance and Administration, Local Government Division (DFA/LGD) 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 DFA/LGD Grant Agreement. Should the DFA/LGD 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.

ARTICLE 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

_____
Entity Name

_____
Signature of Official with Authority to Bind Grantee

By: _____
(Print Name)

Its: _____
(Title)

_____
Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

_____
By:

Its: Cabinet Secretary or Designee

_____
Date

IN WITNESS WHEREOF, the parties have executed this Capital Appropriation Project as of the dates set forth below.

CITY OF SANTA FE:

SEE ABOVE

_____

ALAN WEBBER, MAYOR

ATTEST:

_____

GERALYN CARDENAS, INTERIM CITY CLERK

CITY ATTORNEY'S OFFICE:

_____

ASSISTANT CITY ATTORNEY

FINANCE DIRECTOR:

Emily K. Oster

_____

EMILY OSTER

STATE OF NEW MEXICO
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. Contact Name/Phone #: _____

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. 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 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 the 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.:** _____ **PO #** _____ **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**

Revised 4-2022

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

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: _____

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.

City of Santa Fe Water

801 W. San Mateo, Santa Fe, N.M. 87505
www.santafenm.gov/water

Jesse Roach PE PhD, Director

Bradley Prada, BDD Facility Manager
John Del Mar PE, Engineering Manager
Jonathan Montoya, Source of Supply Manager
Mike Moya, Transmission and Distribution Manager
Bill Schneider PG, Water Resources and Conservation Manager

MEMO

Date: **December 23, 2024**

To: **Public Works and Public Utilities Committee**
Finance Committee
Governing Body

Via: John Dupuis, Public Utilities Department Director John Dupuis (Dec 24, 2024 14:16 MST)

From: Jesse Roach, Water Division Director

ITEM:

Updated Wheeling Rate Agreement Between the City of Santa Fe (City) and Santa Fe County (County)

BACKGROUND

Paragraph 14(B) of the 2016 Amended and Restated Water Resources Agreement (WRA) between the City and the County authorizes the City to impose a charge on County water "wheeled" through the City's water transmission and distribution network to reach the County Utility system. The intent of a Wheeling Rate Agreement is administration of a fair cost from the County to the City for this service.

In April of 2022 the City and County agreed to an interim Wheeling Rate Agreement and the City began to bill the County $1.40 per 1000 gallons of water wheeled effective July 2021. On March 13th 2024, the City's Governing body approved a City and County staff recommended final Wheeling Rate Agreement with an initial wheeling rate of $2.04 per 1000 gallons wheeled. The County governing body did not end up approving the March agreement, and in December of 2024 passed an updated agreement with the following substantive changes from the agreement approved by the City:

1. A definition of "Wheeled Water" to clarify when wheeling charges can and cannot be charged.
2. Rather than an agreement that can be cancelled by either party with notice, the proposed agreement will now remain in effect so long as the WRA is in effect.

The proposed agreement including Appendices defining points of delivery, methodology for calculation of the wheeling rate, and a list of historical rates with effective date is included as attachments to this Memo. Also included is a "red-line" version of the agreement showing changes from the agreement previously approved by the City.

REQUEST

Review and approval of the final Wheeling Rate Agreement Between the City and County.

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Agreement between CoSF & SFCO- Wheel Water

Procurement/contract Title: Shared Agreement

Procurement Method/Vehicle: ☐Sole Source ☐State Price Agreement/Existing ☒ Cooperative ☐Request For Proposals(RFP) ☐Invitation To Bid (ITB) ☐Exempt: 13-1-98

☐Small Purchase (Contract Under $60,000) ☐Other: _____

Requesting Department: PUD/Water Div Staff Name: Jesse Roach

Procurement Requirements:

Procurement files shall be maintained for all purchases and contracts, regardless of the method of procurement. The procurement files shall contain the basis on which the awards are made, all submitted bids/proposals, all evaluation materials (bid tabs or Evaluation Committee Reports), scoresheets, quotations, and all other documentation related to or prepared in conjunction with evaluations, negotiations, and the award processes. The procurements shall contain written determinations from the Requesting Departments, signed by the Chief Procurement Officers (this document), setting forth the reasoning for the contract award decisions before submitting them to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING (CPD)

YES	N/A		YES	N/A	
☐	☒	**Written Determination (srvs)**	☐	☒	**Quote(s) (3 Valid & Current for Over 20k)**
☐	☒	**RFP - Confidential info to be provided to GB by CPD Buyer**	☐	☒	**BAR**
☐	☒	**ITB (include bid tab)**	☐	☒	**FIR**
☐	☒	**Other: _____**	☐	☒	**Certificate of Insurance (srvs)**
☐	☒	**Cooperative Agreements and GSAs and Statewide Price Agreements (include the cover page to show valid date, s page, and items to be purchased)**			
☐	☒	**Horizon Declination or Screenshot of horizonsofnewmexico.org/services.html (srvs)**			
☒	☐	**Summary of Contract (only on contracts)**			
☐	☒	**Current Santa Fe Business Registration (or Exemption if no tax)**			
☒	☐	**Executed Contract or Price Agreement (legal and contractor must sign before purchasing approves)**			
☐	☒	**Chief Procurement Officer (or designee) Approval for Exempt from Procurement (use memo on our site)**			
☐	☒	**Evaluation Committee Report (RFPs only)**			
☐	☒	**Signed Sole Source Determination, Vendor Written Quote, SS Letter from Contractors, and 30 Days Email**			
☒	☐	**>20k = Memo addressed to City Manager (Under 150K) Committees/City Council (Over 150K)**			

_____ _____ _____
Department Point of Contact Title Date

John DuQuis (Jan 4, 2024 14:39 MST)

_____ _____
Department Director Date

_____ _____
Chief Procurement Officer Date

_____ _____ _____
ITT Representative Title Date

City of Santa Fe

Summary of Contract, Agreement, Amendment & Lease

All applicable fields to be completed by department (complete 1.b only if you are processing an amendment):

1.a Munis Contract:_____ Procurement # (RFP/ITB# If any):_____

Contractor: Agreement between CoSF & SFCO- Water Transmission & Distribution System

Procurement Method/Vehicle: *Small Purchase* ☐ *RFP* ☐ *ITB* ☐ *Sole Source* ☐ *GSA* ☑ *Cooperative* ☐ *Exempt* ☐ *SWPA/Existing* ☐

Description/Title: Shared Agreement between CoSF & SFCO

Contract: ☐ Agreement: ☒ Lease/Rent: ☐ Amendment: ☐

Term Start Date: Upon Approval Term End Date: N/A Total Contract Amount: N/A

☐ Approved by Council *(If over the City Manager's approval threshold, you must go through GB)* _____

Contract / Lease:

1.b Amendment #:_____ to the Original Contract/Lease # _____

Increase/(Decrease) Amount $: _____

Extend Expiration Date to: _____

☐ Approved by Council *(If the original went through GB, all amendments must go through GB regardless of the amendment reason)* Date:_____

Amendment is for:

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

3. Procurement History:_____

John Phillips (Jan 4, 2024 14:39 MST)

Purchasing Officer Review: Date:

Comment & Exceptions:_____

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

John Phillips (Jan 4, 2024 14:39 MST)

Budget Officer Approval: Date:

Comment & Exceptions:_____

5. Grant History (if applicable): _____

Grants Administrator Approval: John Phillips (Jan 4, 2024 14:39 MST) **Date** _____

Staff Contact who Completed This Form: Jessica Chavez Phone #: 819-8411

To be recorded by City Clerk:

Clerk #_____

Email: _____

Date of Execution: _____

John Phillips (Jan 4, 2024 14:39 MST)

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

AGREEMENT BETWEEN THE CITY OF SANTA FE AND SANTA FE COUNTY TO WHEEL WATER TO SANTA FE COUNTY THROUGH THE CITY OF SANTA FE WATER TRANSMISSION AND DISTRIBUTION SYSTEM

This Agreement is entered into as of the date of the last signature below ("Effective Date"), by and between the City of Santa Fe ("City") and Santa Fe County ("County"), relating to the conveyance and delivery of County water through the City's water transmission and distribution system, also referred to as wheeling.

RECITALS

WHEREAS, the City and County may contract for services and enter into agreements with one another; and

WHEREAS, the City and County operate water utilities whose transmission and distribution systems are connected to each other and to Buckman Direct Diversion ("BDD") transmission lines at certain points; and

WHEREAS, the County water utility serves areas which cannot be reached by County water sources without use of the City water transmission and distribution system; and

WHEREAS, when County water sources are unavailable or insufficient to meet County demand, BDD Shared Pool water or Water Resources Agreement water from City sources can be moved through the City's water transmission and distribution system for delivery to the County; and

WHEREAS, in the December 2016 "Amended Restated Water Resources Agreement between the City of Santa Fe and Santa Fe County" ("WRA") the County agreed to begin paying the City wheeling rate beginning in 2021;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, set forth and for other good and valuable consideration, the parties agree to the Agreement memorialized below.

AGREEMENT

1. **Wheeling**. County water may be wheeled through the City's transmission and distribution system for delivery to the County service area at specific connection points, defined by master meters.

1.1. **Delivery Points**. The locations and characteristics of master meters defining City to County connection points, hereafter referred to as points of interconnection, are defined in Exhibit "A" (Points of Interconnection), attached hereto and incorporated herein by this reference. Exhibit "A" will be updated with any changes to these delivery points and any additional delivery points and can be updated at any time by mutual written agreement of both the City's Public Utilities Department Director and the Director of Santa Fe County

Utilities. Such agreement will not be unreasonably withheld if provisions of this agreement and Exhibit "A" have been followed.

2. **Wheeling Charge**. The County will pay the City a wheeling charge for water delivered by the City to the County through the Points of Interconnection defined in Exhibit "A" ("Wheeled Water"). Wheeled Water does not include, and the County will not pay a wheeling charge for: (1) water delivered under Section 3 of the WRA; (2) water delivered to or used by the City after a defined Point of Interconnection (SW Business Park); or (3) water delivered to the County through BDD transmission lines as identified in Exhibit A, section 3, except when BDD Shared Pool water is delivered to these points as a result of a Non-discretionary shutdown at BDD.

3.1 The wheeling charge will be calculated using the City's cost-of-service (COS) methodology documented in the Technical Memorandum: Analysis of Water Wheeling Rates for Santa Fe County, attached hereto and incorporated herein by this reference as Exhibit "B". The COS methodology and Exhibit "B" will be updated at any time by mutual written agreement of both the City's Public Utilities Department Director and the Director of Santa Fe County Utilities. If the COS methodology and Exhibit "B" have not been updated within the prior five (5) years, the City will update upon request of either the City's Public Utilities Department Director or the Director of Santa Fe County Utilities

3.2 The effective date and current volumetric wheeling charges in $ per 1000 gallons are listed in Exhibit "C" (City of Santa Fe Wheeling Charge). Exhibit "C" also includes previous wheeling charges and effective dates. The wheeling charge and Exhibit "C" can be updated by the City using the agreed-upon methodology upon the completion of a new or updated Cost of Service Study for the City Water Utility with an effective date no sooner than 30 days after a new Exhibit C has been signed by the City. The County may offer input in the development of each Cost of Service Study, and such input will be reasonably considered by the City.

3.3 The City will be responsible for reading the master meters at the Points of Interconnection and determining associated billing to the County for wheeled water.

3.3.1 The City reserves the right, at its own discretion, and with advance notice to the County to not charge wheeling fees for water delivered through specific Points of Interconnection. This provision will allow the City to incentivize water flow through Points of Interconnection should such flow be advantageous for water quality or other operational purposes.

3.4 The City will send all invoices to Santa Fe County Water Utility, and the County will pay invoices within thirty (30) days of receipt. The rate of $2.04 per 1,000 gallons shown in Exhibit C shall be applied retroactively to County water wheeled through the City system beginning July 1, 2021, resulting in the County paying an additional amount equal to the difference between $1.40 and $2.04 per 1,000 gallons.

3. **Terms of Delivery**. The City will deliver to the County water meeting or exceeding applicable water quality standards.

4.1 The County is responsible for maintaining water quality after the point of delivery.

4.2 In an emergency or force majeure event, the City will have the ability to shut off all deliveries at the affected Point(s) of Interconnection to the County for the duration of the emergency. In the case of an emergency, the City will notify County certified water operators as soon as possible and reasonably cooperate in providing additional supply at alternate locations, if needed. The City shall have full discretion to determine whether such an emergency condition exists within the City transmission and distribution system.

4.3 Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement except for any obligations to make payments to the other party hereunder, when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) state or federal government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and, (i) other events beyond the reasonable control of the Impacted Party.

4. **Term & Termination**. This Agreement shall commence on the date of the final signature below and remain in effect so long as the WRA is in effect.

5. **Additional Documents**. The parties agree to execute such further documents as may be necessary to carry out the terms and intent of this Agreement.

6. **Dispute Resolution**. The City and County agree to mediate disputes consistent with the Mediation Procedures Act, NMSA 1978, Section 44-7B-1 through 44-7B-6, prior to initiating any litigation, to resolve any conflicts arising under this Agreement, the expenses of which shall be shared equally by the City and County. Disputes shall be first discussed by representatives of each party. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within 90 days of the occurrence of the event or circumstances giving rise to the dispute, either party may give notice to the other party that the aggrieved party intends to litigate the dispute. Any dispute requiring notice shall be reported to the next meeting of the respective City and County governing bodies.

7. **Entire Agreement**. This Agreement and the Exhibits hereto contain the entire agreement between the parties, and the terms of this Agreement are contractual, not merely a recital.

8. **Counterparts and Recordation**. This Agreement may be executed in one or more counterparts, each of which is an original, and all of which together constitute only one agreement between the parties. This Agreement shall be recorded with the County Clerk and the City Clerk after the Agreement has been approved and executed by the Parties.

9. **Successors and Assigns.** This Agreement and all of the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of all of the parties hereto.

10. **Notices.** All notices shall be in writing and together with other mailings pertaining to this Agreement shall be made to:

FOR THE COUNTY:

Utilities Division Director Santa Fe County
PO Box 276
Santa Fe, N.M. 87504-0276 Phone: (505) 992-9870
Fax: (505) 992-3028

With a copy to:

County Manager Santa Fe County PO Box 276
Santa Fe, N.M. 87504-0276 Phone: (505) 986-6200
Fax: (505) 986-2740

County Attorney Santa Fe County
PO Box 276 Santa Fe, NM 87504-0276 Phone: (505) 986-6279
Fax: (505) 986-6362

FOR CITY OF SANTA FE:

Public Utilities Director
City of Santa Fe
801 West San Mateo
City of Santa Fe, NM 87504

With Copy to:

City Attorney
200 Lincoln Ave
Santa Fe, NM 87501

or as otherwise specified from time to time by each party.

11. **Choice of Law**. The Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

12. **Limitation of Liability**. Neither the City nor the County waive any limitation of liability that may apply under state law, including but not necessarily limited to the Batement Act, NMSA 1978, Section 6-6-11, the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30 and the Anti-Debt and Anti-Donation Clauses of the New Mexico Constitution, N.M. Const. Article IX, Sections 10 and 14, and NMSA 1978, secs. 37-1-23 and 37-1-24.

13. **Appropriations**. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City's Governing Body or the Board of County Commissioners for the performance of this Agreement. The City's or County's decision as to whether sufficient appropriations are available shall be accepted by the other party.

14. **Effective Date.** This Agreement shall become effective when the Agreement has been executed by all of the parties and their respective legal counsel and has been recorded at the office of the City and County Clerks and in accordance with paragraph 2.1 subject to Section 2 of this agreement entitled "Term."

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands the day and year first written above.

CITY OF SANTA FE

Alan Webber, Mayor — Date

ATTEST:

Andrea Salazar, City Clerk — Date

APPROVED:

Emily K. Oster — Dec 31, 2024

Emily Oster, City Finance Director — Date

APPROVED AS TO FORM:

Marcos Martinez — Dec 30, 2024

Marcos Martinez, Senior Assistant City Attorney — Date

SANTA FE COUNTY

Hank Hughes, Chair
Board of County Commissioners

Date

ATTEST:

Katharine E. Clark, County Clerk

Date

APPROVED AS TO FORM:

Cristella Valez for
Jeff Young, County Attorney

11.26.24
Date

Exhibit A to Wheeling Agreement - WRA Points of Delivery and Other Points of System Interconnection Between City and BDD and County

Last updated: **June 14, 2024**

Approved by

City's Public Utilities Department Director

John Dupuis

Name Signature Date

Director of Santa Fe County Utilities

Brian Snyder

Name Signature Date

Name	Physical System Making Connection to County Independent Water System	System Served	Location	Area Served	Actual Meter Size(s)	Lat	Long	City of SF Meter ID Numbers	Notes
1. Non-Section 3 WRA water delivered to the County through these meters is subject to the applicable wheeling charge.									
West Sector	City	County	Buckman 10 MG Tank	La Tierra, Las Campanas Estates I & II, Aldea, Tessera	8"	35.717051	-105.96164	201808, 201812	
Booster Station 4	City	County	Booster Station 4	La Tierra, Las Campanas Estates I & II, Aldea, Tessera		35.696813	-106.01413		Proposed point of delivery
Campo Conejo	City	County	Rabbit Road and Camino Mariquita	Campo Conejo Subdivision	8" and 6"	35.638349	-105.94541		Should be online in 2023
Richards Ave WEST	City	County	Richards Ave and I-25	Rancho Viejo, La Pradera	10" and 2"	35.6187	-106.00064	99451481, 99451482	
Agua Fria	City	County	Agua Fria and Henry Lynch by Nye School	Agua Fria area west of Henry Lynch including supplemental supply to Agua Fria Community Water Users Assoc.	6" and 1-1/2"	35.660617	-106.00316	99450201, 99450202	
Hyde Park Estates	City	County	Hyde Park and La Entranda	Hyde Park Estates	2"	35.715244	-105.88962	136804	
Richards Ave EAST	City	County	Richards Ave and I-25 NB	SFCC, Oshara, College Heights (general areas east of Richards Ave.)	10" and 6"	35.618715	-106.00024		Proposed point of delivery
TL2N	City	County	Old SF Trail & Teddy Bear Trail	Old Santa Fe Trail out to El Gancho	4"	35.642133	-105.92313		
2. Non-Section 3 WRA water delivered to the County through this meter (excluding City use downstream of meter (SW Business Park)) is subject to the applicable wheeling rate.									
Beckner	City	City & County	Cerrillos Road and Beckner Road	City: Southwest Business Park County: Rancho Viejo	10" and 2"	35.614591	-106.03307		Currently valved off at County line. County to notify City if and when valve is opened and County takes water deliveries at this point of delivery. Absent such notification, all water flowing through this meter is for benefit of City customers.
3. Water delivered to the County through these meters is only subject to wheeling charges when BDD Shared Pool water is delivered to these points as a result of a Non-discretionary shutdown at BDD.									
Wild West	BDD	County	I-25 W. FR and Pino	La Pradera, south NM14, Las Lagunitas	14" and 3"	35.588486	-106.06672	372494	
Game & Fish	BDD	County	Caja Del Rio Rd. and Wildlife Way	NM Game & Fish Complex	8" and 2"	35.667895	-106.06743		
NM Archaelogical	BDD	County	Caja Del Rio	Archaelogical and other County Customers	8" and 2"	35.655061	-106.0645		
SFC Public Works Complex	BDD	County	NM599 West of Caja Del Rio Rd.	Public Works	3"	35.641313	-106.06717		

EXHIBIT B

ANALYSIS OF WATER WHEELING RATES FOR SANTA FE COUNTY

Last updated October 6, 2023

City's Public Utilities Department Director	John Dupuis	John Dupuis (Nov 9, 2023 15:29 MST)	Nov 9, 2023
	Name	Signed	Date
Director of Santa Fe County Utilities	Paul Choman	Paul Choman	Nov 15, 2023
	Name	Signed	Date

I. Overview

The rate for wheeling water through City of Santa Fe Water's (City) transmission and distribution system is determined during the normal completion of the City's cost-of-service study, typically once every three years. The cost-of-service study, which is completed following generally accepted industry practices described by the American Water Works Association in its *Manual M1: Principles of Water Rates, Fees, and Charges*, allocates City of Santa Fe Water's operating and capital costs among the classes of service based on each class's demonstrated demand characteristics, the County being one of many such classes.

II. Definitions

"Allowance for Working Capital" represents the amount of cash the City must keep on hand to cover operating expenses associated with services provided to the County. The allowance is equal to 12.5% of the operating expenses of City of Santa Fe Water, and is added to the rate base. The allowance is allocated to the County in proportion to the rate base within the City's cost-of-service study.

"Capital Costs" – the sum of the County's return on rate base and depreciation expense.

"Cash Residual Method" – a method for quantifying capital costs within the City's cost-of-service which includes calculating the County's capital costs using the Utility Basis and assigning the residual cash-based capital costs to the City's other customers.

"Cost-of-Service" – refers to the generally accepted industry practices for allocating the annual operating and capital costs of providing water services to individual classes of service. These generally accepted practices are described by the American Water Works Association in its *Manual M1: Principles of Water Rates, Fees, and Charges*, and other manuals.

"Depreciation Expense" – the annual depreciation expense on the portion of the City's water system assets allocated to the County within the City's cost-of-service study.

"Fire Protection Costs" – those costs identified in the City's cost-of-service study as direct and indirect costs of the shared public fire protection components of the water system.

"Joint Costs" – those costs identified in the City's cost-of-service study as being shared by all classes of service in proportion to their demands, which includes the cost of storage, metering, billing, and administration. Metering costs are not included as they are paid for by the County separately following the Amended and Restated Water Resources Agreement between the City and County.

"Operating Costs" – those costs identified in the City's cost-of-service study as operating and maintenance expenses.

"Rate Base" – has the meaning ascribed to it within generally accepted cost-of-service principles as published by the American Water Works Association Manual M1. The rate base for the purposes of this exhibit includes the book value of all water system assets allocated to the County within the City's cost-of-service study along with an additional amount to reflect an allowance for working capital.

"Rate of Return" – applied within the Utility Basis to determine the return on rate base. The Rate of Return is a weighted average of the cost of debt and the cost of using the City's cash, also known as the cost of equity. The weights are driven by the debt to asset ratios from the financial audit. Rate of Return is set at no more than two-times the average coupon rate of the City's outstanding water revenue bonds. If the City has no outstanding revenue bonds, then the rate of return shall be set at no more than two times the expected coupon rate for municipal water utilities with the same credit rating as City of Santa Fe Water.

"Return on Rate Base" – is the rate base times the rate of return.

"Transmission Costs" – those costs identified in the City's cost-of-service study as being shared by all users of the City's transmission system which includes the cost of transmission piping and pumping.

"Utility Basis" – refers to the technique used to determine the County's share of capital costs within the City's cost-of-service study; it defines the County's capital costs as the sum of a return on rate base and depreciation expense.

"Wheeling" – means the movement of water supplies owned by the County through City's water system to the County's master meters.

III. Procedures

The City allocates its systemwide costs using generally accepted cost-of-service principles. Specifically, it uses the Base Extra-Capacity method to allocate costs, and it uses the Cash Residual method to quantify capital costs.

The total costs to be allocated in the cost-of-service study are determined at the City's sole discretion based on revenue requirements calculated in a City Council approved long-range financial plan. The costs of service are those expected for the year following the cost-of-service study.

The basis for allocating costs to individual classes of service is the demand each class represents. For the Base Extra-Capacity method, the relevant demands include average daily demand, maximum daily demand, maximum hourly demand. In addition to these, some costs are allocated based on the number of customers served, or by the equivalent meter sizes in service. By mutual agreement, the City and County may define an equivalent meter size to a meter or set of meters used in calculation of the basis. Such specified equivalencies will be memorialized in the definition of connection points in Exhibit A.

For the purposes of determining the Wheeling Rate, the City allocates only certain portions of the system costs to the County. Those costs include select Joint Costs of the system, the Transmission Costs, and select public Fire Protection costs. Fire protection costs are allocated to the County based on the number of County customers receiving fire protection from City tanks as a fraction of all City and County customers receiving fire protection from City tanks. Costs excluded from the County's Wheeling Rate are the cost of surface and groundwater supplies, raw water conveyance systems, treatment costs, distribution system costs, any metering costs that are paid directly by the County to the City, and costs related to the City's payment-in-lieu of tax.

IV. County Demand Units

The table below represents the County's units of service from the most recent cost-of-service study completed in 2021.

Demand Type	Measure	Units
Annual Delivery	Kgal	217,678
Average Day Demand	Kgal/Day	596
Max Day Peaking Factor		1.0
Max Day Demand	Kgal/Day	583
Max Day Units Above AD	Kgal/Day	-13
Max Hr Factor		1.4
Max Hr. Demand	Kgal/Day	857
Max Hr. Demand Above MD	Kgal/Day	274

V. Current Wheeling Rate

The current Wheeling Rate is shown in Exhibit C to the Agreement. The following table is a calculation of the Wheeling Rate from the City's cost-of-service study completed in 2021.

Cost Type / Units	Totals	Base	Max-Day	Max-Hour	Customer
Joint O&M Operating Costs					
Total Joint O&M Costs	$8,440,681	$79,120	$74,478	$145,012	$8,142,071
Total Joint System Units		2,911,551	7,490	14,828	426,491
Unit Type		*Kgal*	*Kgal/Day*	*Kgal/Day*	*Customers*
Cost per Unit		$0.03	$9.94	$9.78	$19.09
County Units		217,678	583	857	12
Total County Cost	$20,322	$5,915	$5,797	$8,381	$229
Transmission User Operating Costs					
Total Transmission O&M Costs	$2,236,172	$1,151,875	$1,084,297	$0	$0
Total Transmission User Units		2,911,551	6,650	10,628	426,485
Unit Type		*Kgal*	*Kgal/Day*	*Kgal/Day*	*Customers*
Cost per Unit		$0.40	$163.05	$0.00	$0.00
County Units		217,678	583	857	12
Total County Cost	$181,174	$86,118	$95,056	$0	$0
Joint Return on Rate Base					
Total Joint Rate Base (Capital)	$11,441,842	$2,255,072	$2,122,770	$4,133,138	$2,930,862
Total Joint Units of Service		2,911,551	7,490	14,828	426,491
Unit Type		*Kgal*	*Kgal/Day*	*Kgal/Day*	*Customers*
Rate Base per Unit		$0.77	$283.41	$278.73	$6.87
County Units		217,678	583	857	12
County Rate Base (A)	$572,779	$168,597	$165,225	$238,874	$82
County Rate of Return (B)	7.24%	7.24%	7.24%	7.24%	7.24%
Total County Cost (= A x B)	$41,469	$12,206	$11,962	$17,294	$6
Joint Depreciation Expense					
Total Joint Depreciation (Capital)	$597,614	130,797	123,123	239,727	103,968
Total Joint Units of Service		2,911,551	7,490	14,828	426,491
Unit Type		*Kgal*	*Kgal/Day*	*Kgal/Day*	*Customers*
Depreciation per Unit		$0.04	$16.44	$16.17	$0.24
County Units		217,678	583	857	12
Total County Cost	$33,220	$9,779	$9,583	$13,855	$3
Transmission Return on Rate Base					
Total Transmisison Rate Base (Capital)	$7,512,410	$3,869,720	$3,642,690	$0	$0
Total Transmission User Units		2,911,551	6,650	10,628	426,485
Unit Type		*Kgal*	*Kgal/Day*	*Kgal/Day*	*Customers*
Rate Base per Unit		$1.33	$547.75	$0.00	$0.00
County Units		217,678	583	857	12
County Rate Base (A)	608,655	289,314	319,341	-	-
County Rate of Return (B)	7.24%	7.24%	7.24%	7.24%	7.24%
Total County Cost (= A x B)	$44,067	$20,946	$23,120	$0	$0
Transmission Depreciation Expense					
Total Transmisison Depreciation (Capital)	$914,104	$470,865	$443,240	$0	$0
Total Transmission User Units		2,911,551	6,650	10,628	426,485
Unit Type		*Kgal*	*Kgal/Day*	*Kgal/Day*	*Customers*
Depreciation per Unit		$0.16	$66.65	$0.00	$0.00
County Units		217,678	583	857	12
Total County Cost	$74,061	$35,204	$38,857	$0	$0
Fire Protection Costs					
Total Fire Protection Costs	$653,211	$653,211	$0	$0	$0
Total Fire Protection Units		2,911,551	6,650	10,628	426,485
Unit Type		*Kgal*	*Kgal/Day*	*Kgal/Day*	*Customers*
Cost per Unit		$0.22	$0.00	$0.00	$0.00
County Units		217,678	583	857	12
Total County Costs	$48,836	$48,836	$0	$0	$0
Total O&M	$201,497	$92,034	$100,853	$8,381	$229
Total Return on Rate Base - Capital	$85,536	$33,153	$35,083	$17,294	$6
Total Depreciation - Capital	$107,281	$44,982	$48,440	$13,855	$3
Total Fire Protection	$48,836	$48,836	$0	$0	$0
Total Costs of Wheeling Service	$443,150	$219,005	$184,376	$39,530	$238
Total Water Delivery	217,678	217,678	217,678	217,678	217,678
Total Rate per Unit of Delivery	**$2.04**	$1.01	$0.85	$0.18	$0.00

Exhibit C to Wheeling Agreement - City of Santa Fe Wheeling Rates

Last Updated: **October 31, 2023**

Approved by

City Public Utilities Department Director	**John Dupuis**	John Dupuis (Nov 9, 2023 15:28 MST)	Nov 9, 2023
	Name	Signature	Date

Effective Date	Wheeling Rate	Cost of Service Study Year
July 1, 2021	**$2.04 per 1000 gallons**	2021

AGREEMENT BETWEEN THE CITY OF SANTA FE AND SANTA FE COUNTY TO WHEEL WATER TO SANTA FE COUNTY THROUGH THE CITY OF SANTA FE WATER TRANSMISSION AND DISTRIBUTION SYSTEM

This Agreement is entered into as of the date of the last signature below ("Effective Date"), by and between the City of Santa Fe ("City") and Santa Fe County ("County"), relating to the conveyance and delivery of County water through the City's water transmission and distribution system, also referred to as wheeling.

RECITALS

WHEREAS, the City and County may contract for services and enter into agreements with one another; and

WHEREAS, the City and County operate water utilities whose transmission and distribution systems are connected to each other and to Buckman Direct Diversion ("BDD") transmission lines at certain points; and

WHEREAS, the County water utility serves areas which cannot be reached by County water sources without use of the City water transmission and distribution system; and

WHEREAS, when County water sources are unavailable or insufficient to meet County demand, BDD Shared Pool water or Water Resources Agreement ~~Backup~~ water from City sources can be moved through the City's water transmission and distribution system for delivery to the County; and

WHEREAS, in the December 2016 "Amended Restated Water Resources Agreement between the City of Santa Fe and Santa Fe County" ("WRA") the County agreed to begin paying the City wheeling rate beginning in 2021;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, set forth and for other good and valuable consideration, the parties agree to the Agreement memorialized below.

AGREEMENT

1. **Wheeling**. County water may be wheeled through the City's transmission and distribution system for delivery to the County service area at specific connection points, defined by master meters.

1.1. **Delivery Points**. The locations and characteristics of master meters defining City to County connection points, hereafter referred to as points of interconnection, are defined in Exhibit "A" (Points of Interconnection), attached hereto and incorporated herein by this reference. Exhibit "A" will be updated with any changes to these delivery points and any additional delivery points and can be updated at any time by mutual written agreement of both the City's Public Utilities Department Director and the Director of Santa Fe County

Utilities. Such agreement will not be unreasonably withheld if provisions of this agreement and Exhibit "A" have been followed.

2. **Wheeling Charge**. The County will pay the City a wheeling charge for water delivered by the City to the County through the Points of Interconnection defined in Exhibit "A" ("Wheeled Water"). Wheeled Water does not include, and the County will not be pay a wheeling charge for: (1) water delivered under Section 3 of the WRA; (2) water delivered to or used by the City after a defined Point of Interconnection (SW Business Park); or (3) water delivered to the County through BDD transmission lines as identified in Exhibit A, section 3, except when BDD Shared Pool water is delivered to these points as a result of a Non-discretionary shutdown at BDD.

2. The wheeling charge~~**Term & Termination**. This agreement shall remain effective unless terminated pursuant to section 2.2 below.~~

~~2.1 The initial term shall commence on the date of the final signature.~~

~~2.2. Either party may terminate this agreement by providing the other party at least one year's notice prior to the effective date of termination; provided that the Agreement shall not terminate until the parties have agreed on and implemented alternative means to supply customers provided service under this Agreement.~~

~~3. **Volume Charge**. The County will pay the City a volumetric charge or charges for certain water delivered to the County through the Points of Interconnection defined in Exhibit "A".~~

3.1 ~~The volumetric wheeling charges~~ will be calculated using the City's cost-of-service (COS) methodology documented in the Technical Memorandum: Analysis of Water Wheeling Rates for Santa Fe County, attached hereto and incorporated herein by this reference as Exhibit "B". The COS methodology and Exhibit "B" will be updated at any time by mutual written agreement of both the City's Public Utilities Department Director and the Director of Santa Fe County Utilities. If the COS methodology and Exhibit "B" have not been updated within the prior five (5) years, the City will update upon request of either the City's Public Utilities Department Director or the Director of Santa Fe County Utilities

~~3.2 If City water is being delivered to the County at agreed upon rates sufficient to cover operation and maintenance of the City's transmission and distribution system, additional wheeling rates will not be added. Water delivered under Section 3 of the 2016 Amended and Restated Water Resources Agreement would not be subject to additional wheeling rates.~~

~~3.3~~3.2The effective date and current volumetric wheeling charges in $ per 1000 gallons are listed in Exhibit "C" (City of Santa Fe Wheeling ~~Rates~~Charge). Exhibit "C" also includes previous wheeling charges and effective dates. The wheeling charge and Exhibit "C" can be updated by the City using the agreed-upon methodology upon the completion of a new or updated Cost of Service Study for the City Water Utility with an effective date no sooner than 30 days after a new Exhibit C has been signed by the City. The County may offer input in the development of each Cost of Service Study, and such input will be

reasonably considered by the City.

~~3.4~~3.3 The City will be responsible for reading the master meters at the Points of Interconnection and determining associated billing to the County for wheeled water.

~~3.4.1~~3.3.1 The City reserves the right, at its own discretion, and with advance notice to the County to not charge wheeling fees for water delivered through specific Points of Interconnection. This provision will allow the City to incentivize water flow through Points of Interconnection should such flow be advantageous for water quality or other operational purposes.

3.4 The City will send all invoices to Santa Fe County Water Utility, and the County will pay invoices within thirty (30) days of receipt. The rate of $2.04 per 1,000 gallons shown in Exhibit C shall be applied retroactively to County water wheeled through the City system beginning July 1, 2021, resulting in the County paying an additional amount equal to the difference between $1.40 and $2.04 per 1,000 gallons.

~~4.~~3. **Terms of Delivery**. The City will deliver to the County water meeting or exceeding applicable water quality standards.

4.1 The County is responsible for maintaining water quality after the point of delivery.

4.2 In an emergency or force majeure event, the City will have the ability to shut off all deliveries at the affected Point(s) of Interconnection to the County for the duration of the emergency. In the case of an emergency, the City will notify County certified water operators as soon as possible and reasonably cooperate in providing additional supply at alternate locations, if needed. The City shall have full discretion to determine whether such an emergency condition exists within the City transmission and distribution system.

4.3 Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement except for any obligations to make payments to the other party hereunder, when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) state or federal government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and, (i) other events beyond the reasonable control of the Impacted Party.

4. **Term & Termination**. This Agreement shall commence on the date of the final signature below and remain in effect so long as the WRA is in effect.

5. **Additional Documents**. The parties agree to execute such further documents as may be

necessary to carry out the terms and intent of this Agreement.

6. **Dispute Resolution**. The City and County agree to mediate disputes consistent with the Mediation Procedures Act, NMSA 1978, Section 44-7B-1 through 44-7B-6, prior to initiating any litigation, to resolve any conflicts arising under this Agreement, the expenses of which shall be shared equally by the City and County. Disputes shall be first discussed by representatives of each party. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within 90 days of the occurrence of the event or circumstances giving rise to the dispute, either party may give notice to the other party that the aggrieved party intends to litigate the dispute. Any dispute requiring notice shall be reported to the next meeting of the respective City and County governing bodies.

7. **Entire Agreement**. This Agreement and the Exhibits hereto contain the entire agreement between the parties, and the terms of this Agreement are contractual, not merely a recital.

8. **Counterparts and Recordation**. This Agreement may be executed in one or more counterparts, each of which is an original, and all of which together constitute only one agreement between the parties. This Agreement shall be recorded with the County Clerk and the City Clerk after the Agreement has been approved and executed by the Parties.

9. **Successors and Assigns.** This Agreement and all of the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of all of the parties hereto.

10. **Notices.** All notices shall be in writing and together with other mailings pertaining to this Agreement shall be made to:

FOR THE COUNTY:

Utilities Division Director Santa Fe County
PO Box 276
Santa Fe, N.M. 87504-0276 Phone: (505) 992-9870
Fax: (505) 992-3028

With a copy to:

County Manager Santa Fe County PO Box 276
Santa Fe, N.M. 87504-0276 Phone: (505) 986-6200
Fax: (505) 986-2740

County Attorney Santa Fe County
PO Box 276 Santa Fe, NM 87504-0276 Phone: (505) 986-6279
Fax: (505) 986-6362

FOR CITY OF SANTA FE:

Public Utilities Director
City of Santa Fe
801 West San Mateo
City of Santa Fe, NM 87504

With Copy to:

City Attorney
200 Lincoln Ave
Santa Fe, NM 87501

or as otherwise specified from time to time by each party.

11. **Choice of Law**. The Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

12. **Limitation of Liability**. Neither the City nor the County waive any limitation of liability that may apply under state law, including but not necessarily limited to the Batement Act, NMSA 1978, Section 6-6-11, the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30 and the Anti-Debt and Anti-Donation Clauses of the New Mexico Constitution, N.M. Const. Article IX, Sections 10 and 14, and NMSA 1978, secs. 37-1-23 and 37-1-24.

13. **Appropriations**. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City's Governing Body or the Board of County Commissioners for the performance of this Agreement. The City's or County's decision as to whether sufficient appropriations are available shall be accepted by the other party.

14. **Effective Date.** This Agreement shall become effective when the Agreement has been executed by all of the parties and their respective legal counsel and has been recorded at the office of the City and County Clerks and in accordance with paragraph 2.1 subject to Section 2 of this agreement entitled "Term."

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands the day and year first written above.

CITY OF SANTA FE

_____ _____

Alan Webber, Mayor Date

ATTEST:

_____ _____

Date

~~Geralyn Cardenas, Interim~~Andrea Salazar, City Clerk

APPROVED:

_____ _____

Emily Oster, City Finance Director Date

APPROVED AS TO FORM:

_____ _____

Marcos Martinez, Senior Assistant City Attorney Date

SANTA FE COUNTY

~~Signature~~Hank Hughes, Chair	Date
Board of County Commissioners	~~Date~~

~~Name, Chair Board of County Commissioners~~

ATTEST:

~~Katherine~~Katharine E. Clark, County Clerk	Date

APPROVED AS TO FORM:

for	11.26.24
Jeff Young, County Attorney	Date

~~**FINANCE DIVISION APPROVAL**~~

~~Yvonne S. Herrera, Finance Director~~	~~Date~~

CITY OF SANTA FE

Memorandum

Date: November 20, 2024

To: Governing Body, Finance Committee, Quality of Life Committee, and Public Works and Utilities Committee

From: Andréa Salazar, City Clerk AS

RE: Adoption of Open Meetings Act Notice Requirements for 2025

EXECUTIVE SUMMARY:
The proposed Resolution adopts reasonable notice requirements for the City's policymaking bodies for 2025, pursuant to the New Mexico Open Meetings Act (OMA). The Resolution will sunset when the Governing Body adopts its 2026 Open Meetings Act resolution.

BACKGROUND:
OMA, NMSA 1978, Sections 10-15-1 to -4, requires that public bodies adopt reasonable notice requirements for their public meetings at least annually. As a result, each year the Governing Body adopts a Resolution adopting notice requirements for that year.

ATTACHMENTS:
Resolution
Fiscal Impact Report

CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2024-__

INTRODUCED BY:

Mayor Alan Webber

A RESOLUTION

ADOPTING ANNUAL OPEN MEETINGS ACT NOTICE REQUIREMENTS FOR 2025.

WHEREAS, the New Mexico Open Meetings Act ("Open Meetings Act"), NMSA 1978, §§ 10-15-1 to – 4, requires that public bodies "determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body"; and

WHEREAS, the Open Meetings Act governs the City of Santa Fe's ("City's") Governing Body and the Governing Body's subordinate policymaking bodies; and

WHEREAS, the Governing Body desires to comply with the Open Meetings Act by adopting its notice requirements for the City's policymaking bodies; and

WHEREAS, the Governing Body seeks to give annual notice to the public of its determination, pursuant to NMSA 1978, Section 10-15-1(D), that a seventy-two (72) hour notice prior to its regular and special meetings is reasonable and that it deems that the same notice is reasonable for the meetings of its subordinate policymaking bodies.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. The applicability of the Open Meetings Act to the City's policymaking bodies is recognized.

Section 2. The notice requirements set forth below are hereby adopted.

A. The City shall give a minimum of seventy-two (72) hours' notice of all regular and special meetings of the Governing Body and its subordinate policymaking bodies.

B. The notice shall include the date, time, place(s) of the planned meeting (multiple places may be included in the notice when one or more online options for "attending" the meeting are available), and a list of the specific items of business to be discussed or transacted at the meeting or information about how the public may obtain a copy of such an agenda.

C. The City shall make the notice available to the public and news media through reasonable means, including posting on the City's website, and providing it to broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

D. Agendas shall be posted on the City's website.

Section 3. Regular Meetings of the Governing Body

A. Unless otherwise specified, including in subsection B below, regular meetings of the Governing Body shall be held as follows:

i. On the second and last Wednesday of each month.

ii. In the City Council Chambers of the municipal building of the City, located at 200 Lincoln Avenue, Santa Fe.

B. When it is difficult or impossible for members of the Governing Body to meet in person, they may participate virtually pursuant to SFCC 1987, Section 1-

9.

C. To the extent possible, meetings will be broadcast via the City's YouTube channel and other media as available, such as the City's Government Channel on Comcast Channel 28 or Comcast Channel HD928, and on the radio from KSFR 101.1 FM.

Section 4. Special Meetings

A. The City shall provide a minimum of 72 hours' notice of all special meetings of the Governing Body and its subordinate policymaking bodies.

B. Unless otherwise specified, special meetings are held at the same place as regular meetings. The date, time, and place of a special meeting shall appear on the agenda and be made available to the public and news media through reasonable means including posting on the City's website.

C. The agenda shall be posted on the City's website.

D. When it is difficult or impossible for members of the Governing Body to meet in person, they may participate virtually pursuant to SFCC 1987, Section 1-9.

E. To the extent possible, meetings will be broadcast via the City's YouTube channel and other media as available, such as the City's Government Channel on Comcast Channel 28 or Comcast Channel HD928, and on the radio station KSFR 101.1 FM.

Section 5. Quasi-Judicial Committees and Subordinate Policymaking Bodies

A. The Governing Body hereby requires that every quasi-judicial committee, board, or commission, including but not limited to the planning commission, historic design review board, and board of adjustment, follow the same notice requirements as the Governing Body, and as provided in this resolution and the

Open Meetings Act.

B. The Governing Body of the City hereby requires that all other policymaking boards, commissions, and committees follow the same notice requirements as provided by the Open Meetings Act.

Section 6. Emergency Meetings

A. Pursuant to its procedural rules, the Governing Body or subordinate policymaking body may call, with, if possible, up to 24 hours' notice, a meeting to consider any matter that, if not addressed immediately, will likely result in injury or damage to persons or property or significant financial loss to the City. When possible, the City will provide 24-hour telephonic notice to all media who normally cover City meetings before the emergency meeting commences.

B. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda. Unless there is a State or national emergency already declared for the same reasons, within ten (10) days of taking action on an emergency matter, the City will notify the Attorney General's Office that the emergency meeting took place.

Section 7. Term

This Resolution shall sunset upon adoption of the 2026 Open Meetings Act Resolution, making it unnecessary to rescind.

PASSED, APPROVED, and ADOPTED this _____day of _____, 2025.

_____

ATTEST: ALAN WEBBER, MAYOR

_____

ANDRÉA SALAZAR, CITY CLERK

APPROVED AS TO FORM:

_____

ERIN K. McSHERRY, CITY ATTORNEY

Legislation/2025/Resolutions/Open Meetings Act 2025

FIR No. 10635.1

FISCAL IMPACT REPORT

General Information:

(Check) **Bill:** _____ **Resolution:** X

Short Title(s): Open Meetings Act 2025

Sponsor(s): Mayor Alan Webber

Reviewing Department(s): City Clerk

Staff Completing FIR: Andréa Salazar, City Clerk **Date:** 11/20/2024 **Phone:** (505) 955-6327

Reviewed by City Attorney: [signature] **Date:** Dec 6, 2024

Reviewed by Finance Director: Emily K. Oster **Date:** Dec 6, 2024

Summary:
The purpose of this Resolution is to comply with the Open Meetings Act (OMA) by adopting annual OMA notice requirements for 2025. The Resolution shall sunset upon adoption of the 2026 Open Meetings Act resolution.

Departments Affected:
Governing Body, City Clerk's Office, and Departments supporting policy making bodies.

Consequences of Not Enacting Legislation:
If this legislation is not adopted, the Governing Body would fail to comply with the OMA requirement that it adopt notice requirements for meetings governed by the OMA.

Conflict, Duplication, Companionship, or Relationship to Other Legislation:
This Resolution sunsets upon the adoption of the 2026 Open Meetings Act resolution.

Performance and Administrative Implications:
Compliance with the OMA is required for the decisions of policy making bodies to be final and binding.

Fiscal Implications:
OMA does not require stenographers, but it does require minutes and funds for stenographers who take minutes come from the General Fund and are included in the City Clerk's budget for FY25.

Fiscal Impact

_____ Check here if no fiscal impact

Expenditures

Expenditure Type	FYE 2025	FYE 2026	FYE 2027	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
Personnel and Benefits*	$	$	$				
Capital Outlay	$	$	$				
Contractual/ Professional Services	$38,700	$38,700	$38,700				
Operating	$	$	$				$
Total:	$	$	$				$116,100

Expenditure Narrative:
The City Clerk's Office allocated $38,700 for stenographer costs associated with providing minutes to certain committees including Governing Body, Planning Commission, Historic Districts Review Board, Archaeological Review Committee and Board of Adjustment.

Revenue

Revenue Type	FYE 2025	FYE 2026	FYE 2027	Recurring (R) or Non-recurring (NR)	Fund
General Fund	$	$	$		
Special Revenue	$	$	$		
CIP	$	$	$		
Enterprise	$	$	$		
Internal Service	$	$	$		
Trust and Agency	$	$	$		
Federal	$	$	$		
Other	$	$	$		
Total	$	$	$		

Revenue Narrative:

Signature: Andrea Salazar

Email: asalazar@santafenm.gov